

Assignment of litigious or pre-litigious claims and default interest

Madrid, January 2022

The Spanish Supreme Court (SC) has issued a new judgment¹ contributing to provide certainty and confidence to the flourishing Spanish market of litigious or pre-litigious claims.

A company under insolvency proceedings (Harinas Rolle) had an outstanding claim against another company (Colmepan) resulting from the provision of flour and derivatives. As is the case in claims arising from commercial transactions, default interest accrued in accordance with law 3/2004 of 29 December on *measures to combat late payment in commercial transactions*².

Following Harinas Rolle's liquidation, a third company (ALAE) acquired the claim. As a new creditor of Colmepan, ALAE filed a lawsuit claiming payment of the principal and default interest pursuant to law 3/2004.

After a complete dismissal of the action in the first instance, the Court of Appeal of Madrid (CAM) upheld ALAE's appeal except as regards interest. The CAM ruled that ALAE was entitled to legal interest from the lawsuit filing date, but not to default interest provided for by law 3/2004, on the grounds that ALAE did not become a creditor as a result of a *commercial transaction*, but rather because of an assignment agreement.

ALAE then brought an appeal before the SC. It essentially argued that, according to the Civil Code and settled case-law, the assignment of a claim encompasses all rights ancillary to it, including default interest.

The SC declared ALAE's right to receive from Colmepan default interest provided in law 3/2004 and, thus, upheld the appeal. The SC founded its decision as follows:

- (i) The assignee of a claim acquires it with all its ancillary rights, including default interest, unless otherwise agreed by the parties to the assignment agreement.
- (ii) Legal provisions on default interest in commercial transactions are mandatory, even if the relevant claim is assigned to a third party.
- (iii) Law 3/2004 is aimed at reducing late payment in commercial transactions by imposing high default interest. This deterrent purpose would be frustrated if the CAM's interpretation were accepted.

This SC's judgment is a significant endorsement for acquirers of litigious or pre-litigious claims in Spain.

¹ SC judgment 768/2021 dated 3 November 2021.

² The interest rate agreed in the contract or, in case no rate has been agreed, the interest rate applied by the European Central Bank to its most recent main refinancing operation carried out before the calendar half-year in question plus eight percentage points.