

ALMUDENA FERNANDEZ

Enclosed I am sending you the last procedural procedure in the subject referenced below.

**Client:**  
**Contrary:** CLUB LA COSTA VACATION CLUB LTD  
**Judgment:** ORDINARY JUDGMENT No. 1285/2017  
**Court:** COURT 1st INSTANCE No. 1 FUENGIROLA  
**M / Ref.:** OC-2017/01  
**S / Ref.:**

Last procedure:

JUDGMENT

A greeting.

to June 25, 2018

LEXPROC MARBELLA SL  
 B93342962  
 PLAZA GONZALEZ BADÍA TORRE10 LOCAL 2  
 29601 MARBELLA - MÁLAGA  
 TEL. 952 751 200 FAX. 952 751 210



**This is Terry from Denham in Buckinghamshire He's celebrating his win against Club La Costa. He paid about £9k for 751 VC Points He paid approx £6k to Lawyers but is expecting that to be returned by the Courts. He's won about £30k and this is his document that is from the Spanish Courts, evidencing his award.**

**The document is only a rough translation to help other owners understand what has gone on.**

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**JUDGMENT No. 218/2018**

In the city of FUENGIROLA, on June 20, 2018, the Ilma. Mrs. D<sup>a</sup> ESPERANZA BROX MARTORELL, MAGISTRADO-JUEZ holder of the COURT OF FIRST INSTANCE N<sup>o</sup>1 OF FUENGIROLA (ANTIGÜO MIXTO 2) and its party, has seen the present proceedings of Ordinary Procedure 1285/2017 Followed before this Court, by virtue of a request by **DON TEREN**

**AS**, with Attorney D. David Sarriá  
 Rodríguez and Lawyer I in front of Club La Costa  
**Vacation Club LTD**, in front of Consolidated Resorts Limited and in front of Club

The Costa Resort Management Limited, and,

#### FACTUAL BACKGROUND

**FIRST.-** In writing of 09/29/2017, by the Procurator of the Courts Don David Sarriá Rodríguez, in the ostentatious representation of gift , a lawsuit was filed ordinary in front of commercial entities Club la Costa Vacation Club LTD, in front of **Consolidated Resorts Limited** and in front of **Club La Costa Resort Management Limited**, in the exercise of radical nullity contract of taking advantage of turns of real estate, and accumulated claims of quantity.

**SECOND.-** Submitted to this court decree was issued on 18/10/2017 admitting it to process, agreeing to transfer it to the counterpart, with the requirements and legal preventions, summoning him to answer it in 20 days.

**THIRD.-** The defendants were declared in legal situation of procedural rebellion in order of order of 04/19/2018, convened to the parties to the celebration of the Pre-Trial Hearing for the day 06/13/2018, in which it took place. In it the plaintiff proposed as proof of the documentary (by reproduced the one already provided), after whose admission the autos pending the decision of judgment without need of previous celebration of the trial, under the provisions of article 429. 8º LEC.

#### FOUNDATIONS OF LAW

Verification Secure Code: c verification of the integrity of a  
copy of this electronic document at the address: https://ws121.juntadeandalucia.es/verificma/2/ This document incorporates an electronic signature recognized in accordance with Law 59/2003, of December 19, on electronic signature.  
ESPERANZA BROX MARTORELL 06-20-2015 03:25:32 PM DATE 06/21/2018  
MA CRISTINA VAQUERO ORTIZ 06/21/2018 09:28:31

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**FIRST.-** The plaintiffs plea for the ruling of the sentence declare:

- The radical nullity of the contract of sale number E 2688 unite subscribed as of 12/18/2005 with the commercial entity Club la Costa Vacation Club Ltd and Consolidated Resorts Ltd, as well as any annex thereof.  
- The nullity and inadmissibility of the advance payment of the amount of 8,995 For it, the aforementioned entities were satisfied, and the obligation of these entities return said amounts in duplicate, condemning them accordingly to to pay to the plaintiff the amount of £ 17,990.

