



Companies hiring transportation services from a carrier can receive claims directly from another carrier outsourced by the former

Judgement of the Supreme Court of 24 of November of 2017

Background

When hiring transportation services, it is convenient to bear in mind if the carrier who has been hired (“hired carrier”) is the one who actually carries and delivers the goods to the recipient, or if the hired carrier has outsourced the provision of such transportation services to another carrier (“final carrier”).

In case of outsourcing, if the hired carrier does not pay the final carrier, the latter can choose between claiming the payment from the hired carrier or directly from the company who hired the transportation services in the first place. This second possibility is the so-called “direct action”, incorporated to the Spanish legal system in 2013.

Position of the Supreme Court

In this judgement, the Supreme Court has clarified certain matters regarding the direct action, which have generated controversy among the Spanish Courts.

In particular, the Court stated that the company hiring the transportation services in the first place is a real “joint and several guarantor” to the final carrier.

To such effect, if the hiring company receives a claim for payment from the final carrier, such company must pay in full the amount agreed between the hired carrier and the final one, even when the company has adequately and promptly complied with all its obligations vis-à-

vis the hired carrier. According to the Court, this is without prejudice of the hiring company’s right -who was forced to pay the final carrier by virtue of the direct action- to claim the corresponding amounts from the hired carrier.

Protection against the direct action

As we can see, the direct action implies a risk for the company hiring the transportation services, in the sense that it might be obliged to pay some amounts to the final carrier whose services it never hired.

It may be the case that the company hiring the transportation services might even have to pay twice for the same service: first pay the hired carrier and then the final carrier who exercises the direct action.

To protect the interests of the hiring company against this risk, certain restrictions can be included in the services agreement entered between such company and the hired carrier, such as a prohibition to subcontract.

Another option would be to establish in the agreement that the hiring company does not have to pay any amount to the hired carrier until it proves that the final carrier has received the corresponding price.