

**Requirements for a finding of abuse of law  
in the acquisition and restructuring of companies:  
the Lex Nova case  
(Judgment of the High Court of Castile and Leon  
[Valladolid Employment Division]  
in appeal no. 2008/2013 of 20/02/2014)**

**Carolina San Martín Mazzucconi**

*Academic Council Member, Gómez-Acebo & Pombo*

*Reader (Associate Professor), Universidad Rey Juan Carlos*

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*The High Court of Castile and Leon (Tribunal Superior de Justicia de Castilla y León) determined the appeal for review of an employment tribunal decision (recurso de suplicación) lodged by a worker against a ruling which, notwithstanding holding his dismissal unlawful, did not find there to be "abuse of law to the detriment of workers" nor did it order the codefendant companies to assume joint and several liability for the consequences of such unlawfulness.*

*As we shall see, the Court defended a stringent view of abuse of law (fraus legis) where such must be proven in respect of all the elements giving shape to the same.*

**Relevant facts**

The events that interest us took place throughout 2012 and can be summarised as follows:

In the month of July, the publishing house Editorial Aranzadi, S.A. acquired all the shares in Corporación Lex Nova, S.L., with the former making it known that it was not interested in one of the group companies: Grafolex, S.L.U., involved in graphic arts, which, though solvent, reported losses. The worker had been serving in this company since 2003.

A few months before the acquisition was consummated by Aranzadi, Lex Nova sold to a third party, for one euro, all its shares in Grafolex. In October, the latter carried out a collective redundancy of its entire staff which was held unlawful, and in December it made the

worker redundant for economic reasons, without disbursing the appropriate severance pay and owing the last two month's salary.

**The worker's statements of case**

The appellant contended that the sale of Grafolex was done in abuse of law simply because Aranzadi demanded it, seeking to prejudice the rights of workers. He based such a statement on what he considered to be a number of signs of abusive conduct, which would allow us to presume the same. They are discussed below.

**Judicial reasoning**

*a) General doctrine on abuse of law and its presumption*

To resolve the case, the Court recalled the legal doctrine relating to abuse of law<sup>1</sup>:

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<sup>1</sup> Summarised in the Judgment of the Supreme Court of 14/5/2008 (Appeal no. 884/2007).

- Abuse of law is not presumed, but must be proven by those who invoke it.
- Notwithstanding, proof of the same is allowed by means of both direct and indirect evidence, the latter including judicial presumption (now regulated under art. 386 of the Spanish Civil Procedure Act), which operates when between the facts established and that which is inferred there is “a precise and direct link according to the rules of human judgment”.
- Although sometimes abuse of law has been found irrespective of the intent to abuse (*animus fraudandi*), taking into account only the prohibited outcome, the majority doctrine requires the concurrence of the subjective element, so the abuse defined by art. 6(4) of the Spanish Civil Code implies an intentional deviant use of a rule to cover an unlawful outcome, thus separating itself from a mere violation or non-compliance.

*b) Analysis and discarding of evidence of abuse*

Having established the preceding guidelines, the Court went on to examine the presumed evidence of abuse alleged by the appellant:

- 1) PAYMENTS OF DIVIDENDS: Grafolex unloaded more than 2 million euros in reserves through a payment of dividends, but for the Court this did not presuppose the existence of abuse, for the following reasons:
  - such payments occurred in years prior to the sale of Lex Nova, without there being any record of dealings at that time with Aranzadi for these purposes.
  - all Group companies, and not just Grafolex, distributed dividends.
  - even the expert witness submitted by the worker denied that such distribution were the cause of Grafolex’s losses.
- 2) SALE FOR ONE EURO: Though striking that Lex Nova discarded Grafolex for only one euro, the circumstances do not make this sufficient to presume abuse. The Court reasoned that

since it was a company “with losses and in crisis”, its acquisition was very risky, which “would justify the symbolic sale price.”

- 3) COLLECTIVE REDUNDANCY: The worker claimed that Grafolex “simulated” the termination procedure, to which the Court concluded that this entails a ruling of unlawfulness, as was the case, but is not evidence of abuse in the prior sale.
- 4) AGREEMENT FOR ARANZADI TO NOT ASSUME GRAFOLEX: The sale and purchase deed between Lex Nova and Aranzadi states that the latter is not interested in acquiring that company nor does it assume liability for any claims made by its employees. The Court held that such agreements may be valid between the contracting parties even if not against third parties, and that in any case, they do not establish that the sale of Grafolex was abusive.
- 5) BREACH OF AGREEMENT TO PLACE ORDERS WITH GRAFOLEX: Lex Nova offered, under a contract that was never signed, to continue placing orders with Grafolex after discarding it. But the Court considered that this did not conceal any abuse, since, aside from not signing the contract, Lex Nova “fulfilled it as long as it could and the circumstances allowed.”

*c) Closing argument: assessment of the benefit gained by the person who mocks the rule*

After rejecting one by one the alleged signs of abusive sale of Grafolex, the Court provided a final reasoning, logical in nature, to round out its arguments: the absence of abuse is strengthened considering that it is not clear what would have been the benefit for Lex Nova from resorting to the alleged abusive sale of Grafolex.

Paradoxically, the Court supports this statement with a judicial presumption since, in its view, if Lex Nova had sold the company to a third party, “one can assume that it would have prompted the redundancy of workers, either on the grounds of economic losses, or on productive grounds due to Aranzadi’s lack of interest in acquiring it. It turns out that the total amount of minimum statutory severance pay in this case coincided with the equity value of Grafolex, and so the benefit for Lex Nova

gained by not applying the supposedly flouted rules concerning terminations on such grounds, is not clearly supported.

Based on the foregoing, the Court concluded that the intent to abuse had not been sufficiently proven, leading to the dismissal of the appeal.

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