-That the amount that must be deducted from the amount claimed, for the refund that must be done by the defendant of the party that proportionally corresponds for the years not enjoyed, amounts to £ 2034.72, condemning Club Costa Costa Vacation Club Ltd and Consolidated Resorts Ltd to pay the plaintiff the amount of £ 15,995.28, its equivalent in euros at the date of judicial inquiry, amounting to € 18,199.65.

-Nullity of the adscription of the actors to Club la Costa Vacation Club Ltd, condemning him to be and to go through such a statement, and

-Convicted the co-defendant Club Costa Resort Management Limited to pay the plaintiff the amount of 8198.45 euros as payments of annual maintenance ("Management Charge").

All this with more the corresponding legal interests, and with express conviction in costs.

Alleges the plaintiff party that dated 18/12/2005 celebrated with the "company" "Club Vacacional Club la Costa Ltd" a "contract of purchase", in which it appears as "selling company" Consolidated Resorts Limited, to whom satisfy the purchase price ascending to 8478 sterling pounds, considering that what he signed was an exploitation contract for tournaments of real estate for tourist use, subject to Law 4/2012, whose nullity, as well as any annex to it, intended by the following reasons:

1º / Failure to determine the duration of the contract, as there was no indicated in the none, meaning therefore for an unlimited time, thus violating the law 42/98, modified by the law 4/2012, in whose article 3º a duration of 3 to 50 years is established.

2nd / Lack of determination of the object on which the rights fall

transmitted, with violation of Articles 1.7 and 11 of Law 42/98, and with violation of articles 1256 and 1261 of the Civil Code, in connection with the Article 6.3.

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Page 4

3rd / Violation of Article 1.4 of Law 42/98, in relation to 1.7, to collect the prohibition of linking the right of exploitation in turn to the acquisition of the ownership of rights, naming them as timeshare, or any other way that contains the word "property".

4th / Infringement of the prohibitive rule of article 11 of law 42/98 in regarding the collection of advance amounts, when the payment of advances is prohibited before the end of the withdrawal period, sanctioning the act made against this prohibition with nullity as of right.

**SECOND.-** In view of the evidence practiced, it is proven that dated on 12/18/2005 by the today plaintiff the purchase contract was signed attached as document 3.2, \_\_\_\_\_, in which it appears as selling company Consolidated Resorts Limited, and under whose heading figure "the company" Club Vacacional Club la Costa Ltd, from which it turns out that made a request for association to the company and to buy rights of points, for a price of £ 8478.00, paid on the same day as the subscription of the 4995 pounds sterling contract, a second cash payment being made on the 02/01/2006 of £ 4000, after which he acceded to membership status, obtaining the appropriate certificate that results in obtaining 751 points (doc.16). The claimants paid € 8198.45 (£ 7187.42) in respect of fees annual maintenance for the use of a lodging in a Resort, being the points managed by the company. No term of any duration was established. The withdrawal period was not respected, payments being made during the same. It is not clear what the object of the contract really is in view of the same, resulting in contrary to what is inferred from the reading of the document what they bought was the right to a lodging for which they paid maintenance fees from 2009 to 2017, finally subscribing a contract subject to the law 42/98 that has been violated in all the precepts mentioned by the plaintiff, Law on exploitation rights by turn of real estate for tourist use (previous to the current law 4/2012 of contracts for the use in turn of goods for tourist use, acquisition of long-term holiday products, resale and exchange and tax rules, which transposed the Spanish legal system Directive 2008/122 / EC). As well as Royal Decree-law 8/2012, of 16 March, of contracts for the use in turn of goods for tourist use, acquisition of long-term holiday products, resale and exchange.

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Page 5

**THIRD.-** The defendant, declared in absentia, has not opposed the plaintiff claim preventative, extinguishing or excluding facts. However

It should be noted that the contract whose invalidity is in question violates the content of the cited law 42/1998, of December 15, whose objective scope appears in its

Article 1, in which paragraph 1 indicates that "the right of use in turn may be constituted as a limited real right or in accordance with the provisions of section 6 of this article, "which states that:" The leases of holiday real estate by season, which have as their object more than three of them, up to a maximum of 50 years, and in those who anticipate the income corresponding to some or all of the contracted seasons, will be subject to the provisions of this law, without prejudice of the provisions of the Urban Leasing Law. Such contracts must necessarily refer to a specific annual season that is corresponds to a specific or determinable period of that season already an accommodation determined or determinable by its generic conditions, whenever the building or real estate complex is specified where it is going to enjoy the right ... "

