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Origin Proc.: Ordinary procedure

Origin Proc. No: 0000407/2016-00
Court of the First Instance No 4 of San Bartolomé de Tirajana

Case: Appeal Case No: 0000818/2017 ID: 3501942120160002708
Resolution: Judgment 000254/2019

Intervention:	Party involved:	Lawyer:	Court Prosecutor:
Appellee	[redacted]	Miguel Rodriguez Ceballos	Maria Del Mar Montesdeoca Calderin
Appellee		Miguel Rodriguez Ceballos	Maria Del Mar Montesdeoca Calderin
Appellant	ANFI SALES S.L.	Javier De Andres Martinez	Antonio Carlos Vega Melian
Appellant	Anfi Resorts S.L.	Javier De Andres Martinez	Antonio Carlos Vega Melian

JUDGMENT

Your Honours,

CHAIRMAN: Mr Víctor Caba Villarejo

MAGISTRATES: Mr Carlos García van Isschot

Mr Miguel Palomino Cerro

In the city of Las Palmas de Gran Canaria on 23 May 2019;

Whereas the 5th Section of this Provincial Court has seen the proceedings arising from this case by virtue of the appeal filed against the Judgment No 151/2017 of 25 May, issued by the Court of First Instance No 2 of San Bartolomé de Tirajana in the court records of Ordinary Judgment No 0000407/2016-00, pursued at the request of **Mr** [redacted] **and Ms** [redacted], appellant/appellee, represented in this appeal by the court prosecutor María del Mar Montesdeoca Calderín and assisted by the barrister Mr Miguel Rodríguez Ceballos against the trading entities **"ANFI SALES, S.L." and "ANFI RESORTS, S.L.",** appellant/appellee party, represented in this appeal by the court prosecutor Mr Antonio Carlos Vega Melián and assisted by the barrister Mr Javier de Andrés Martínez, with the reporting judge being the magistrate Mr Carlos Augusto García van Isschot, who expresses the judicial opinion of the chamber.

BACKGROUND INFORMATION

ONE. THE PRESIDING JUDGE OF THE COURT of First Instance No 4 of San Bartolomé de Tirajana, the Honourable Magistrate Mr Carlos Suárez Ramos, issued Judgment No 000151/2017 of May 25, in the aforementioned records whose operative part literally states: < CONSIDERING IN PART the claim filed by Mr [redacted] and Ms [redacted] against ANFI SALES S.L. and ANFI RESORT S.L., and CONSIDERING IN PART the counterclaim filed by ANFI SALES S.L. and ANFI RESORT S.L. against Mr [redacted] and Ms [redacted]: 1. I declare the nullity of timeshare contracts signed by the parties on 25 March 2009 (number AAAB09032506F) and 3 April 2009 (number AAAB09040310F) 2. I order ANFI SALES S.L. and ANFI RESORT S.L. to return to Mr [redacted] and Ms [redacted] the price paid for the contacts, which amounts to €40,714 (21,714 + 19,000) 3. I order Mr [redacted] and Ms [redacted] to return to ANFI SALES S.L. the value of the time actually enjoyed under the contract, which is set at €6,514.24 (3,474.24 + 3,040). 4. I declare the compensation of the sums set forth in the points two and three, and I ORDER ANFI SALES S.L. and ANFI RESORT S.L. to jointly and severally pay [redacted] the sum of thirty-four thousand, one hundred and ninety-nine euros and seventy-six cents (€34,199.76). This sum will accrue the legal interest rate from the date on which the claim was filed. 5. I order Mr [redacted] and Ms [redacted] to return the membership certificate linked to the contract declared void. 6. I declare that the compensation of maintenance fees is not applicable. 7. All this with no order to pay court costs. Let the parties be notified of this judgment. >>

TWO. The aforementioned Judgment No **151/2017 of 25 May** was reconsidered on appeal; on the one hand, with the counterclaim defendants “ANFI SALES, S.L.” and “ANFI RESORTS, [redacted] S.L.” and, on the other hand, the counterclaimed claimants filing the corresponding appeal based on the facts and grounds seen therein.

Having processed the appeal in the manner stipulated in Article 461 of the Law on Civil Procedure, the opposing party presented the respective notice of opposition and the proceedings were then raised to this Chamber, where an appeal case was formed; and before which said litigants appeared in due time and form.

