

Official Case Repertory:	STS 988/2014
Cendoj ID:	28079110012014100118
Court:	Supreme Court. Civil Division
Jurisdiction:	Madrid
Section:	1
Appeal No.:	135/2012
Resolution No.:	142/2014
Procedure:	CIVIL
Rapporteur:	ANTONIO SALAS CARCELLER
Type of Resolution:	Judgment

JUDGMENT

In the city of Madrid on 20th day of March 2014.

Heard by the First Chamber of the Supreme Court, consisting of the Magistrates listed above, the appeal to the Supreme Court against the ruling issued at the appeal stage by the Nineteenth Section of the Provincial Court of Madrid, as a consequence of the ordinary declaratory suit No. 113/08, brought before the 46th Court of First Instance of Madrid, in which the appeal has been filed before the aforementioned Court for the legal representation of **Seguros Catalana Occidente S.A.**, represented before this Chamber by the Court Solicitor Mrs. Paloma Ortiz-Cañavate Levenfeld; and defendant **Mapfre Empresas, S.A.**, represented by the Court Solicitor, Mr. Federico Ruiperez Palomino and, **Ocaso, S.A.**, represented by the Court Solicitor Mrs. María Pilar Cortés Galán. ACS-Dragados and Zavelsa are also parties in this action and have not appeared before this Supreme Court.

FACTUAL BACKGROUND

FIRST.- The Court of First Instance reviewed the records of ordinary proceeding filed by Ocaso, S.A. against ACS-Dragados, Zavelsa, Mapfre Industrial and Catalana Occidente.

1. The plaintiff filed a complaint pursuant to the legal requirements, where requested, after stating the arguments of fact and law, to "*... enter Judgment against the Defendants for the amount of 161,871.76 Euros to my client, plus interest and costs.*"

2. After the complaint have been admitted for processing, the legal representation of Mapfre Empresas Compañía de Seguros y Reaseguros S.A: (formerly known as Mapfre Industrial, S.A.) replied to it, opposing the respective claims adverse to the arguments of fact and law and they found appropriate to conclude with a request to

"... enter judgment to completely dismiss the complaint filed by the plaintiff, with imposition of costs."

The legal representation of the insurance company Catalana Occidente S.A., also replied to the complaint and after arguing the arguments of fact and law to be considered, ended up pleading to the Court: to enter "*... Judgment to completely dismiss the complaint and acquit my client of all claims thereof, with express imposition of costs to the plaintiff.*"

The legal representation of Dragados, S.A. (formerly known as ACS Proyectos, Obras y Construcciones, S.A.) replied to the complaint, opposing the respective claims adverse to the arguments of fact and law and they found appropriate to conclude with a request to enter "*... judgment to completely dismiss the complaint filed by the plaintiff before my client, with express imposition of the costs incurred.*"

The legal representation of Zavelsa, also replied to the complaint and after arguing the arguments of fact and law to be considered, ended up pleading to the Court: to enter "*... Judgment to completely dismiss the complaint filed against my client and expressly acquit Zavel, S.A. of all claims thereof, with imposition of costs to the plaintiff.*"

3.- The parties were invited to a preliminary hearing, the proposed and relevant evidences were brought to the trial, and the legal proceedings were concluded to deliver a ruling.

4.- The Court of First Instance rendered the Judgment on March 15, 2010, which contained the following operative part: "*WE RULE AS FOLLOWS: With regard to the complaint filed by Attorney Mrs. Cortés Galán as legal representative of the company Ocaso S.A., the company Zavel, S.A. shall be and hereby is convicted, as well as Catalana Occidente to jointly and severally pay the plaintiff the amount of 161,871.76#, for the damages caused, plus the corresponding statutory interest and court fees. And I acquit and relieve the companies ACS-Dragados and Industrial Mapire, of all claims against them in the complaint.*"

On April 21, 2010, the judgment clarification order was issued, which contained the following operative part: "*The judgment pronounced in the records of March 15, 2010 is clarified as follows: Legal grounds for the decision "Fifth-. In relation to the complaint, the court fees should be imposed on the defendant, Zavel S.A. and Catalana Occidente whose claims have been rejected (art. 394 LEC), acquitting thereof, ACS-Dragados and Mapire Industrial, imposing the court fees to those convicted". And in the Judgment "With regard to the complaint filed by Attorney Mrs. Cortés Galán as legal representative of the company Ocaso S.A., the company Zavel, S.A. shall be and hereby is convicted, as well as Catalana Occidente to jointly and severally pay the plaintiff the amount of 161,871.76#, for the damages caused, plus the corresponding statutory interest and court fees." And I shall acquit and relieve the companies ACS-Dragados and*

Industrial Mapire, of all claims against them in the complaint, imposing the court fees to those convicted”.

SECOND.- Seguros Catalana Occidente S.A., the company Mapfre and the company Zavel, S.A. appealed against that judgment, and the appeal was heard by the Nineteenth Section of the Provincial Court of Madrid who rendered its judgment on October 13, 2011, with the following ruling: *"We dismiss the appeal made by the companies Catalana Occidente and Zavel S.A. against the judgment pronounced on March 15, 2010, by the 46th Court of First Instance of Madrid in the procedure of the case in question, with imposition to the court fees of this appeal on those who filed such appeal. - With regard to part of the appeal filed by the company Mapire, the judgment will be partially revoked in the sense of imposing the court fees of the first instance corresponding to the appellant, to the plaintiff company Ocaso S.A., without special imposition of the court fee arising from this appeal. The remaining decisions of the judgment shall be maintained."*

THIRD.- The Attorney Mrs. Paloma Ortiz-Cañavate Levenfeld, on behalf of **Seguros Catalana Occidente S.A.**, filed an extraordinary appeal for breach of procedure founded on the following grounds: (1) Violation of the provisions of Article 218 of the Code of Civil Procedure, due to the inconsistency of the judgment; and (2) Violation of the right to effective judicial protection with breach of Article 24 of the Spanish Constitution.

