

## JUDGEMENT NO. 8/2016

In Torremolinos, on 12th of January 2016

I, MARTA ALONSO AZUAGA, the ALLOCATED JUDGE-MAGISTRATE of the COURT OF FIRST INSTANCE NUMBER 5 OF TORREMOLINOS AND ITS DISTRICT, having seen the proceedings of the ORDINARY PROCEDURE dealt with by this Court with number 1013 of year 2015 at the request of [REDACTED] and [REDACTED], represented by Solicitor at Court Mr Ignacio Sánchez Díaz and defended by Lawyer Mr Juan Carlos Vila Marcos against companies PUEBLO EVITA MARKETING COMPANY LIMITED and PUEBLO EVITA MANAGEMENT LIMITED, proceed to state the

### FACTS IN ISSUE

**FIRST.-** Solicitor at Court Mr Ignacio Sánchez Díaz, on behalf of [REDACTED] filed a claim against PUEBLO EVITA MARKETING COMPANY LIMITED and PUEBLO EVITA MANAGEMENT LIMITED on 7<sup>th</sup> of July with the purpose of declaring a contract void. In his statement of claim he requested as a precautionary measure, the order of suspending payment of the fees deriving from the contracts in dispute.

**SECOND.-** By means of decree of 1<sup>st</sup> of September 2015 the claim was admitted to proceed and this particular was notified to the Defendant, with a decision being made that a separate part be formalised to order the requested precautionary measure, for which a judgement was entered on 5<sup>th</sup> of November 2015.

**THIRD.-** The Defendant did not file a defence against the claim or entered an appearance for the purposes of these proceedings, so by means of legal measures issued on 18<sup>th</sup> of November 2015 and according to the provisions of article 496 of Act 1/2000 of the Rules of Civil Law Procedure of 7<sup>th</sup> of January, the Defendant was found in contempt of court and both parties were summoned to a preliminary hearing for 12<sup>th</sup> of January 2016.

**FOURTH.-** The preliminary hearing was held on the above date, with the Defendant not entering appearance. The Plaintiff ratified its statement of claim and proposed a series of documents as the only piece of evidence with the proceedings pending a judgement in accordance with article 429.8 of Act 1/2000 of 7<sup>th</sup> of January of the Rules of Civil Law Procedure.

**FIFTH.-** This procedure has generally followed all the formalities and legal requirements.

### LEGAL GROUNDS

**FIRST.-** By means of a claim the Plaintiff requests the voidance of a contract and beseeches that a judgement be entered by which:

- The time share contracts entered by the parties in dispute on 23<sup>rd</sup> of February 2001 and 21<sup>st</sup> of June 2006 be declared void. Secondly, that such contracts be declared voidable due to lack of consent.
- That the Defendants be sentenced jointly and severally to return all the sums paid by the Plaintiffs in relation to the aforementioned contracts.
- That payment of advance sums in the amount of 3,200 sterling pounds be considered as inappropriate and the Defendants be sentenced to return double that amount, that is, the amount of 6,400 sterling pounds, plus any legal interests applicable.
- That the Defendants be jointly and severally sentenced to return all the fees paid by the Plaintiffs on account of the maintenance services deriving from the aforementioned contracts in the sum of 2,437 sterling pounds, plus any legal interests.
- That the Defendants be sentenced to pay the court fees.

The Defendant did not enter appearance at the hearing in spite of having been duly summoned, and therefore it was declared in contempt of court. Although such declaration does not assume acceptance of the facts in the claim (article 496.2 of the Rules of Civil Law Procedure), it does imply that no facts or pleadings contrary to the claim of the Plaintiff have been filed in this dispute, which does not further oblige the Plaintiff to show evidence of the facts declared in their statement of claim (article 217 of the RCLP).

Therefore, having reviewed the documents included in these proceedings, which have not been challenged or distorted by the Defendant, it is hereby proved that on 23<sup>rd</sup> of February of 2001 [REDACTED] entered into a contract of purchase with the Defendant for the timeshare of a property. Later on, on 21<sup>st</sup> of June 2006, the same parties entered into a new contract to replace the existing timeshare for another one. From the contents of both contracts the following is deduced:

- The object of the timeshare is only roughly described in point four without a reference to the physical location of the apartment that is being allocated or its registration details at the Land registry (pleased see documents 1A-1B and 2-A-2B of the statement of claim).
- On page two the price of the purchase is indicated (3,200 sterling pounds) being paid by means of a VISA card on the same day of purchase.
- The contract does not include details on the length of the right of timeshare being acquired, although the annexes and the internal rules of the Club include a contract expiry date of 2068.
- The contract does not include a reference to the right of abandonment of the conditions.