THREE. Whereas there was no request for admission of evidence and without the need for a hearing, the court records were indicated for deliberation, voting and ruling.

LEGAL GROUNDS

ONE. On the duration of the contract and the applicable law.

I. The first of the grounds of appeal made by Anfi Sales S.L. and Anfi Resorts S.L. is based on the appealed resolution having circumvented any consideration regarding the applicable law since, as the appellees understand, the version described of timeshare in Law 4/2012 and the third section of its single temporary provision should govern the resolution of the dispute.

They do not, therefore, share the claim of the Supreme Court of the application of the second temporary provision of Law 42/1998, precisely because in their opinion it was repealed by the 2012 Law, so they consider it fully legal that the contracts concluded during the validity of the first of the aforementioned laws could have an indefinite duration.

Subsidiarily to the foregoing, they consider it legal that there is the stipulation of an indefinite period of duration under Law 42/1998, citing a judgment issued by this Chamber on 21 April 2015.

II. The appellees/appellants [redacted], considering that the same arguments in the response to the claim are literally reproduced in the appeal document, refer to the decision in the appealed resolution, favourable to the argument asserted by them in the claims.

III. As this Chamber has already said in previous resolutions, doubts about the joint interpretation of the temporary provisions of the 2012 Law gave rise to a divergent treatment of the issue by the sections of this Provincial Court, although the Supreme Court Ruling of January 2015 was convincing in its conclusion in this regard and gave prevalence precisely to a claim which this Chamber had previously pursued and which is asserted in the appeal. Thus, in our judgment of 26 February 2018, Case 793/2016, we indicated in a similar assumption that:
<... In relation to the indefinite duration of the arrangement on which the right of the claimants was provided, specifically this Section 5, and contrary to Section 4, has always maintained a different interpretation of the second additional provision (section 2 §3) of the Timeshare Law, which states:

«(…) In the deed of adaptation, the sole owner of the property must describe the pre-existing arrangement and state that the rights to be transferred in the future will have the nature which results from the arrangement, [1] identical to that of the already assigned rights. Anyone wishing to market the timeshare periods not yet transferred as [2] timeshare rights will also provide the arrangement regarding the periods available with the requirements established in this law, but without the need for the arrangement to be provided for the entire property, but only with respect to non-assigned periods. Anyone wishing to [3] transform

the entire arrangement to turn it into a timeshare system, as regulated by the law, may do so by complying with all the requirements established therein, but maintaining the duration of the pre-existing arrangement, even if it was undefined" [The numbers in square brackets are ours, as is the bold text].

We have considered that this provision includes the three possibilities of adaptation of a pre-existing arrangement: the first [which we understood allowed restriction 1 above] in which the entire arrangement is identical to the previously provided one, i.e. in which the assignment of the rights to be transferred in the future will be identical to those already assigned; the second [restriction 2] in which the arrangement would be dual purpose, as the uses transferred before the adaptation to the previous arrangement and the new transferred uses coexist [hence, said provision states that "…without the need for the arrangement to be provided over the entire property, but only with respect to unassigned periods"]; and, finally, [restriction 3] that the entire arrangement is transformed into new system of use established by said law [assuming this one in which even the provision allowed, so we understood its upheld duration in a pre-existing arrangement, even if it was undefined].

Section 3 of this second temporary provision said that "Without prejudice to the provisions of the preceding section, all pre-existing arrangements will have a maximum duration of fifty years, from the entry into force of this law, unless the duration is lower or unless the deed of adaptation explicitly expresses a declaration of continuity for an indefinite period or a certain period of time", which the Chamber had understood in the sense that, in relation to the duration of the adapted arrangement, its duration (including, where appropriate, indefinite) should be explicitly provided for and which, in its defect and unless the pre-existing arrangement was of a shorter duration, would be reduced to fifty years. In fact, the recitals of the Timeshare Law say:

«(…) VII - Regarding the temporary arrangement, the question is that the law is applicable, as regards existing arrangement, to the promotion and transfer of rights which contain the power to enjoy accommodation for a period of time each year, also establishing for these arrangements, in any case, the obligation to be adapted within two years of the law coming into force. Naturally, the adaptation required by the second temporary provision is not intended to transform pre-existing arrangements, but only to publicise them and their form of use, with full respect for the rights already acquired. Therefore, the provision stipulates only the requirements of Article 5 and not the fulfilment of all the obligations which the Law imposes on whomever wishes to provide a timeshare system, once it has entered into force and, even those, only to the extent that they are compatible with its own nature of the pre-existing arrangement" [The bold text is ours].

