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ANALYSIS

Corporate & Commercial Law

Invalidity, due to shareholder oppression, of the resolution to file a director liability (to company) claim

The Supreme Court (Judgment no. 824/2026 of 29 May) affirmed the declaration of invalidity of a company resolution to file a director liability (to company) claim, finding that it had been abusively imposed by the majority insofar as not responding to a reasonable need of the company and having been passed by the majority in its own interest and to the unjustified detriment of the minority.

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1. Background

§ 1. In 2019, an investor acquired a majority stake (60%) in a family-owned private limited company that was experiencing financial difficulties. As part of this transaction, a shareholders' agreement was entered into (by all shareholders: the new and the existing ones). It provided, on the one hand, that the company's "chief executive" (the managing director) would continue to be one (nominally designated) of the "family" shareholders (now minority shareholders); and, on the other hand, that the company's board of directors would initially consist of five members: three of them would be appointed by the majority shareholder (the "investor"); another by the minority family shareholders; and the fifth would be the aforementioned CEO. It was also provided that, should the latter be removed from office, the family shareholders would have the right to appoint another board member to replace him. In this scenario, however, the board of directors would then consist of six members following the addition of the individual appointed as CEO by the majority shareholder.

§ 2. At a general meeting held in February 2020, it was resolved (with shareholder holding 60% of the capital voting in favour and the "family" shareholders voting against) to file a liability claim against the four directors who served on the board before the new investor took control of the company and who prepared the financial statements for 2018. Essentially, the liability claimed stemmed from accounting irregularities in the financial statements for that financial year. It should be noted that two of those four directors (one of whom was the CEO) were still in office at the time the aforementioned meeting was held; therefore, the passage of the resolution to file the liability claim against them resulted in their automatic removal from office (Art. 238(1) of the Companies Act — LSC).

§ 3. Furthermore, and specifically with regard to the managing director, once the aforementioned resolution had been passed at the general meeting, the board of directors declared the service contract that had bound him to the company since 2019 to be terminated (said contract provided that, if the CEO were to cease to hold office for a reason other than one of those set out in the contract — voluntary resignation, fraud, wilful misconduct or negligence established by a court, death, incapacity, or material breach of the current business plan — he would be entitled to compensation from the company).

§ 4. Two of the shareholders belonging to the minority family group contested the resolution, alleging a violation of the right to information (Art. 196 LSC) and that the resolution to file a director liability claim harmed the company's interests by failing to respond to an objective need and by being passed for the exclusive benefit of the majority shareholder (Art. 204(1) LSC). Leaving aside for now the issue of the possible violation of the right to information, it is worth noting that the claim was not upheld at first instance but was upheld on appeal by the Barcelona Provincial Court (Fifteenth Chamber) in Judgment no. 6/2023 of 10 January (ECLI:ES:APB:2023:212). In summary, the Provincial Court held that the contested resolution was "unfair, as it appeared unjustified and conferred an advantage on the majority while causing harm to the minority; the true objective pursued by the resolution was not so much the subsequent filing of the director liability claim as it was to remove the minority group from the company's management, contrary to what was agreed in the shareholders' agreement and without assuming the pecuniary consequences arising from the termination without just cause of the service contract entered into between the company" and one of the removed directors.

§ 5. The 'cassation' appeal lodged by the defendant company was rejected by the Supreme Court in Judgment no. 824/2026 of 29 May (ECLI:ES:TS:2026:2386), in which — substantially aligning with the Provincial Court — it was held that each and every one of the requirements set out in Article 204(1) LSC were met for the contest to the company resolution to succeed on the grounds that it was detrimental to the company's interests.

