

Minority shareholders and challenges to *negative* corporate resolutions

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The Barcelona Court of Appeals (BCA) has recently ruled¹ on challenges to the so-called *negative* corporate resolutions, in a case where a shareholder holding a 23 per cent of the share capital in a company owned by four members of a family proposed that the general shareholders' meeting (GSM) take the decision to demand payment of certain amounts owed to the company by the shareholders and other parties, but the GSM rejected by majority to claim the amounts indicated by that shareholder and instead decided to analyse the situation of the company and eventually, if applicable, claim the amounts really owed to the company.

The dissenting 23 per cent shareholder sought from the commercial court the annulment of the GSM *negative* decision not to claim the amounts indicated by her, but did not seek at the same time the adoption by the court of the *positive* resolution that she had proposed.

The commercial court declared the nullity of the GSM decision not to claim the amounts indicated by the dissenting shareholder and ordered the company to demand payment of all outstanding debts.

The company then appealed the judgment before the BCA, which, among other things, reminded² the distinction between *contrary*, *non-existent* and *negative* corporate resolutions:

- (i) *Contrary* resolutions are resolutions not to do something. As any other resolution passed by the GSM, they may be challenged pursuant to the Spanish Companies Act.
- (ii) *Non-existent* resolutions are those that (a) have not even been proposed or, (b) when proposed, have not been submitted to the vote of the GSM. They cannot be challenged since there is no legitimate interest in challenging what has never come into existence.
- (iii) *Negative* resolutions are those submitted to the GSM but not passed because the required majorities have not been reached. These resolutions may be challenged, but an action seeking their annulment would be pointless if the claimant does not also request that the court declares the defeated proposal of resolution as being passed by the GSM.

The BCA overturned the first instance judgment, among other reasons, because the minority shareholder merely sought the annulment of the GSM *negative* decision not to claim the debts indicated by her, instead of bringing two consolidated actions, i.e. one seeking the annulment of that *negative* resolution and one seeking the adoption of the *positive* resolution to claim such debts. The BCA found that for this reason the appealed judgment went *ultra petita* by ordering the company to take a *positive* decision that the claimant had not requested.

This judgment reminds the importance that court actions are complete and technically well-structured, in particular in cases like this, where a minority shareholder puts forward a GSM resolution that is vetoed by the majority.

¹ Decision of the Barcelona Court of Appeals nº 669/2020, dated 30 April 2020.

² Decision of the Barcelona Court of Appeals nº 280/2014, dated 25 July 2014.