However, we have been forced to modify the aforementioned criteria and now consider the nullity of the "timeshare" contract concluded once the Timeshare Law entered into force when, despite the adaptation of the pre-existing arrangement, the new period is assigned as 'indefinite', in contradiction with the temporary arrangement (from three to fifty years) established in Article 3.1 of said Law, under the terms set forth in the Supreme Court Judgment of 15 January 2015, No 774/2014 whose legal principle

remains constant until today, as shown by the recent Supreme Court Judgment of 30 January 2018 No 49/2018, appeal 1977/2016 which states that:

"This Chamber has reiterated that setting a period in timeshare contracts is an essential element of the contract, required by Article 3 and the lack of which determines the nullity of the contract by application of Article 1.7 of Law 42/1998.

This requirement to determine the duration is applicable to contracts concluded after the law entered into force, as stated in Judgment 192/2016 of 29 March (followed by many others, such as Judgments 633/2016 of 25 October, 516/2017 of 22 September, and 629/2017 of 21 November, 633). To the extent that it also applies, in accordance with the provisions of the temporary provisions of the law, to contracts concluded subsequently in which timeshare periods not previously transferred are transferred for the first time (Judgments 774/2014 of 15 January and 96/2016 of 19 February 19).

Judgment 192/2016 of 29 March said:

"When setting the contract with an indefinite duration, the provisions of Law 42/1998, which requires the setting of time according to the right or, if less, the duration of the arrangement (Article 3). This Chamber has already issued a resolution in this regard in Judgment 774/2014 of 15 January, which interprets the second temporary provision of Law 42/1998, after a systematic connection of its sections 2 and 3, in the sense that anyone wishing to "commercialise the timeshare periods not yet transferred as timeshare rights (...) should provide the arrangement concerning the periods available with the requirements established in this Law, including the one related to time, stipulated in Article 3, Section 1", so failure to comply with said provision results in nullity as a matter of law, as provided in Article 1.7.

"In this sense, in order to verify how the legislator wanted the contract to have a certain duration from the effective date of the law, which will generally be linked to the duration of the board basis, it is sufficient to resort to the rule contained in its Article 13 which, as it regulates the right of resolution of the owner for non-payment of services, sets forth that "to carry out the resolution, the owner must declare, in favour of the right holder, the proportional part of the price corresponding to the time remaining until its extinction"; a rule for which the application of a duration period is required".

Consequently, for this reason, it is necessary to declare the nullity of the disputed contracts".

In accordance with the theory set forth, this ground must be dismissed in application of the legal principle established by the Civil Court of the Supreme Court of Spain in this regard, dealing with the two disputed contracts here, respectively, **dated 25 March 2009 (number AAAB09032506F) and 3 April 2009 (number AAAB09040310F)**, of the acquisition of rights both **for an unlimited period of time,** according to the sixth stipulation of the membership terms and conditions of the Anfi Beach Club.

TWO. On the indeterminacy of the purpose. The Anfi trading companies do not appeal the reasoning which concerns the nullity of the contract for lack of purpose contained in the appealed resolution, jointly dealt with in its first legal basis

with the nullity for not having specified a contractual term.

The appellees [redacted], recall that the purpose was an unspecified floating week and refer to the content of the appealed resolution, in accordance with the most current legal principle coined by the Supreme Court.