FOURTH.- This Court issued an order on October 2, 2012, by which it was agreed to grant the appeal and serve notice on the defendant, **Ocaso S.A.**, who represented by Attorney, Mrs. Pilar Cortés Galán, presented an application challenging the appeal.

FIFTH. - As the parties did not request the matter to be held in a public hearing, this was indicated by voting and ruling on February 27, 2013, in which it took place. Acting as Rapporteur the Honorable Judge Mr. D. **Antonio Salas Carceller**,

LEGAL GROUNDS

FIRST.- The company Ocaso S.A. filed a complaint under ordinary proceedings against ACS-Dragados, Zavel SA, Mapfre Industrial and Catalana Occidente S.A., requesting the conviction of the defendants and the payment of 161,871.76 euros, as jointly and severally liable defendants.

The 46th Court of First Instance of Madrid rendered this judgment of March 15, 2010 by which upheld the lawsuit regarding Zavel SA and Catalana Occidente condemning them jointly and severally liable for the payment of the amount claimed, while discharging ACS Dragados and Mapfre Industrial. Subsequently, on April 21 a clarification order was issued which established that the defendants who had been

convicted shall not only pay the plaintiff's costs but also the acquitted co-defendants' costs.

Zavel SA y Catalana Occidente SA appealed against the judgment, and the Provincial Court of Madrid (Section 19) dismissed the appeal by judgment dated October 13, 2011.

Catalana Occidente SA. appealed against such judgment due to procedural violation.

SECOND.- The two grounds of the appeal were intended to highlight the internal inconsistency of the contested judgment and lack of reasonableness of their arguments, reporting to the effect the breach of article 218 of the Code of Civil Procedure and Law 24 of the Spanish Constitution, while, despite the Court argued to the contrary on this matter in its legal reasoning, and in its ruling, decided to reject the appeal of Catalana Occidente SA against a judgment which, as pronounced in the first instance, erroneously ordered the payment of the costs incurred by the other parties who had been sued along with Catalana Occidente SA and had been acquitted with regard to the claims of the plaintiff.

Therefore, the contested judgment, in its third legal reasoning, literally states that "according to the provisions of Article 394 of the Procedure Code, the party who has their claims rejected or dismissed should be liable for the court fees" and, however, resolves to upholding the ruling of first instance which, to the contrary of such doctrine, orders the co-defendant to pay the costs incurred by other co-defendants who were acquitted; order that is only applicable for cases specifically provided for by law, such as Article 14, item 5a of the Code of Civil Procedure, for the cases of intervention committed by one of the defendants with respect to a third party.

With exception to these cases, it is clear that as the jurisdictional and procedural relationship is established between plaintiff and defendant, and not between co-defendants, therefore the payment of the court fees incurred by others shall not be applicable to any of co-defendants, not even under the argument - used by the Court - that Catalana Occidente SA was not entitled to request for these costs to be paid by the plaintiff Ocaso SA, a claim that can't be made by Catalana Occidente SA, since in the "plead" of its Appeal expressly requested for the revocation of the order of payment of costs against it, regardless of whether a request was added to it, which certainly was not entitled to, with relation to such costs imposed on the plaintiff Ocaso SA.

THIRD.- With regards to the appeal for procedural violation, the judgment under appeal should be annulled in particular to which it refers, and ruling on the issue, to withdraw the conviction of the appellant Catalana Occidente SA, to the payment of the costs incurred in the first instance by its co-defendants ACS Dragados and Mapfre

Industrial, without special pronouncement on the appeal - which should be regarded - and those produced by this appeal (Articles 3894 and 398) the Code of Civil Procedure)

Therefore, in the name of the King and through the authority conferred by the Spanish people.

WE RULE

That we must and do declare that we have examined the extraordinary appeal for procedural violation brought by the legal representative of **Catalana Occidente SA** against the decision pronounced by the Provincial Court of Madrid (19th Section) of October 13, 2011, in the Appeal Proceedings No. 375/2011, under ordinary proceedings number 113/2008, brought before the 46th Court of First Instance of Madrid, in view of a lawsuit filed by **Ocaso SA** against the appellant herein and others, which we **annul** the decision pronounced referring to the appeal, and instead, we revoke the costs against the appellant in respect of those incurred in the first instance by the co-defendants ACS-Dragados and Mapfre Industrial, without making any express order for costs for their appeal and this procedural violation..

Therefore by means of our decision, which will be inserted in the LEGISLATIVE COLLECTION producing the copies required for this purpose, we pronounce, order and sign. - José Ramón Ferrandiz Gabriel.- Antonio Salas Carceller.- Ignacio Sancho Gargallo.- Rafael Saraza Jimena.- Sebastian Sastre Papiol.- Signed and Initialled. PUBLICATION: The above ruling was read out and made public by his excellency MR. D. **Antonio Salas Carceller**, who was the Judge pronouncing the opinion of the court, with the Public Hearing being conducted on today's date in the First Chamber of the Supreme Court; which I as Clerk of the same, certify.