

NEW LAWS FAVOUR DEBTORS - ARAOZ & RUEDA

Posted on 09/03/2015



Category: [Uncategorized](#)

Tag: [cat-disputeresolution](#)



Courts are doing more to alleviate the troubles of debtors, the result of which has been that, with the real estate market in decline, banks own a lot of property with little value

A number of legislative changes have been brought into effect in Spain that favour debtors, according to Araoz & Rueda partner Eduardo de León. However, while recent changes in the law are aimed at helping to alleviate the ongoing economic crisis – as well as the plight of Spanish debtors – it remains to be seen how effective they will be, he adds. “The issue of residential property foreclosure is a very real and human concern in Spain,” says de León.

One of the main implications of the changes to the law, is the possibility of challenging the existence of “an abusive clause in a former mortgage agreement”. Other possible minor consequences of the changes could be a cap on the late payment interest rate, as well as measures to reduce reducing the “outstanding debtor’s liability after the enforcement of the mortgage”.

The decline of the real estate market has meant that banks have ended up with a considerable amount of real estate in their possession, with much of it of little value to them. De León references voluntary codes of practice introduced in 2012 to encourage Spanish banks to restructure the debt,

write off part of the debt, and even accept payment in kind in cases of foreclosure.

Court victory for debtors

Subsequent to this in 2013, debtors scored a victory over Spanish banks following a ruling by the European Court of Justice of 14 March, 2013 (C-415/11). In the Aziz case, which has allowed the domestic courts to delay the eviction of those who have fallen behind with mortgage payments, according to de León. The decision allows the courts a lot of leeway in cases where harsh restrictions are found to exist in a mortgage agreement. Spanish legislation was subsequently amended in order to incorporate this ruling.

In May 2013, Law 1/2013 added a number of provisions that increase the powers of the Spanish courts, and aim to alleviate the burden put on debtors. So, for example, the late payment interest rate has been capped at three times the statutory rate.

In addition, the prior legal position, which established unlimited liability on the debtor in the case of foreclosure proceedings has been amended so that if the creditor has secured 75 per cent of the debt within five years from enforcement, the borrower is free of any obligations.

Mortgage foreclosures increase

De León notes that the net effect of all these changes has been that the courts have been playing an increasingly important role in the protection of debtors.

In the first three months of 2014 the overall number of mortgage foreclosures in Spain had actually increased (rising by almost 20 per cent on the same period in the previous year) but the enforcement on residential homes has decreased by 24.4 per cent. Spanish banks have as a consequence had a large amount of unwanted real estate on their hands. From banks' perspective the situation is "less than ideal", comments de León. Not least due to the costs associated with foreclosure, as well as the pressure to shift foreclosed properties from their balance sheets.

Challenging enforcement

Meanwhile, company insolvency procedures are now more "debtor-friendly", following Law 17/2014, which modifies parts of the Spanish insolvency law, Araoz & Rueda associate, Andrés Mochales, adds. "In pre-insolvency scenarios, enforcement proceedings can now be challenged if the company can prove that the assets in question are 'necessary' to the running of the company," he says.

A recent study by Axesor found that there was a decrease of more than 30 per cent in the number of companies filing for bankruptcy in 2015, compared to the previous year.

However, de León notes that the long-term practical implications of these legislative changes remain uncertain. "These new laws are very recent, and as yet untested. There has not been any practical application of them by the courts."