Based on the above facts and by virtue of the contents of Directive 94/ 47 of 26<sup>th</sup> of October 1994 relating to the protection of buyers against some terms within contracts whereby a right to use timeshare properties is acquired; by virtue of Act 42/1998 of the rights of timeshare of holiday properties and tax regulations, and by virtue of the Judgements of Court Room 1 of the Supreme Court of Justice 830/ 2015 of 15<sup>th</sup> of January, 3212/2015 of 16<sup>th</sup> of July and 4082/2015 of 8<sup>th</sup> of September, it is hereby concluded that contracts above mentioned are void in law on account of the

lack of identification of the property that is the object of the same, of breach of the maximum legal length of a contract (50 years), of allocating the timeshare contract before the property is actually registered to the Land Registry and in general, on account of breaching the right to minimum contents established in article 9.1 of the above Act 42/98. And therefore by virtue of article 1.7 of the above mentioned Act, it is hereby resolved that the main request of the claim be admitted and the contract in dispute be declared void as well as any other contracts that are accessory to this. As a consequence of the contracts being declared void, the remaining requests made in the claim are also admitted to proceed, with the following decision being issued:

- To sentence companies PUEBLO EVITA MARKETING COMPANY LIMITED and PUEBLO EVITA MANAGEMENT LIMITED jointly and severally to return all the sums paid by the Plaintiffs with the purposes of the above-mentioned contracts.
- To declare inappropriate the advance payment of the sums of 3,200 sterling pounds (equal to 4,246.22 euros) already paid, thus sentencing the Defendants jointly and severally to return double this sum, that is 6,400 sterling pounds (equivalent to 8,492.44 euros).
- To sentence companies PUEBLO EVITA MARKETING COMPANY LIMITED and PUEBLO EVITA MANAGEMENT LIMITED jointly and severally to return to the Plaintiffs the fees paid on account of the maintenance services derived from the contracts above referred, which add to 2,437 sterling pounds (3,233.97 euros).

**SECOND.-** The sums the Defendant is being jointly and severally sentenced to pay shall be increased by the relevant legal interest that, by application of articles 1100 and 1108 of the Civil Code, is the equivalent to the legal interest of money from the date the claim was filed, increased by two points from the moment this judgement is entered (article 576 of the RCLP).

**THIRD.-** With regards to the court fees, as the claim has been fully admitted, the provisions of article 394.1 of the RCLP are applicable with the payment of the same being imposed on the Defendant.

### **JUDGEMENT**

I HEREBY RESOLVE TO FULLY ADMIT the claim filed by Solicitor at Court Mr Ignacio Sánchez Díaz on behalf of [REDACTED] against companies PUEBLO EVITA MARKETING COMPANY and PUEBLO EVITA MANAGEMENT LIMITED and I SAY:

1. That the timeshare contracts entered by the parties in dispute on 23<sup>rd</sup> of February 2001 and 21<sup>st</sup> of June 2006 be declared void, as well as any accessory contracts thereof.
2. That companies PUEBLO EVITA MARKETING COMPANY LIMITED and PUEBLO EVITA MANAGEMENT LIMITED be jointly and severally sentenced to return to the Plaintiffs all the sums paid on account of the above-mentioned contracts plus the applicable interest, which is the legal interest of money from the date the claim was filed, increased by two points from the moment this judgement is entered, with the accrual

- of such interests being terminated on the date of payment of the sum dictated in the judgement.
3. That the advance payment of the sums of 3,200 sterling pounds (equivalent to 4,246.22 euros) be declared inappropriate, thus sentencing the Defendants to return double the said amount , that is 6,400 (equivalent to 8,492.44 euros) plus the relevant interests, which is equivalent to the legal interest of money from the date the claim was filed, increased by two points from the time this judgement is entered, with the accrual being terminated on the date of payment of the sum dictated in the judgement.
  4. That companies PUEBLO EVITA MARKETING COMPANY LIMITED and PUEBLO EVITA MANAGEMENT LIMITED be jointly and severally sentenced to return all the fees paid by the Plaintiff on account of maintenance services derived from the above referred contracts, which add to 2,437 sterling pounds (3,233.97 euros) plus the relevant interest, which is equivalent to the legal interest of money from the date this claim is filed, increased by two points from the moment this judgement is entered with termination of the interest accrual on the date of payment of the sum indicated in the judgment.
  5. That the Defendant be payable of all the court fees.

Please enter the original judgment into the judgment book.

Please note that you are entitled to file a **REMEDY OF APPEAL** against this judgement at the County Court of MALAGA (article 455 of the RCLP). Any remedies of appeal shall be filed in writing to this Court within **TWENTY WORKING DAYS** from the day following the date of notification, where you are required to indicate the judgement you are appealing against and the sections you wish to dispute (article 458 of the RCLP).

In order to have the abovementioned remedy of appeal admitted to proceed, you are required to make a deposit for the sum of 50 euros into the account held by this court with [REDACTED], indicating under the description section of the deposit document the fact that this is a remedy of appeal, together with code "02" in accordance with the Fifteenth Additional Provision of Organic Law of the Judiciary 6/1985, except in the cases established as exclusions in the same law (Attorney General, The State, Autonomic Communities, Local Institutions and any autonomous bodies depending on the above ones) or any beneficiaries of free legal assistance.

And this judgement is hereby resolved and signed by me.

**PUBLICATION.**- The above judgement has been entered, read and published by the ALLOCATED MAGISTRATE-JUDGE, who entered it during a public hearing being held on the date above indicated. And I, the Court Registrar, attest the same in TORREMOLINOS on Thirteenth of January of Two Thousand and Sixteen.

*"With regards to the personal data, its being kept confidential and the prohibition of transferring or communicating such data by any means or procedure, it is hereby stated that this shall be handled only for the purposes of the activities of the Public Administration of Justice (ex Organic law 15/99 of 13<sup>th</sup> of December on data protection)"*