



In a commodatum agreement (loan for use), the return of the equipment can be requested at any time, as long as an express duration or a specific use have not been agreed on

Judgment of the Supreme Court of 3 of December of 2014

Commodatum in healthcare environment

In the judgment that we analyze the Supreme Court reminds us that the commodatum agreement is the one by virtue of which a party freely assigns an item to the other party, in order for such party to use it, during a certain time or for a specific use. Such relation generates obligations only for the recipient. Such obligations include keeping the item and returning it when the period agreed to comes to an end, or when the use for which it was assigned terminates. The Court also reminds that while the period or use that have been agreed are not terminated, the party who lent the item cannot claim it back unless it has an urgent need for it.

The commodatum loan is a contractual relationship frequently used in the healthcare environment. Such is the case, for instance, with refrigerators or other equipment that pharmaceutical companies lend to hospitals in order to store medicinal products that are administered in clinical trials in which they participate. It is also the case with equipments lent for the analysis of samples, or for the administration of certain treatments.

Setting a period or specific uses

In the case that the Supreme Court analyzes in this judgment, a company occupied some pieces of land under a commodatum agreement. The owners of such lands decided to bring legal

proceedings against the company in order for the company to vacate the lands and for the owners to regain possession.

The company that occupied the land had simply received the right to freely use them, but neither the period during which the lands would be assigned, nor the use they would be given was agreed on.

As there was no agreement regarding the period or the use, the Supreme Court considered that, according to the rules that govern the commodatum agreement, the party who lent the item could claim it back at any time without the need to invoke any specific reason. Accordingly, the Court declares the loan for use terminated, obliging the user of the lands to vacate them. It is therefore important to keep in mind that in commodatum agreements, the conditions agreed upon will be the deciding factor when it comes to recovering the equipment that has been assigned.

If a deadline has been established for the assignment or if the use that will be given to the assigned equipment has been specified, such equipment may not be recovered until the agreed period has expired or until the use for which the equipment has been assigned has been made. If such period has not been fixed and the use has not been specified, then according to this judgment the owner might claim the item at any time without the need to justify back why the equipment should be returned.