> *It cannot be ruled out that the resolution to file a director liability claim may be imposed abusively by the majority*

2. Contesting company resolutions detrimental to the company's interests

§ 6. We will now examine the Supreme Court's stance regarding the requirements necessary for a contest to a company resolution to be viable on the grounds that it was abusively imposed by the majority (see point 2.1 below) and, specifically, regarding the requirement that the resolution not respond to a reasonable need of the company (see point 2.2 below). Finally, we will examine how these conditions applied in the case at hand (see point 2.3 below):

2.1. *Requirements for determining that a resolution has been abusively imposed by the majority*

§ 7. We should start by recalling the provisions of Article 204(1) LSC:

> 1. Company resolutions are contestable if they are contrary to the law, conflict with the articles of association or the internal rules of the general meeting, or are detrimental to the company's interests for the benefit of one or more shareholders or third parties.
>
> A resolution is also detrimental to the company's interests — even if it does not cause damage to the company's assets — if it is abusively imposed by the majority. A resolution is deemed to be abusively imposed when, without responding to a reasonable need of the company, it is passed by the majority in its own interest and to the unjustified detriment of the other shareholders.

§ 8. As the Supreme Court explained, the law defines as a typical case of "detriment to the company's interests" (for the benefit of one or more shareholders or third parties) the passage of resolutions that are imposed "in an abusive manner by the majority", even if no harm is caused to the company's assets. And, to facilitate the application of this rule, the law specifies that a resolution shall be deemed to have been imposed in an abusive manner when all three of the following requirements are met: *a*) the resolution does not respond to a reasonable need of the company; *b*) it was passed by the majority in its own interest; and *c*) it causes unjustified harm to the other shareholders.

2.2. *When does a resolution not respond to a reasonable need of the company?*

§ 9. As noted in the judgment under discussion, a resolution is *reasonable* for the purposes of Article 204(1) LSC when "it responds to an objective, legitimate, and proportionate need in the company's interests, such that it does not constitute shareholder oppression and does not entail an unjustified sacrifice for minority shareholders". This standard — the Supreme Court continues — is what allows for a distinction between the legitimate exercise of majority power and an actionable abuse thereof.

§ 10. In any event, the Supreme Court clarified that, in order to carry out an appropriate assessment — in light of the circumstances of the case — it is necessary to examine whether the objective or purpose pursued by the resolution responds to a real need. It must also be examined whether the means employed to achieve that objective are reasonable, in light of the harm caused to minority shareholders (see Supreme Court Judgment no. 1763/2025 of 2 December [ECLI:ES:TS:2025:5428]). In accordance with the *rationale* of the provision, the Supreme Court adds that the reasonableness of the resolution is linked to the existence of less harmful alternatives for achieving the objective. The majority cannot choose means that maximise its own benefit if there are other means that satisfy the company's interests without unjustifiably harming the minority.

§ 11. In fact, and to supplement the explanation provided by Judgment no. 824/2026, the reasonableness of the resolution appears to depend directly on whether it addresses an objective and legitimate need; that is, whether its passage is justified from the perspective of the company's interests. The fact that a resolution passed under these conditions does not constitute shareholder oppression is a consequence of its reasonableness (and of the fulfilment of the other two requirements mentioned above). And the fact that it does not entail an unjustified sacrifice for minority shareholders seems to have more to do with the requirement of "proportionality" (that is, that the content of the resolution in question — the decisions it entails — be consistent and balanced with the aim of addressing an objective and legitimate need).

2.3. *The solution in the specific case*

§ 12. As the Supreme Court indicated, the issue to be decided in this case was whether, in light of the relevant circumstances, this resolution responded to a reasonable need of the company. And, to reach a conclusion on this point, it was necessary to assess "the possibility of obtaining indemnification or compensation for the harm suffered by the company" (in this case, specifically, whether any harm could have occurred). In fact, as we will see below, the Court also examined whether the resolution had been passed by the majority in its own interest and to the unjustified detriment of the other shareholders.

§ 13. The appellant company argued that it could not be denied that the resolution to file a liability claim against the directors who had prepared the financial statements for the financial year 2018 responded to a reasonable need of the company. Furthermore, it asserted that "[t]o rule out, in actions for a declaration of invalidity of company resolutions, any possibility of filing such a subsequent claim [...] is completely out of place, because it is not the role of the court assessing the validity of the resolution to also examine the prospects of success in that subsequent lawsuit...".