The contract object of the litis lacks the minimum content and is indeterminate its contractual object, infringing the art. 1261 Civil Code, defying itself in addition to the law on general conditions of the hiring and the law of defense of consumers and users; does not have the minimum precise content so that there is reasonable knowledge of what is contracts, having satisfied for the purchase of the right to points a amount of money in sterling, ignoring what it is that it was exactly hired. Apparently a right of use was acquired, right staff to reserve a holiday accommodation in real estate belonging to a complex, not expressly identified at any time and during a period not determined. This being the case, what is established in art. 1.7 of the L. 42/98 in relation to the 9.1 3rd, owing, by the nullity that is declared, the amounts paid back to the actors.

**FOURTH.-** Regarding the effects of the nullity that is declared, according to settled case law, they must, under Article 1.7 of the law 42/98, to be returned to the purchaser, in principle, all amounts satisfied, in order to leave the contracting party in good faith unharmed. surprised by the content of the contract, which is of adhesion, and that lacks object, although this reimbursement can not be total, but proportional to the time it is out of date, taking into account that the maximum legal duration is 50 years. The amount corresponding to the enjoyment by the

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actors of the opportune period -8 years, from 2009 to 2017-. As it comes determined by the jurisprudence in judgments of the Supreme Court of 29 March and May 26, 2016, in which the basis for the return is established. Amount to which the appropriate legal interests must be added from the date of the judicial inquiry.

From the test carried out, it turns out that:

\*\* The actors performed at Consolidated Resort Limited and Club Costa Vacation Limited the following advance payments, in the first 3 months: a first payment, on 12/18/2005, of 4,995 pounds; and a second payment of 4000 pounds, this is a total of 8995 pounds,

\*\* the actors also paid the co-defendant Club La Costa Resort Management Limited the corresponding maintenance fees annual increases to their equivalent in euros at the date of demand **8198.45** €, from 2006 (2009) to 2017.

Understanding that the duplicate refund concerned is applicable, since it is application the aforementioned Royal Decree-Law 8/2012, of March 16, whose article 13, signed "prohibition of payment of advances", feel that:

"1. In the contracts of use per shift of fixed assets tourism, long-term holiday product and exchange are prohibited the payment of advances, the constitution of guarantees, the reservation of money in accounts, the express recognition of debt or any consideration to favor of the employer or a third party and at the expense of the consumer, before conclude the withdrawal period.

2. The same prohibitions are established with respect to contracts for resale, before the sale actually took place or was terminated the contract by other means.

3. The acts carried out against this prohibition are null and void right and the consumer may claim double the quantities delivered or guaranteed by such concepts. "

And consider equally applicable the operations contained in the fact 11° of the writing of demand, variables to calculate the restitution value,

A) Yes:

- price agreed in the contract 8478 pounds £
- priorrate annual (8478 pounds / 50 years): 169.56 pounds / year
- time effectively enjoyed between 2006 and 2017: 12 years
- value of time enjoyed (169.56 × 12): 2034.72 £

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Page 7

Thus of the amount claimed as principal and duplicate payments ( pounds:  $8995 \times 2 = 17.990$ ) the amount corresponding to the value must be deducted of the years enjoyed (£ 2034.72), which makes a total of £ 15,955.28, whose equivalent in euros at the date of judicial inquiry amounts to € 18,199.65.

In addition, the plaintiff satisfied the amount of € 8198.45 in concept of payments for maintenance, which has not been discussed by the counterpart (doc. 7.1 and following).

**FIFTH.-** In the matter of procedural costs, the article is applicable 394 LEC, which establishes the objective criterion of the expiration, so they must be imposed on the defendant.

Having regard to the aforementioned legal precepts, and others of general and pertinent application,

#### FAILURE

That estimating as esteem the demand formulated by \_\_\_\_\_ of the mercantile entities Club Costa Vacation Club LTD, **Consolidate Resorts Limited** and **Club La Costa Resort Management Limited**, I must declare and declare:

- The **radical n nity of the contract** \_\_\_\_\_ signed on date 12/18/2005 with the commercial entity Club La Costa Vacation Club Ltd. and Consolidated Resorts Ltd, as well as any annex thereof.

