

ANALYSIS



Insurance

Limitation period of an insurer's recourse claim against construction agents distinct from the insured under the Spanish Building (Unified Regulation) Act

Despite its logic and simplicity, Article 18 of the Building (Unified Regulation) Act continues to give rise to interpretative problems in higher court case law. It has not quite found its place alongside Article 1145 of the Civil Code and Article 43 of the Insurance Contracts Act.

ÁNGEL CARRASCO PERERA

Professor of Civil Law, University of Castilla-La Mancha
Academic counsel, Gómez-Acebo & Pombo

1. The systematic solution

This paper presents some thoughts on Supreme Court Judgment no. 330/2026, dated 2 March, regarding the position of the civil liability insurer of a construction agent when it seeks recourse after over-paying the liability due by the insured, the architect planner.

First, let us consider the provisions that appear to us to be applicable *prima facie*:

- Article 18(2) of the Building (Unified Regulation) Act (LOE):

Any action for recovery that may lie with any of the agents involved in the construction process against the others, or *with insurers against them*, shall lapse within two years from the date the court decision ordering the liable party to pay damages becomes final and conclusive, or from the date on which compensation was settled out of court [emphasis added].

- Article 43 of the Insurance Contracts Act (LCS):

... the insurer, once compensation has been paid, may exercise the rights and bring the *actions that, by reason of the loss, would have rested with the insured against the persons responsible* for it, up to the limit of the compensation. The insurer may not exercise the rights to which it has been subrogated to the detriment of the insured... [emphasis added].

The insurers referred to in Article 18 LOE must undoubtedly be those providing civil liability cover for any of the agents sued and found liable, essentially the insurer of the architect, the site manager and the building engineer. And little else, because neither the developer nor the contractor nor the supplier insures against civil liability for construction defects. The parties entitled to bring a direct action against the insurer under Article 76 LCS will be the commonhold associations seeking, under Articles 17 and 18(1) LOE, structural or functional repair. The recourse claim by these civil liability insurers may arise in two situations: either the insurers have paid on behalf of their insured parties by virtue of the *prima facie* joint and several liability under Article 17(3) LOE and subsequently seek, by way of recourse, to establish the full or partial liability of a party other than the insured, or they have paid by virtue of joint and several liability, but the payment exceeds the insured party's internal share. Whenever the insurer is entitled to seek recourse against another party involved in the construction for any reason, it may do so on the same terms against the relevant insurer.

Article 18 LOE (as well as Art. 43 LCS) may also refer to the insurer covering structural damage to the building, taken out by the developer in accordance with the conditions set out in Article 19 LOE. The insured parties under this damage insurance policy are the owners who have purchased registered units in the building, and it is their rights that the insurer is subrogated to. However, the owners are not agents, so the rights to which the insurers are subrogated are the rights of claim against the agents.

In both cases (civil liability insurer and damage insurer), the insurer may utilise the subrogation *ex lege* provided for in Article 43 LCS. This provision is not a source of subrogation distinct from that of Article 18 LOE. On the contrary, it forms the basis of the latter; it is merely that Article 18 LOE sets out the conditions (time limits) for exercising this right of recourse based on subrogation. The subrogation under Article 43 LCS has a broader scope than the former because it extends to third par-

agents (other than the insured) that is subject to the time limit set out in Article 18(2) LOE.

2. The resolved dispute

The statutory appeal lodged by the commonhold association seeking to hold the construction agents liable in accordance with Article 17 LOE was upheld in its entirety and, consequently, the claim brought against the defendants in this case, who,

in respect of the matters forming the subject of this appeal, were ordered jointly and severally to carry out the repair works proposed in accordance with the claim filed by the commonhold association. Subsequently, the commonhold association sought enforcement, and

the court issued an order valuing the work at €443,147.50, in accordance with the report prepared by the court-appointed expert. Of that amount, the architect found liable paid a total of €307,487.09, of which €242,437.89 was paid through ASEMAS.