§ 14. To begin with, the Supreme Court noted that Article 238(1) LSC permits the passage of a resolution to file a liability claim against directors at the request of any shareholder, without the need for it to have been included on the agenda. However — and this is relevant — a director liability claim does not seek a mere reprimand; it does not aim for a simple declaration that the conduct in question was improper. Therefore, the resolution to file such a claim must be justified by the existence of quantifiable harm that is eligible for compensation. This was, in fact, the first issue to be analysed (see (*a*) below).

§ 15. However, for the contest to be successful, it was also necessary that, as a result of the disputed resolution, the majority obtain an advantage or benefit and that the minority suffer unjustified harm. The Supreme Court acknowledged that, at first glance, it seems unlikely that the resolution to file a liability claim against the directors would not respond to a reasonable need of the company and that it was passed by way of shareholder oppression. It should not be forgotten that the removal of directors may be decided by a majority vote at a shareholders' meeting at any time and *ad nutum* (Art. 223(1) LSC). Regarding the latter point, the Provincial Court — which was more explicit than the Supreme Court on this matter — indicated that, in a case such as the one at hand, the advantage obtained by the majority could not consist solely in the removal of the director, given that such removal may be decided at any time at the shareholders' meeting without having to give any reason (Art. 223 LSC). Therefore, it was necessary to take the analysis a step further and determine whether the resolution could *offer* other advantages to the majority to the detriment of the minority (see (*b*) below).

§16. The issues raised in the two preceding paragraphs are discussed below:

a) §17. On the one hand, and as previously noted, it was observed that the reasonable necessity of passing the resolution had to be analysed in light of the possibility of obtaining indemnification or compensation for the harm suffered by the company.

§ 18. On this point, the Supreme Court upheld the Provincial Court's conclusion that the accounting irregularities identified in the 2018 financial statements were unlikely to result in harm to the company that would warrant or merit compensation. Specifically, the first appellate court's ruling held as follows: "... the erroneous or defective reflection of an economic event in the accounting records will distort the true and fair view and may cause harm to third parties who contract with the company under the mistaken belief that they are dealing with a solvent company or one whose assets have a higher value, but it cannot cause direct harm to the company's assets". Therefore, the decision to hold the directors who prepared the financial statements liable was not justified.

§ 19. The Supreme Court judgment also considered it highly significant in this regard that the director liability (to company) claim had not actually been filed. Furthermore, it noted that there had not even been an attempt to assess the harm to be compensated or to specify the nature of such harm. And this — the Supreme Court concludes — confirmed the following view taken by the Provincial Court: "If the acts attributed to the directors against whom the liability claim is sought are not capable of causing harm to the company's assets, it seems clear that the resolution to file the director liability claim is not justified".

§ 20. Note that, by accepting this line of reasoning, the Supreme Court is acknowledging that, at least to some extent, there may be a "trial within a trial". That is, within the proceedings contesting the resolution to file the director liability claim, it would be necessary to examine whether the conduct attributed to the directors in question is capable of causing harm to the company (and, therefore, of giving rise to the liability sought). The Provincial Court was aware of this issue and acknowledged that it could not rule "on the intended claim", but asserted that this did not prevent it from examining "the facts on which that future claim would be based, for the limited purpose of assessing whether passage of the resolution is reasonable". The Supreme Court's position on this point is understandable, since the circumstances indicated that the resolution to file the director liability claim was nothing more than a manoeuvre intended to secure the removal of the directors associated with the minority group — in violation of what had been agreed upon in the shareholders' agreement — and, to that extent, aimed at obtaining advantages at the expense of the remaining shareholders (and not, in reality, at obtaining compensation for alleged harm suffered by the company's assets, which is the very purpose of director liability claims). However, it certainly remains to be defined with greater precision to what extent, in such cases, the examination of whether there are sufficient grounds (and, with it, justification and necessity) for the passage of the resolution to file a director liability claim.

b) § 21. Furthermore, the Supreme Court went on to examine whether the resolution was passed in the exclusive interest of the majority and to the detriment of the minority shareholders:

§ 22. In this regard, the Supreme Court placed particular emphasis on what it termed the "collateral" effects of the contested resolution. It should be recalled that the shareholders' agreement entered into when the majority shareholder acquired his stake in the company's capital was intended to guarantee that the family shareholders — who became minority shareholders (holding 40% of the capital) — would remain involved in the company's management. To that end, it was established that, of the five board members, two would be affiliated with the group of minority shareholders (and that one of them would initially serve as CEO). In addition, the company entered into a service contract with the CEO that provided for the right to compensation if he were to cease to hold office for a reason other than one of those specified in the contract itself (basically, if he were terminated without just cause).