- The nullity and inadmissibility of the anticipated collection of the amount of 8995 For it, the aforementioned entities were satisfied, and the obligation of these entities return these amounts in duplicate, condemning them, accordingly, to to pay the plaintiff the amount of £ 17,990

-That the amount that must be deducted from the amount claimed, for the refund that must be done by the defendant of the party that proportionally corresponds for the years not enjoyed, amounts to £ 2,034.72, condemning **Club la Costa Vacation Club Ltd and Consolidated Resorts Ltd** to pay the plaintiff's share the amount of minus £ 18,199.65, its equivalent in euros to the date of judicial inquiry,

-Nullity of the applicants' ascription to Club la Costa Vacation Club Ltd, condemning this entity to be and go through such a declaration, and

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-condemning the co-defendant **Club la Costa Resort Management Limited** to pay to the plaintiff the amount of 8198.45 euros as payments of annual maintenance .

With more legal interests coming from the date of the judicial interpellation, and the payment of the procedural costs.

Get rid of and join literal certification of this resolution to the proceedings, including the original in the Sentence Book.

Against this resolution it is possible to appeal **APPEAL** before the Hearing Provincial of MÁLAGA (article 455 LEC). The resource will be interposed through of a document presented in this Court within a period of **TWENTY BUSINESS DAYS** counted from the day following the notification, limited to citing the resolution appealed, with expression of the impugned pronouncements (article 458 LEC)

For the admission to process of the resource previously must make a deposit constitution in the amount of 50 euros, having to enter it in the account of this Court of Banco Santander nº, indicating in the Observations of the income document that is a resource of appeal followed by the code '02', in accordance with the provisions of Additional provision Fifteenth of the OL 6/1985 of the Judiciary, except concurrence of the cases of exclusion foreseen in it (Ministry Fiscal, State, Autonomous Communities, Local Entities and agencies autonomous workers dependent on all of them) or beneficiaries of legal assistance free

So for this my sentence, definitely judging in the first instance, I pronounce it, I command and I sign it.

**PUBLICATION.-** Read and published was the previous Judgment by the Mr. Mrs. Judge who signs it, being held public hearing in the same day of your date, I give faith in FUENGIROLA.

"In relation to the personal data, about its confidentiality and prohibition of transmission or communication by any means or procedure, shall be treated exclusively for the purposes of the Administration of Justice (ex Organic Law 15/99 of 13 December, protection of personal data) "

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Page 10

LexNET Message - Notification

Message

**IdLexNet** 201810216853594  
**Affair** ; Judgment  
**Sender** **Organ** JDO. FIRST INSTANCE N. 1 of Fuengirola, Málaga [2905442001]  
**Recipients** **Type of organ** JDO. FIRST INSTANCE  
SARRIA RODRIGUEZ, DAVID [436]  
**College of Attorneys** Illustrious Association of Procurators of Málaga  
**Date-time sending** 06/22/2018 07:56  
**Documents** 0020674\_2018\_001\_pjU0.D Description: Judgment  
gjS.pdf (Main) Document Hash: 9d28c05ec90d1b6bfd1ca7626702a778ce38b446  
**Message data** **Target procedure** Ordinary Procedure [ORD] N 0001285/2017  
**NIG** 2905442C20170005971

Message history

Date hour	Action transmitter	Action	Recipient of action
06/25/2018 09:41	SARRIA RODRIGUEZ, DAVID [436] -Ilustre College of Attorneys of Málaga	COLLECT IT	
06/25/2018 09:20	Illustrious Association of Procurators of Málaga (Fuengirola) (Fuengirola)	FEEDS	SARRIA RODRIGUEZ, DAVID [436] -Ilustre College of Attorneys of Málaga

(\*) All the hours referred by LexNET are of Peninsular scope.

Date of Presentation: 06/22/2018 07:56

#### JUDGMENT No. 218/2018

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#### FOUNDATIONS OF LAW