The exception of force majeure when special clauses are not included in an international agreement

Judgment of the Supreme Court of 5 June 2014

Background

In January 2008, Belgian company St. Paul, N.V., dedicated to the manufacturing and sale of industrial cheese and the Spanish Freigel Foodsolutions, S.A. entered into various supply agreements. In accordance with the terms of the agreements, the Belgian manufactured agreed to supply circa 800Tm of cheese to the Spanish company, who intended to use them to manufacture pre-prepared food.

In March 2008 Freigel sent an e-mail to St. Paul, notifying that, two days prior, the facility where its products were manufactured had burned. In this situation, Freigel offered to pay St. Paul for the products it had received prior to the fire and it also stated that pending orders were cancelled because of force majeure.

Despite having received this communication, St. Paul N.V. decided to send a truck with one of the orders that it had already manufactured for Freigel, and to continue with the manufacturing of the pending orders. When the truck reached Freigel and they refused to receive the products, St. Paul N.V. decided to leave it in consignment at a warehouse in Spain and demand fulfilment of the agreement, asking Freigel to accept delivery and pay for the goods.

Force majeure in international sales agreements

When the case reached the Courts, the conflict was decided on the basis of the UN Convention on the International Sale of Goods, which is applicable to international sales of goods, unless the parties agree in the contract to exclude the application of the Convention or if they include special provisions on such matter.

In this case, Freigel claimed that, under the Convention, the fire could be considered as a force majeure event and that it allowed Freigel not to comply with its obligations under the agreement.

The Supreme Court agrees with Freigel and recalls that the UN Convention contemplates that a party is not responsible for the breach of any of its obligations if it proves that the breach is due to an event meeting two conditions: firstly, the event must be beyond the control of the party that makes the claim; and secondly, the event must be unforeseeable on the date of entering into the agreement.

The Court also deals with the temporary effect of the force majeure exception. In this sense, it states that a party may be released from performing its obligations under the agreement only while the force majeure event lasts, and that there are situations of force majeure event that are not permanent but temporary. On this basis, maybe St. Paul N.V. could have adopted the position of keeping the products in its warehouse, wait until Freigel restarted its activity and then requested performance of what had been agreed. The Supreme Court states that St. Paul N.V. did not act in this manner, and that it just insisted that Freigel should accept the orders when it was not in a position to use the goods at all, and on this basis, it rules in favour of Freigel.