

Sale of an asset of the insolvency estate, legal standing to challenge and *material justice*

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The Spanish Supreme Court (SC) has issued a ruling¹ confirming that Escampa, a shareholder of a well-known hotel company (Silken), had legal standing to seek the annulment of the sale of 5,000 shares of Silken owned by the insolvent company Grupo Hotelero Urvasco (GHU).

The sale was authorised by GHU's insolvency administrator, but not by the insolvency court and, therefore, it breached the rule set forth in article 43.2 of the former Insolvency Act (IA), that prohibited to sell assets of the insolvency estate before the opening of the liquidation phase without the authorisation of the insolvency court.

Despite not being a creditor of GHU, Escampa challenged the sale before the insolvency court, submitting that it violated article 43.2 IA. GHU, its insolvency administrator and Silken contested Escampa's claim, on the grounds that Escampa was not a party to the sale and purchase agreement nor a creditor of GHU. Both the insolvency court and eventually the Court of Appeal annulled the sale.

GHU then challenged the Court of Appeal's decision before the SC on the same grounds. According to GHU, it breached article 1,302 of the Spanish Civil Code (SCC), which provides that the annulment of a contract can be sought by its main or ancillary obligors.

The SC declared that, notwithstanding the general rule set forth in article 1,302 SCC, there may be circumstances justifying the legal standing of a third party when it has suffered a damage as a result of the contract in question.

The SC went on saying that article 43.2 IA was aimed at maximizing the proceeds from the disposal of assets in the insolvency estate and hence insolvency creditors have a legitimate interest to challenge the acts of disposal. However, legal standing may go beyond and include other parties like Escampa, since it had not been allowed to bid for the shares of a company of which it was already a shareholder, bearing in mind that the sale "could alter the control of the company".

This judgment is interesting in that it seems to follow a certain trend to adjudicate disputes, in particular between shareholders, seeking justice not only *formally* but also *materially*, as we have submitted in previous publications.

¹ Judgment of the SC 1823/2023 of 22 December.