

Composition of active mass under TRLC – case law

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Introduction

[Supreme Court decision of 24 July 2014](#)

[Supreme Court decision of 11 September 2015](#)

Introduction

Article 192 of the Consolidated Text of the Bankruptcy Law (TRLC) introduces the concept of the 'active mass' of a bankruptcy, which constitutes all of the assets and rights integrated into the bankrupt's assets on the date of the declaration of bankruptcy, as well as those that are reintegrated to the bankrupt or acquired before the conclusion of the bankruptcy proceedings.

The active mass incorporates the principle of universality derived from Article 1.911 of the Civil Code (ie, the debtor is liable for all of its present and future assets).

This article examines notable case law on the composition of the active mass under the TRLC.⁽¹⁾

Supreme Court decision of 24 July 2014

Facts

In this case,⁽²⁾ the bankruptcy administration wanted to exclude from the active mass real estate which lacked an urban planning licence and therefore could not be sold or legally transferred. It considered that in order for assets to be included in the active mass, they must be legally transferable.

The insolvent company defended the real estate's inclusion in the active mass as it was part of a development which was under execution (83% of the work had been executed, despite the fact that it was not yet registered in the Land Registry and did not have a licence).

Decision

Under Article 82.3 of the Insolvency Proceedings Act, which refers to the formation of the inventory in insolvency proceedings:

the appraisal of each of the assets... shall be made according to their market value, taking into account the rights, encumbrances, or charges of a perpetual, temporary or redeemable nature that directly affect them or influence their value.

The two properties that the insolvent company intended to include in the active mass formed part of a development which was under execution; therefore, they had to be included in the active mass – despite not being registered in the Land Registry or having a licence – since they could be legalised. All of these circumstances affected the value of the assets, but did not prevent them from being included in the active mass. If it is impossible to commercialise assets, as the bankruptcy administration pointed out in this case (invoking Article 1272 of the Civil Code), this must be justified, and difficulty cannot be confused with impossibility (Supreme Court decisions of 12 March 1994 and 20 May 1997, among others). If commercialisation is impossible, this must be definitive, which excludes rights, encumbrances or charges of a temporary nature (Supreme Court decision of 13 March 1987).

Supreme Court decision of 11 September 2015

Facts

In this case,⁽³⁾ the bankruptcy administration claimed a loan that the insolvent company had granted to a third company. The loan was subject to a suspensive condition that had been fulfilled.

The debtor argued that there was no cause of action to claim the debt because it was not inventoried in the

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insolvent company's assets. She argued that the inventory of assets and rights could not be amended if it had not been challenged and that, therefore, the claim was not included in the liquidation plan.

Decision

In insolvency proceedings, the inventory and list of creditors inform the creditors of the debtor's assets. This function is relevant as it provides the creditors with sufficient information, either in:

- the composition phase, to enable them to evaluate, using objective criteria, the different composition proposals that may be put forward; or
- the liquidation phase, to inform them of the degree of satisfaction of their claims in the realisation of the assets and rights, in the legally established order.

Therefore, even if there is an alleged omission (of which there was none in this case), any asset – in this case, a credit – must be claimed, collected and distributed among the creditors, it being the responsibility of the bankruptcy administration to carry out all of the necessary judicial and extrajudicial steps "until the conclusion of the insolvency proceedings".

In view of the above, the judgment under appeal refers to the various steps taken by the bankruptcy administration with respect to the respondent appellant, whereby, when the liquidation phase was opened, all of the incidents regarding the loan claimed were included in the quarterly reports that the bankruptcy administration sent to the court, as referred to in Section 3 of the law, which has been reproduced verbatim, in part, in Section 4.

However, even if the claim of the debt contracted by the defendant had not been reported or inventoried, the insolvent company's credit against the defendant could be claimed judicially.

In this case, once the suspensive condition to which the loan claim was subject had been fulfilled, and the common phase of the insolvency proceeding had ended, the claimed debt could not be included in the list of lawsuits. However, for the purposes described above, this was irrelevant.

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Endnotes

(1) This article is part of a series on the active mass under the TRLC. For other articles in the series, please see "[Composition of active mass under TRLC](#)".

(2) Ruling 430/2014; Appeal 1583/2012.

(3) Ruling 475/2015; Appeal 2198/2013.

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