

Aránzazu Barandiarán

## Payments in kind are similar to enforcements regarding the termination of lease agreements

The recent [Judgment of the Supreme Court \(Chamber 1\) No. 1374/2024 of 21 October](#) considers that a payment in kind (*dación en pago*) in an insolvency proceedings is similar to a mortgage enforcement for the purposes of Article 13(1) of Law 29/1994 of 24 November on Urban Leases (*Ley de Arrendamientos Urbanos*) (“**LAU**”).<sup>1</sup> The Court found that a valid lease over the transferred properties is terminated unless it is registered with preference over the right of the lender.

### I. The case

---

The judgment addresses the question of whether the causes for termination of the lessor’s right set out in Article 13(1) LAU are a closed list or not.<sup>2</sup> Until the date of this judgment, this provision had not been subject to legal interpretation, despite the previous pronouncements contained in the Supreme Court Judgments Nos. 577/2020 of 4 November; 109/2021 of 1 March, and 379/2021 of 1 June. In these decisions, the Supreme Court held that, following an enforcement of properties subject to unregistered leases, the occupants held no title to possession.

In the case in point, the Alicante Court of Appeal had upheld the previous decision by the Orihuela Court of First Instance. The Court held that Article 13(1) LAU is not applicable to payments in kind of leased dwellings, given that no statutory provision equates payments in kind to mortgage enforcements or awards by Court rulings, and no analogous or extensive interpretation is admissible.<sup>3</sup> The Court of Appeal had considered that the leases would only have been terminated if the properties had been subject to a mortgage enforcement, even within the insolvency proceedings, as permitted by Articles 148 and 149 of Royal Legislative Decree 1/2020 of 5 May approving the revised text of the Insolvency Act (*Texto refundido de la Ley Concursal*) (“**TRLC**”).

### II. The Supreme Court’s judgment

---

The Court held that the “termination of the lessor’s right” referred to in Article 13(1) LAU must be interpreted broadly, meaning “*the loss by the lessor, through an act or legal transaction that does not depend on its will, of the right that made the lease possible (in this case, the ownership of the dwellings), so that a third party acquires legal title to the property*”.

Payments in kind referred to in Article 155(4) of the former Insolvency Act (currently contemplated in Article 211 TRLC) serve a similar purpose to forced transfers resulting from mortgage enforcements. This is because payments in kind take place in the context of the global winding-up of a company, which is not voluntary and which, although it is meant to be an alternative to judicial enforcements, falls implicitly within the scope of Article 13(1) LAU, as it results in a transfer of the title to property that allowed its owner to lease it, as overseen by a Court of justice.

---

<sup>1</sup> Per the wording implemented by Law 4/2013 of 4 June. Please note that this wording was repealed by Royal Decree-law 7/2019 of 1 March, which established a more protective legal framework for residential leases.

<sup>2</sup> “*If during the term of the contract, the lessor’s right is terminated by the exercise of a conventional right of first refusal (retracto convencional), the opening of a substitution in trust (sustitución fideicomisaria), the forced transfer arising from a mortgage enforcement or court ruling or the exercise of a right of purchase option, the lease shall be terminated.*”

<sup>3</sup> This is irrespective of whether the contracts are registered in the Land Registry.

Consequently, the Court considers that the lessor's right is "terminated" not only in the four cases specifically listed in Article 13 LAU (contractual rights of first refusal, substitutions in trust – "*sustituciones fideicomisarias*", forced transfers arising from mortgage enforcements or court rulings, and purchase options) but also in any other cases that result in the loss of the title to the property that allowed the lessor to lease it, through an act or legal transaction that is beyond the lessor's control.

### III. Conclusions

---

The decision issued by the Court confirms that winding-ups in insolvency liquidations qualify as global enforcements. Therefore, any payments in kind agreed in such context terminate leases pursuant to Article 13(1) LAU (we stress, in its wording prior to RDL 7/2019), if the leases are not recorded in the Land Registry.

The Court has clearly and definitively settled any interpretative doubts regarding the term "forced transfers".

With this judgment, the Supreme Court follows the line of Judgment No. 783/2021 of 15 November, in which the Court declared that Article 1571 of the Civil Code applies to the repossession of business premises (in accordance with Article 4(3) LAU). If we interpret both judgments jointly, we must conclude that the reasoning of the new judgment also applies to non-residential leases. These are also terminated by the loss of the lessor's title for any reason beyond its control (such as, for example, any transfers that occur within an insolvency winding-up).

## Contacts



### Julio Parrilla

Partner, Real Estate

[jparrilla@perezllorca.com](mailto:jparrilla@perezllorca.com)

T: +34 91 432 51 54



### Aránzazu Barandiarán

Counsel, Real Estate

[abarandiaran@perezllorca.com](mailto:abarandiaran@perezllorca.com)

T: +34 91 432 51 44



### Antonio Garcia

Senior Associate, Real Estate

[agarcia@perezllorca.com](mailto:agarcia@perezllorca.com)

T: +34 91 432 51 47

## Offices

### Europe [↗](#)

Barcelona

Lisbon

Madrid

Brussels

London

### America [↗](#)

New York

Mexico City

Monterrey

### Asia-Pacific [↗](#)

Singapore

The information contained in this Legal Briefing is of a general nature and does not constitute legal advice.

This document was prepared on 8 November 2024 and Pérez-Llorca does not assume any commitment to update or revise its contents.

©2024 Pérez-Llorca. All rights reserved.

App Pérez-Llorca  
All legal content



[perezllorca.com](http://perezllorca.com) [↗](#)