§ 23. However, through the contested resolution, the majority shareholder (the investor) sought to have two board members removed — including the CEO — resulting in the termination of the aforementioned contract without the right to receive the agreed-upon compensation. At the same time, the majority shareholder sought to alter the majority composition of the board of directors by increasing its influence within the board. In effect, the majority shareholder would achieve — in accordance with the provisions of the shareholders' agreement — a change in the number of board members, which would be reduced to six, of whom only two would be appointed by the minority group, while the other four would be appointed by the investor partner, who would also choose, from among these four, the new CEO (thereby depriving the minority shareholders of direct control over the company's management).

§ 24. The circumstances under which the contested resolution was passed and the effects actually sought thus demonstrated that it was passed through shareholder oppression, excluding the minority shareholders from the direct management of the company and seeing their representation on the board reduced in relative terms. Furthermore, the former CEO was deprived of the right to the compensation to which he would have been entitled upon loss of office.

3. The relevance or irrelevance of the shareholders' agreement and its breach

§ 25. The defendant company argued in the second ground of its 'cassation' appeal that the Provincial Court had violated the legal doctrine regarding the (non-) enforceability of shareholders' agreements against the company and that, therefore, it had disregarded the immediate consequence of said doctrine: namely, that the *mere* breach of a shareholders' agreement (even if it is unanimous) is not sufficient, *on its own*, to successfully challenge a company resolution[1]. According to the appellant, the Provincial Court had indirectly contravened this criterion by treating the provisions of the shareholders' agreement as a decisive factor in determining that the majority had acted abusively in imposing the resolution.

§ 26. The Supreme Court, however, noted that the contest to the resolution was not based on a breach of the shareholders' agreement, but rather on the fact that it had been adopted through shareholder oppression. It is another matter that, to illustrate that the contested resolution was adopted in the interest of the majority and to the unjustified detriment of the other shareholders, the signed shareholders' agreement was cited (a course of action that would not contradict the provisions of Art. 29 LSC).

§ 27. It is true that both the Provincial Court and the Supreme Court approached the issue from the perspective of whether the resolution could be classified as detrimental strictly in accordance with the provisions of Article 204(1) LSC. They therefore operated within the parameters set out by that provision. It is also true that, at least formally, there was no discussion of whether a breach of the unanimous shareholders' agreement should render the company resolution ineffective; thus, it was never asserted that the resolution was void precisely because it contradicted the shareholders' agreement. However, it should not be forgotten that, by relying on the content of the shareholders' agreement to determine whether the company resolution had been passed *by the majority in its own interest and to the unjustified detriment of the other shareholders*, the door is ultimately opened to considering, more generally, the provisions of unanimous shareholders' agreements when determi-

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[1] See Supreme Court judgments 138/2009, dated 6 March (ECLI:ES:TS:2009:941); 128/2009, dated 6 March (ECLI:ES:TS:2009:940); 103/2016, dated 25 February (ECLI:ES:TS:2016:659); 120/2020, dated 20 February (ECLI:ES:TS:2020:507); 613/2020, dated 17 November (ECLI:ES:TS:2020:3794) and 300/2022, dated 7 April (ECLI:ES:TS:2022:1386); along the same lines, see also Supreme Court Judgment 1136/2008, dated 10 December (ECLI:ES:TS:2008:6664).

ning whether a company resolution has been abusively imposed by the majority. And this approach to the problem can be seen as an (indirect) way of introducing into the system, if not the general enforceability of unanimous shareholders' agreements against the company, then at least the recognition of their "relevance" for the limited purpose of determining whether a resolution is harmful. A *mere* breach of the shareholders' agreement would not, *on its own*, justify a declaration of invalidity of a company resolution, but such a breach would be a factor to be given serious consideration when assessing the harmful nature of the resolutions.