Even though the nullity of the contract has already been declared for another reason, such declaration of ineffectiveness would also concur due to the indeterminacy of the purpose. The Chamber has already ruled on multiple occasions about this specific lack of determination of the purpose, the so-called "Super Red" system that the appellants use in their contracts, concluding in all cases the original nullity of the contract due to indeterminacy of the purpose, as the first degree magistrate has rightly agreed. Thus, in the Judgment of 12 January 2018, Case 29/2016, we said:

... the contract lacks the purpose provided by law and thus fails to comply with the mandatory rule of Article 9.1, Section 3, of Law 42/1998, according to which the contract must contain the "precise description of the building, of its location and of the accommodation to which the right applies, with explicit reference to its registration data and to timeshare period covered by the contract, with indication of the days and times when it begins and ends". Law 42/1998 does not cover another type of contract such as this one in which the accommodation is not defined; an agreement which could have been covered by the rule of Article 1255 of the Civil Code if it were not because the law itself prohibits it by sanctioning it with nullity (Article 6.3 of the Civil Code) in defence of consumer rights. This requirement is also contained in Article 30.1.3 of the new Law 4/2012 of 6 July, which currently governs such contracts. Specifically, the aforementioned judgment of the fourth section and to which the trading entities today appellees were appellant parties, and in relation to the same type of floating week in the contracted red period, states that "The Chamber, applying the recent legal principle set forth, must confirm the appealed judgment. The accommodation indicated in the contract NUM001 is of a "floating category". Although it says that it can be occupied, in season "Super5 Red" by four people and that it has a bedroom, this does not meet the requirements of precision or specification of the accommodation covered by the contract (Article 9.1.3 of Law 42/1998), which are required, according to the Supreme Court, for the business to have the purpose foreseen by the Law. The "Association Certificate" (document 3 presented with the claim) refers to the right to use a "floating" suite, and the "Membership Certificate" of Club Monte Anfi (document 4 provided with the claim) refers to the right to use and enjoy a one-bedroom apartment and to a "weekly period"; "floating unit, super red season". In addition, in clause number three of the "travel and booking contract", concluded on the same business day NUM001, it is said that "this coupon may only be exchanged when booking by telephone" (.), and that the "possibility of booking depends on availability". The fact that the claimant has stayed at Club Monte Anfi (in various accommodations, as demonstrated by the appellant - document 8 provided with the answer to the claim) cannot validate the business which is now null and void in accordance with the recent case law exposed.

In accordance with the theory set forth, this ground must be dismissed in application of the principle established by the Civil Chamber of the Supreme Court in this regard, dealing with the contracts disputed herein dated 25 March 2009 on the acquisition of the right to enjoy a

floating week at the “Anfi Beach Club” complex, in **a floating suite**, with "two **deluxe** bedrooms", with a "regular" type of booking, in a "floating" season, with check-in day (Monday, Saturday) and check-out day “Monday, Saturday”, “6” occupants and first occupancy in “2010”, in the contract dated 3 April 2009, which granted accommodation at the Anfi Beach Club complex, a floating week at the “Anfi Beach Club” complex, **in a floating suite, with "2 standard bedrooms,** with a "regular" type of booking, in a "floating" season, with check-in day (Monday, Saturday) and check-out day “Monday, Saturday”, “6” occupants and first occupancy in “2010”.

THREE. The sum to be refunded as a result of the declaration of nullity.

I. Regarding the economic consequences derived from the nullity, the appellants request that, with the reconsideration of the decision which dismisses their counterclaim, their theory of refund of benefits by the appellants is accepted according to the price paid by a third party for use of the property, for the justification of which the appellants provided an expert report, which would thereby comply with the provisions of Article 1303 of the Civil Code in regard to the restitution of the property with its earnings.

II. The appellees, following the legal principle of the Supreme Court established in this regard, which enshrines the application of the proportional rule between contract price, the fifty-year period and annual periods of use, are satisfied with the resolution of the appealed judgment.

III. As is the Chamber. As we said in our judgment of 30 November 2016 (No 443/2016; appeal: 455/2015 - Official Case Repertory: SAP GC 1855/2016 - ECLI:ES:APGC:2016:1855):

... declared the nullity of the contract (...) and having applied the consequences of retroactive rescission of benefits of Article 1303 of the Civil Code, the refund to the appellants of the sums received by the defendant company Anfi Sales S.L. by reason of the annulled contract, which is the sum of (...)

