The Spanish Supreme Court quashes a ruling of the Madrid Court of Appeal that had decided to direct the parties to submit their dispute to the out-of-court dispute resolution mechanism provided in the SPA

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The Spanish Supreme Court (SSC)[1] has recently overturned a judgment of the Madrid Court of Appeal (MCA) because it found that the MCA had ruled beyond the claims submitted by the parties (*extra petita*) by directing them to the out-of-court dispute resolution mechanism set forth in a SPA despite the fact that both parties had finally decided to solve their dispute in court.

The dispute related to the determination of the price of a business that had been sold pursuant to a SPA in which the parties had agreed that the price should be adjusted post-closing to reflect "the real value of the assets transferred and liabilities assumed".

According to the SPA, in case the parties failed to reach an agreement regarding the adjusted price, the dispute should be solved by a Big Four. A dispute arose, but none of the Big Four was hired because the parties did not agree on the terms of the engagement letter.

Buyer and seller filed separate court claims against each other that were eventually consolidated. The seller sought the court to order the buyer to pay the price resulting from certain adjustments. The buyer, for its part, sought the court to determine the final price in accordance with an expert report to be prepared by a Big Four or alternatively in accordance with the expert report it had submitted with its court claim. In any case, both claims sought the court to resolve the dispute rather than direct the parties to the price determination mechanism provided in the SPA.

The first instance court partially upheld the seller's claim and rejected the buyer's. In relation to the latter, it declared that it could not appoint a Big Four pursuant to the terms of the SPA since the parties had waived the out-of-court dispute resolution mechanism agreed in the SPA and decided to solve their differences in court; therefore, it found that the adjustments to the price should be made pursuant to the evidence submitted in the court proceedings.

The MCA reversed the judgment and ruled that the parties should resort to the out-of-court dispute resolution mechanism of the SPA and only after having tried that could they refer to the courts.

Both parties filed an extraordinary appeal before the SSC alleging, inter alia, that the MCA's ruling was *inconsistent* since none of them had sought the court to enforce the out-of-court dispute resolution mechanism, but, quite the opposite, both had decided to solve their dispute judicially.

[1] Judgment of the SSC no. 306/2021, dated 12 May 2021.

The SSC upheld both extraordinary appeals and returned the case to the MCA for it to resolve the dispute. The SSC recalled that courts' decisions must be consistent, this is to say that they must accommodate the parties' requests for relief. In the case at hand, however, the MCA's judgment was inconsistent since "none of the parties requested the matter to be solved out of court by the auditors" and thus the MCA's decision amounted to "expelling the parties from the judicial system and leaving them in the same situation as at the beginning of the dispute, while none of the parties had requested that".

The ruling confirms the importance that SPAs provide *clear and effective* dispute resolution mechanisms: in a case like this, for instance, by signing the auditor's engagement letter prior to or simultaneously with the SPA and making clear that if the adjustment mechanism becomes frustrated or contentious for some reason the court or the arbitrator, as applicable, may and must decide the dispute.