

DEBTORS ' PARADISE A TALE OF SPANISH (UN)JUSTICE

by Jan Willem de Haan



This is an outline of an article that describes a still ongoing case of a bankrupt Spanish company and its ' liquidators who "took the money and ran". The full article can be read on the website of Insol Europe.

Egidius Janssen vs. Redondo

In May 1999 Egidius Janssen N.V., ("EJA N.V.") a Dutch company had a receivable of EUR 184.573,25 on its Spanish reseller, Redondo Hermanos Papel, S.A. ("Redondo") .

EJA N.V. went bankrupt and the receivable was transferred to Egidius Janssen B.V. ("Egidius"). By april 2001 the deed of transfer of the receivable was served to Redondo. Still no payment followed.

Then Redondo went bankrupt (procedure 781/2000 with Court of First Instance number 51 of Madrid hereinafter "Court 51"). Egidius was invited to the creditors' meeting to elect the trustees of July 20, 2001.

On July 19, 2001 Egidius filed its claim in the bankruptcy. The next day instead of election of trustees, a settlement was reached between Redondo and its creditors as its main creditor Unipapel, S.A. voted in favour.

The settlement was flawed. Settlement agreements in bankruptcies could only be reached after examination of the debts by the trustees, hence after their appointment.

Also the content of the settlement was remarkable. The assets would be sold but the creditors would only be paid if at least 25% of the debts of the creditors could be paid. It was unclear what would happen if the proceeds were less then 25%.

Nevertheless, Court 51 ratified the settlement on October 31, 2001. Subsequently, the commission of liquidators ("the Liquidators") sent a letter to each creditor summoning to file proof with them of their claims.

The Liquidators informed on February 18, 2002 that Egidius had not filed any proof of her claim and it was therefore thrown out.

Egidius replied on April 3, 2002 :

- a) the debt of Egidius was already acknowledged and filed on July 19, 2001;
- b) the new filing of proof basis in the law as the Liquidators had no powers to disregard a claim.

Egidius discovered that the Liquidators sold the properties of Redondo on November 28, 2001 for € 8.023.511,59 and that € 1.871.048,31 was available for payment to common creditors. The total debt of the common creditors was € 3.029.094,64, so 61% of their debts should be paid, (property register

number 15 of Madrid, with registration number ("finca") 3.810). Egidius inquired on December 17, 2002 about this sale and payment to the creditors.

One of the Liquidators called on January 30, 2003 offering payment of 25% of the debt. In a meeting on February 5, 2003, the offer was repeated but no accounts were rendered, only a promise to do so. After that, nothing was heard anymore nor was payment received.

Egidius decided for legal action. Egidius therefore started a new procedure on February 7, 2005 against the Liquidators with the courts of Madrid:

- a. Acknowledgement of the debt to Egidius;
- b. Rendering of accounts by the Liquidators and payment of Egidius;
- c. Indemnity from the Liquidators for damage incurred.

The dean's office ("DO") of the court that assigns new cases, assigned the claim to Court 67 of Madrid. It took Court 67 until June 5, 2005 to carry out service on all of the Liquidators. The Liquidators argued lack of jurisdiction of Court 67 in favour of the newly created commercial courts and alternatively, Court 51.

It took Court 67 until April 11, 2006 to declare not itself but Court 51 competent. Egidius did not appeal. Appeal would take two years and Court 51 could then still deny jurisdiction.

Egidius filed its claim again with the DO on March 21, 2007 asking for assignment to Court 51.

On September 17, 2007 the DO clarified the situation:

- a. On March 22, 2007 the case was sent to Court 51;
- b. On April 23, 2007 Court 51 returned the case to the DO to send it to the commercial courts;
- c. The DO agreed to send the case to the commercial courts;
- d. On July 9, 2007, commercial court 2 returned the case to the DO arguing Court 51 is competent;
- e. The DO ordered to send the case again to Court 51;
- f. Court 51 sent the case back to the DO saying it is not competent .

By resolution of September 17, 2007, the DO reconfirmed that Court 51 is competent.

On November 12, 2007 Court 51 directly informed Egidius of its incompetence but invited Egidius to argue for competence of Court 51. Egidius had already done that in her summons writ but did it again. Court 51 ruled on January 10, 2008 that it had no jurisdiction and sent the case to the DO.

Parties cannot appeal such resolutions because the courts must ex officio initiate proceedings to determine which is competent.

The DO summoned Court 51 to either issue a resolution that can be appealed by Egidius and/or to initiate proceedings to determine the competent court.

Court 51 finally allowed appeal, on February 29, 2008 to determine the competent court. The appeal will take at least a year.

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Egidius found out that the real property of Redondo was soon after converted in housing complexes making much more profit . Egidius is convinced there would have been enough money to pay 100% of the debts.

If one reads this story, it is not surprising that in Spanish bankruptcy procedures, Spanish creditors never fight for their money. This case is symptomatic and representative for Spanish bankruptcies. I am not sure if the new "Ley Concursal 2004" has improved things.

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