However, to avoid the unjust enrichment of the refund of the price paid by the claimants without taking into consideration the value of use of the holiday periods enjoyed by the claimants, as expressed by the Supreme Court, but in accordance with Article 1.7 of Law 42/98, holding harmless the contractor in good faith who is cheated by the content of the contract which fails to comply with the legal requirements, the claimants have been able to enjoy the accommodation offered by the contract, so the refund of the paid sums must not be total, but proportional to the time that must be subtracted from the contract, taking into account its maximum duration of fifty years, in accordance with the arithmetic operation performed by the Supreme Court.

Consequently, of the sum paid by the claimants, only the sum which proportionally corresponds to the years pending to enjoy, starting from its maximum duration of fifty years [...], must be refunded. And the Supreme Court, in the Judgment of 7 July 2016 (No 462/2016, appeal 1520/2014 - Official Case Repertory: STS 3121:2016, ECLI: ES:TS:2016:3121) argued that:

It is true that Article 1.7 of Law 42/1998 establishes that, in the event of absolute nullity, all amounts paid will be returned to the purchaser. However, the interpretation of said article and its application to the case cannot be alien to the provisions of Article 3 of the Civil Code in the sense that said must be made in accordance with its "spirit and purpose". The aforementioned Article 1.7 holds

harmless the contractor in good faith who is cheated by the content of the contract - normally of membership - which fails to comply with the legal requirements, but this did not occur in this case, in which - as has been said - the claimants have been able to enjoy the accommodation offered by the contract for three years, so the refund of the paid sums must not be total, but proportional to the time that must be subtracted from the contract, taking into account its maximum duration of fifty years.

The judgment of the court of first instance observed the legal principle set forth above, so the ground must be dismissed, and the dismissal of the counterclaim made by the appellants must be confirmed.

FOUR.

I. As the final ground for the appeal of the Anfi trading companies, they invoke a "Frivolous claim. Estoppel theory. Abuse of law" according to the existence of a legal relationship with a duration of several years "with no problems… without any complaints having been made".

II. The appellees do not consider the argument a true ground for appeal as it reproduces the content of the allegations in their response to the claim.

III. But this claim, not considered in the appealed resolution and reproduced in several appeals which the Chamber has seen recently, was analysed and dismissed in our Judgment of 17 July 2018, Case 493/2017, with the following argument:

The appellant maintains that the parties signed an agreement many years ago, the content of which has been effective throughout this period and no complaints have been made, and that, now, against their estoppel, the claimants are pressing for the nullity of a contract which they have been fully enjoying for so many years in a clear "disloyal delay" and "frivolous claim".

The ground has to be rejected. The Supreme Court Judgment of 7 April 2015 (No 187/2015, appeal 937/2013) cited in the judgment of 16 February 2012 because it reasoned that "the jurisdiction on estoppel, the legal basis of which is in Article 7.1 of the Civil Code, generally requires concurrence of the following circumstances: i) that the disputed act has been freely adopted and carried out; ii) that there is a causal link between the act performed and the subsequent incompatibility; iii) that the act is conclusive and unquestioned, providing the expression of consent aimed at creating, modifying and extinguishing any right generating a situation which disagrees with the subsequent conduct of the subject. However, as an essential precondition for its application, it is crucial that the act is subject to confirmation. As stated by the appellant, the jurisprudence of this Chamber establishes that only contracts which meet the requirements of Article 1261 are subject to confirmation, namely the essential elements, consent, purpose and cause, in other words, estoppel, is not applicable in matters of nullity (Supreme Court Judgments of 10 June and 10 February 2003 (Appeals No 3015/1997 and No 1756/1997))."

Further, it is also not possible to consider "disloyal delay" in the exercise of the action, since the Supreme Court Judgments of 15 June 2012 (399/2012) and 1 April 2015 (163/2015) say that disloyal delay, which applies before the end of the expiration period to render the action impossible, has its specific basis of application as one of the typical forms of acts of extra-limited exercise of rights which imply

a violation of the principle of good faith (Article 7.1 Civil Code). Therefore, for its application, apart from the natural omission of the exercise of the right and a prolonged course of a period of time, an objective disloyalty regarding the reasonable reliance in the debtor about the non-claim of the credit is required. This reliance must arise, without fail, from the creditor's estoppel to that effect. This latter requirement may not be authorised in relation to the claimants because they have not exercised estoppel which generates said reliance and without the fact that they enjoy the consideration derived from the contract provided that its radical nullity is not verified, with - we insist - estoppel not able to validate a business with absolute nullity.

