

## **Another judgment on good faith and corporate law**

Madrid, September 2021

The Court of Appeal of Barcelona (CAB) recently reminded that the right to challenge companies' resolutions, as any other right, is limited by the principle of good faith and hence cannot be exercised in an abusive manner.

The judgment<sup>1</sup> refers to a dispute between the minority shareholder of a family-owned real estate company, who had been its sole director since its incorporation in 2003, and the majority shareholders, who had been enjoying certain properties belonging to the company for free or for below-market rents.

The conflict arose in 2017, when the majority shareholders filed a criminal complaint against the minority shareholder for an alleged crime of misappropriation and the latter, being aware that she was going to be dismissed as director of the company in the next general shareholders' meeting (GSM), included in the GSM's agenda a payment request to the shareholders of their outstanding debts vis-à-vis the company for the use of its real estate assets over the past years; the amounts to be claimed resulted from an expert report that the minority shareholder had filed in the criminal proceedings.

The GSM refused to claim those amounts and instead decided to request payment once the new directors had had the opportunity to examine the company's real situation and determine the exact amount of the debts.

The minority shareholder challenged this resolution on the grounds that it had been passed to the detriment of the company's interest and to the benefit of the majority shareholders. A first instance commercial court upheld the challenge and declared the resolution null and void, but the CAB revoked that decision, among others, for the following reasons:

(i) Lack of detriment of the company's interest:

The GSM did not refuse to claim payment of the shareholders' debts vis-à-vis the company, but only to claim the amounts that had been calculated by the dismissed director. There was a reasonable need for the new directors to ascertain the company's financial situation and determine the actual amount of the debts before claiming their payment.

(ii) Bad faith and abuse of rights:

The minority shareholder had acted in evident bad faith and in an abusive manner, contrarily to its earlier *own acts* (estoppel). During fifteen years as the company's sole director, she had never claimed any debt from the shareholders, and she only did so after the majority shareholders brought criminal proceedings against her and dismissed her as director of the company.

This CAB's judgment is another good reminder that the exercise of (minority or majority) shareholders' rights must not only keep to the letter of the law but is also limited by the principles of good faith and estoppel. This is particularly important in closed corporations, as often times the parties' behaviours end up crystalizing patterns that may limit or nuance the written agreements or the statutory rights.

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<sup>1</sup> Judgment of the Court of Appeal of Barcelona 669/2020 dated 30 April 2020.