

The Judgment number 591/2014 dated October 15, 2014, rendered by the Civil Division of the High Court of Justice derives from the claim filed by the entity Accor Hoteles España, as a lessee, against the entity Residencial Ademuz, S.L., as a lessor. In this case, the plaintiff claimed for the rescission of the leases subscribed with the defendant, and, in a subsidiary manner, the reduction of the leased hotel incomes, basing its arguments on the application of the clause *rebus sic stantibus*, due to the exceptional change on the circumstances involved in the Spanish trade.

The Court of First Instance and the Province Audience condemned Residencial Ademuz, rejected the claim of the Lessee, and enforced the fulfillment of the agreement.

In response, the respective appeal was timely filed and the Supreme Court set forth the application of the *rebus sic stantibus* clause to the case, pointing out that the target of the same, despite the fact that it is not legally recognized, should be the review of the contracts in those cases that, due to the existence of new circumstances with regards to the former circumstances at the time of the execution of the agreement, which holds an unpredictable character, the provisions of any of the contracting parties has become so burdensome that the economic balance of the contract is considered broken.

In the case under discussion, in view of the specific circumstances of the case, the High Court allowed the application of the "*rebus sic stantibus*" clause and, accordingly, authorized the modification of the agreement, thus, allowing the reduction of the agreed lease by applying greater flexibility to the jurisprudential doctrine concerning the application of the "*rebus sic stantibus*" clause that in recent times was applied by the High Court.

The reasons alleged by the High Court in order to allow the application of such clause were as follows: the financial crisis has been an absolutely unforeseeable circumstance which has generated a serious disorder to the tourism sector. As a result, there has been a considerable drop in sales and revenue in this sector and, more specifically, in the financial activity of the tenant involved, causing a repeated outcome of losses, that placed it in a pre-insolvency situation.

Thus, in order to restore the contractual financial balance between the contracting parties, and in accordance with the expert report provided by the plaintiff, the High Court authorized the amendment of the contract with regard to the reduction of the rent, and ordered a 29% annual reduction of the rent, establishing a deadline for such discount that will be applicable from the date when the claim was filed until the end of the year 2015 by considering that such term is adjusted to the specific temporal context that was affected by the exceptional financial circumstances.

Paula Casado