FIVE. The appeal filed by the claimants against the first instance judgment refers to the lack of an order to pay the first instance procedural costs, considering that their claim must be fully sustained and, therefore, imposed on the defendant, according to Article 394 of the Law of Civil Procedure, and to the economic consequences of the nullity of the declared contract, stating that the annual maintenance fees must be included.

Ground for appeal referring to said fees which is dismissed.

Maintenance fees are not part of the contract price and the Supreme Court has ruled on this in several of its judgments, excluding the amount of maintenance fees paid during the term of the contract from the consequences of the nullity of the contract.

Thus, in its resolution of 27 September 2017, it states that “As this Chamber has reiterated, it is true that Article 1.7 of Law 42/1998 establishes that, in the event of absolute nullity, all amounts paid will be returned to the purchaser. However, the interpretation of said article and its application to the case cannot be alien to the provisions of Article 3 of the Civil Code in the sense that said must be made in accordance with its "spirit and purpose". The aforementioned Article 1.7 holds harmless the contractor in good faith who is cheated by the content of the contract - normally of membership - which fails to comply with the legal requirements, but this did not occur in this case, in which - as has been said - the claimants have enjoyed the accommodation offered by the contract for three years, so the refund of the paid sums must not be total, but proportional to the time that must be subtracted from the contract, taking into account its maximum duration of fifty years, also excluding any maintenance and service fees related to its use".

Therefore, the only consequence of the nullity in relation to maintenance fees is to declare that they are no longer enforceable in the future.

SIX. Regarding the calculation of the economic compensation for use according to the criterion of the Supreme Court, which the claimants developed and advocated in their demand itself, the appealing parties argue that there was an error in that operation when the judge considered that the contract lasted eight years (2010, 2011, 2012, 2013, 2014, 2015, 2016 and 2017), although the actual duration was seven years, because the claim was filed in May 2016, and the uses were arranged for the following June and July,

and it was documented by email that the defendants denied them the use of those rights in 2017.

The counterparty has made no declaration on this point, in its brief of opposition to the appeal, and the judge, in his court record of 21 June 2017, argued that the determination of the effective time to enjoy the contract was difficult because the contract was subject to the floating week system, but the emails sent between the members and Daniel Armas Blasco and Malena Correa (both of Anfi Vacation Club) actually revealed that, throughout December 2016 and January 2017, occupancy for March 2017 had been unsuccessful due to a permanent lack of availability. These documents were incorporated, without a formal challenge, in the court record of the previous hearing of 25 May 2017, and were accompanied to demonstrate the indeterminacy of the purpose and that the right to use the week was conditioned on the availability of the co-defendants, filed in the third factual statement of the brief of the claim.

In the fifteenth legal ground in the judgment dated 25 May 2017, the judge argued that the clients had not yet had the opportunity to enjoy their week in 2017.

In the subsequent document, dated 31 May 2017, the clients argued that the nullity of the contracts declared by said judgment, at the time of said year and given the absolute lack of availability, meant that they would not have been able to enjoy the weeks of occupancy in June and July of that year. This fact was not disputed, given the eloquent silence of the counterparty, but was included in the case of sustaining the grounds and set at 35,014.04 euros (as an amount calculated without refuting otherwise in terms of its arithmetic correction and in accordance with the variant of seven years) with the economic compensation exceeding the 34,1199.76 euros fixed in the ruling, for eight years of use yet seven actually being enjoyed, because ANFI refused availability for the entire year of 2017, even after the final judgment, as evidenced by email correspondence, which was corroborated by the silence of the counterparty given the appellant's arguments.

