

Book VI of the Catalan Civil Code: most salient features

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At times we do not attach enough importance or pay enough attention to the different regional systems of civil law that coexist with the national system of civil law in Spain. One of these regional systems is that of Catalonia. Recently Book VI of the Catalan Civil Code has been published, directly touching on matters that may affect financial transactions, the giving of guarantees and security, and contracts in general. It is therefore advisable to be conversant with the specificities of this new regulation, which in certain transactions may offer advantages over the national system that we ought not to ignore.

This briefing note seeks to call attention to the changes introduced by Book VI of the Catalan Civil Code ('Book VI'), as approved by the Catalan Act of Parliament passed on 15 February, concerning contracts and obligations and amending the preceding Books ('Act 3/2017')¹.

But for the odd exception unaddressed here, Act 3/2017 will come into force on 1 January 2018.

Let us see, then, what are the new features that we should pay heed to:

- *Undetermined or indeterminable price*

Book VI affords full enforceability to sale and purchase contracts that do not determine the price or make provision for determining the price. In these cases, the price will be that generally charged in comparable circumstances, upon conclusion and in relation to property of a similar nature (*vide art. 621(5)(1)*).

- *Determination of the price by one of the parties*

Contrary to what happens under national civil law, art. 621(5)(2) allows for the possibility of the price being unilaterally determined by one of the contracting parties, although the counterparty may object to said price if found to be manifestly unreasonable or to have not been determined

¹ *Ley 3/2017, de 15 de febrero, del libro sexto del Código civil de Cataluña, relativo a las obligaciones y los contratos, y de modificación de los libros primero, segundo, tercero, cuarto y quinto.*

within the time limit agreed for such purpose. If the objection is upheld, the price generally charged in comparable circumstances will be applied. The same rules apply when determination of the price is entrusted to a third party, although such a possibility is already provided for in the Spanish Civil Code.

- *Earnest money deposits*

Here we should note that under Book VI, unless otherwise expressly provided, deposits which are an earnest for performance of the contract implicitly provide for withdrawal, the opposite of what occurs under national civil law according to the judicial interpretation given to art. 1454 of the Spanish Civil Code.

- *Costs and expenses in connection with a contract*

Book VI also entails changes to the distribution of costs and expenses which may be incurred in connection with a sale and purchase contract. In the absence of a provision to the contrary, the seller will be responsible for the cost of delivery of the property, whereas the buyer will be responsible for receipt and transportation costs other than those payable by the seller, as well as for the cost of execution of any deed, the cost of issuance of the first copy, other post-transfer expenses and those expenses incurred in connection with registration with registers.

- *Rescission on the grounds of unfair advantage*

According to article 621(45), sale and purchase contracts and other contracts with mutual consideration may be rescinded if, at the time of conclusion, one party depended on the other or had with the latter a special relationship of trust, it was in a situation of compelling need or financial distress or was unable to foresee the consequences of its acts, provided that the counterparty has exploited the foregoing and gained excessive benefit or manifest unfair advantage. Additionally, the contract may be rescinded if it is a B2C (business-to-consumer) sale where, contrary to the requirements of good faith, there is a significant imbalance in the parties' rights and obligations to the detriment of the consumer.

- *Rescission on the grounds of gross disparity*

Under art. 621(49), a party may rescind the contract to which it is a party if it proves that, at the time of conclusion, the value of the consideration to be received was less than half the value of that to be given. This rule was already provided in the former Compilation of Catalan Civil Law² but, unlike now with Book VI, this remedy was only available in sales and purchases of real property.

² *Compilació de Dret Civil de Catalunya.*

- *Particularities in the sale and purchase of real property: third-party financing*

Book VI allows the buyer of real property to withdraw (resile) from the contract where, having financing by a credit institution been provided for, documentary proof is provided of the refusal of such institution to grant the financing.

- *Sales with an option to repurchase*

Art. 621(55) regulates sales with an option to repurchase (*pactum de retrovendendo*), already provided for in the Compilation. This device is interesting given that it allows, among other things, putting up as collateral property that is subject to an option to repurchase, which is often not allowed in national civil law by reason of the 'forfeiture proviso' (*pactum commissorium*) prohibition under art. 1859 of the Spanish Civil Code.

Such repurchase must be exercised in accordance with the provisions of arts. 568(28) to 568(32), which are added to Book V of the Catalan Civil Code through the final fifth provision of Act 3/2017, which regulate matters such as the maximum duration of the right to repurchase or the amounts that the original seller must pay to the current owner of the encumbered thing (*res*).

- *Plurality of agents*

Taking a route at odds with that taken by the Spanish Civil Code (art. 1722), art. 622(29) of Book VI sets forth the joint and several liability of agents (mandatories) when they have acted collectively.

- *Enforcement of liens*

Until now, in the enforcement of a lien by means of a public sale of property, a second auction had to be called if the first one failed. With the approval of Act 3/2017, the lien holder (lienor) can make his own the retained property directly after the first auction if it fails. To do so, the lienor must issue a receipt of satisfaction of the entire claim and assume all expenses of the enforcement procedure, so that the lienee will be completely released from debt. This change is introduced by the fifth final provision, which amends, among others, art. 569(7) of Book V.

- *Mortgagee's assignment of the debt secured by mortgage*

The fifth final provision also amends art. 569(28) of Book V concerning obligations secured by mortgage and the assignment of the mortgage debt. According to the new rule, it will be a requirement for entitlement of the mortgage debt assignee that the assignor notifies in a verifiable manner the mortgage debtor and, if applicable, the registered owner of the mortgaged property of the price agreed for the assignment or the value given to the assigned receivable and the essential terms of the assignment. In addition, a waiver of notice by the debtor will be void.

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