

COURT RULINGS ON MORTGAGES CAUSING WAVE OF LITIGATION - ARAOZ & RUEDA

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A series of court rulings have overhauled the Spanish mortgage market and created the “biggest litigation issue” in Spain, according to Eduardo de León, partner at Araoz & Rueda.

Following the aftermath of the 2008 financial crash, legal judgements from a number of courts - including the European Court of Justice - have found that Spanish lenders exercised “unfair” terms and undermined consumer rights, De León explains. He adds that this culminated in this year’s Royal Decree ordering Spanish banks to repay consumers’ past mortgage overpayments. De León says the next major issue related to mortgages will be the question of “the mortgagee’s fees charged to the debtor as well as the general liability of the mortgagor not limited to the value of the mortgaged property”.

Litigators are preparing for a fight. “The problem is that some of the banks have decided they are not going to accept [the decree] because they maintain the terms of the mortgage were clear enough, were not unfair and were very well explained to consumers,” says De León. “The Spanish mortgage

market is changing, not because the banks or lenders want it to, but because the court officials are changing the system." He adds: "There's a clear evolution. It's now not enough to have an agreement between both parties. It's about how banks - and companies - can obtain an understanding with the consumer."

Another growing area of work for litigators stems from Spain's 2003 bankruptcy act. De León says: "When the crisis started, we realised the [bankruptcy] system was not perfect." De León explains that, consequently, there have been amendments to legislation, with some impacting on refinancing, "especially pursuant to the additional fourth provision of the Spanish Bankruptcy Act".