As ASEMAS was unable to secure repayment from the property developer and the building engineer for what it considered to be an overpayment, it filed a claim against both parties. It argued that they had been ordered, together with its insured party — the architect — to pay jointly and severally the sum of €443,147.50 and that, as there were three parties ordered to pay and shared liability was presumed, that amount should be paid in equal thirds, so that each of them was liable to pay €147,715.83. However, it was the architect

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ties other than construction agents. It is clear, however, that any damage caused by these third parties who are not agents will not constitute construction damage under Article 17 LOE and, therefore, this subrogatory recourse will not be subject to the two-year time limit of Article 18(2), but rather to the limitation period for the insured's claim against the third party causing the damage, to which the insurer has subrogated.

In summary, any subrogation in favour of Article 19 LOE's insurer that gives rise to the initial claim against the agents is subject, in its exercise, to the time limit set out in Article 18(1), because the owners have no other time limit either. And any subrogation in favour of the civil liability insurer of one of the agents, because it pays, gives rise to a right of recourse against the other

who took charge of complying in the main with the judgment by paying a total of €307,487.09, of which ASEMAS covered €242,437.89. It concluded, therefore, that the architect had made an overpayment of €159,771.26, and that ASEMAS had borne €82,666.63 of that amount, which it was claiming in the action brought.

The appellate judgment given by the *Audiencia Provincial* rejected the ground of appeal, which reiterated the limitation period expiry raised as a defence. The provincial court reasoned that the limitation period under Article 23 LCS did not apply, as the action brought is neither contractual nor derived from the insurance contract, nor is the claimant a party to it; rather, it is an action for reimbursement by subrogation for payment, based on Article 43 LCS and Article 1145 of the Civil Code (CC), within the framework of the shared obli-

sions and procedures, respectively, governing the determination of the dispute.

The Supreme Court judgment addressing the alleged breach of provisions concurs on the above point. The action brought is an action for recovery by statutory subrogation of the insurer and its limitation period is not governed by Article 23 LCS and cannot, in the present case, be subsumed under Article 18(2) LOE.

The legal basis of the action rests on Article 43 LCS and Article 1145 CC, and its limitation regime is determined, as already noted in Judgment no. 709/2025 of 9 May, by Article 1964 CC, in its version prior to the amendments made by Act 42/2015 of 5 October.

The insurer's subrogation to the insured's claim pursuant to Article 43 LCS does not alter the limitation regime of the right of action that the insured has against the liable third party, such that the limitation period, the start of its calculation and the possibility of interruption will depend on the nature of the claim giving rise to the action that the insured transfers

to the insurer (Judgment no. 865/2008 of 1 October and judgments cited therein).

3. Commentary

I believe that the legal doctrine established by the Provincial Court and the Supreme Court is misguided.

To begin with, let us consider Article 1145 CC and the recourse between joint and

Neither Article 43 LCS nor Article 1145 CC contains any specific limitation regime that could override Article 18(2) LOE

gation arising from the court order which held the parties involved in the construction jointly and severally liable. Consequently, the applicable limitation period was the general one set out in Article 1964 CC, which, in relation to the fifth transitional provision of Act 42/2015, would not have expired on any of the dates proposed by the appellant. The building engineer lodged two separate point-of-law appeals on the grounds of a breach of the provi-

several debtors. This provision does not contain or refer to any specific limitation regime. It applies to all recourse claims between joint and several debtors, but each case will have its own specific regime. Articles 17 and 18 LOE also fall within the scope of Article 1145 CC, on the understanding that any such award for an amount exceeding the insured party's share would only have been possible through the application of the *in solidum* doctrine, which leads to Article 1145 CC, but from there refers to the special regime of Article 18(2) LOE.

An insurance company providing cover for construction damage as provided for in

Article 19 LOE may only take action against the construction agents after having paid the insured owners, within the two-year period established in Article 18(1) of that Act. An insurance company providing civil liability cover for construction damage may only seek recourse against parties, other than the insured, under Article 18(2) LOE, whether the insured, being a final joint and several co-debtor, has paid the entire sum or has paid more than his share, or, ultimately, the insured has no internal share of liability despite having paid as a joint and several co-debtor under Article 17(3) LOE.

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