SEVEN. As regards the costs of the counterclaim, it should be noted that the judge considered that the counterclaim of ANFI had not been completely dismissed, given that it was ordered to deliver to the defendants an amount in compensation for the use, even if it is less than requested, but, in the case that is examined again today, it turns out that the economic refund in the first instance judgment was in accordance with the terms of the plea and the terms of the content of the claim document (except in the calculation of annual payments which have been amended favourably herein for the clients) in which it was broken down and calculated, in accordance with the Supreme Court Ruling of 29/03/2016 with said Court's rule of three, the consequence of the economic refund of benefits, and the defendants insisted, in their counterclaim, on making the expert report of the economist Mr Febles prevail, although it has been dismissed so many times, by this and by the other sections of the Provincial Court of Las Palmas. In addition, the judge explicitly explained that for the return of the membership certificate, mentioned in the counterclaim, there was, in principle, no economic reason to agree to it, as said document is already incorporated in court files, with the claim document, to be delivered as appropriate to the defendant ANFI, which obviously was not going to recognise the

legal position of a third party which could be presented with the annulled registered certificate, thus vetoing it to be used as a kind of title, for the purposes of the transfer and taxation of the use.

Therefore, we sustain the grounds for the appeal and order the co-defendants to pay the costs of their counterclaim dismissed in the first instance, as authorised by Article 394.1 of the Law of Civil Procedure.

FINAL. Costs.

I. The costs derived from the appeal filed by Anfi Sales S.L. and Anfi Resorts S.L. will be assumed by these appellants, pursuant to Article 398.1 of the Law of Civil Procedure.

Those derived from the appeal of M and Ms , are not subject to special taxation, as their appeal has been accepted in part, according to the second section of the same provision.

In view of the cited legal provisions and others of general and relevant application,

FAILURE: Having dismissed the appeal filed by "ANFI SALES, S.L." and "ANFI RESORTS, S.L." and sustained in part the one also filed by Mr and Ms against Judgment No 151/2017 of 25 May, issued by the Court of First Instance No 4 of San Bartolomé de Tirajana, in the ordinary court records No 407/2016-00, we must revoke said resolution and in its place we issue this one, whereby < SUSTAINING IN PART the claim filed by Mr and Ms against ANFI SALES S.L. and ANFI RESORT S.L., and SUSTAINING IN PART the counterclaim filed by ANFI SALES S.L. and ANFI RESORT S.L. against Mr and Ms

1.We declare the nullity of the timeshare contracts signed by the parties on 25 March 2009 (number AAAB09032506F) and 3 April 2009 (number AAAB09040310F).

2. We order "ANFI SALES, S.L." and "ANFI RESORTS, S.L." to return to Mr and Ms the price paid for the contracts, which is €40,714.

3. We order Mr and Ms to return to "ANFI SALES, S.L." the value of the time actually enjoyed under the contract, which is set at €5,699.96.

4. We declare the compensation of the sums set forth in the points two and three, and WE ORDER "ANFI SALES, S.L." and "ANFI RESORTS, S.L." jointly and severally to pay Mr and Ms thirty-five thousand, fourteen euros and four cents (€35,014.04), a sum which will accrue legal interest from the date on which the claim was filed.

5. We order Mr [redacted] and Ms [redacted] to return the membership certificate linked to the contract declared void.

6. We declare that the compensation of maintenance fees is not applicable.

7. With no order to pay court costs regarding the claim of Mr [redacted] and Ms [redacted], nor those derived from the processing of their appeal.

8. We order "ANFI SALES, S.L." and "ANFI RESORTS, S.L." to pay the costs of their counterclaim and those derived from the processing of their appeal.

It is ordered that certification of this Judgment is placed in the file of this Chamber and appended to the case file and please notify the parties that an appeal for reversal may be filed against it solely in the interest of reversal (Article 4772.3 of the Law of Civil Procedure), as the procedure was pursued because of the matter at hand and/or for a sum less than €600,000.00 and, where appropriate, jointly, an extraordinary sum for procedural infraction (for the grounds stated in Article 469 of the Law of Civil Procedure). It must be brought before this Court within twenty days from the notification of this judgment, the records of which correspond to the First Chamber of the Supreme Court. Furthermore, the requirements set forth in Chapter IV must be fulfilled - in relation to the Sixteenth Final Provision - and in Chapter V of Title IV of Book II of the Law of Civil Procedure. At the time of filing, the provision of a deposit of fifty euros, for each one of the appeals filed, will be required, subject to failure to process, and must be recorded in the appropriate credit institution and in the "Deposit and Consignment Account" held by this Court, which must be accredited.

Thus, our judgment is duly pronounced, ordered and signed.