

Proposal for Legal Action Against Corvera Golf & Country Club

Antonio Flores - Lawbird Legal Services - March 2010

Introduction

We have been approached by a small number of people who bought property at the Corvera Golf and Country Club who wish to withdraw from the contract and recover their deposits on grounds that the promised facilities have not been built. These facilities include, among others, a 5 star hotel to be run by the De Vere Hotel Management Group, an Equestrian Centre, a Gymnasium, Swimming pools, Tennis Courts, a Shopping and a Commercial Centre and a Country Club. Most buyers have an original contract, a receipt of the funds paid and a bank guarantee.

Our firm has dealt with similar cases involving private purchase contract holders with success. Among others, these include claims against La Reserva de Marbella S.A., Promaga, Aifos, Manilva Costa S.A. etc. (please visit www.lawbird.com for more information).

Legal Analysis

From a legal point view there are 2 initial considerations to make, one factual and one legal.

The first consideration, which refers to fact, consists of determining what has been built so far at the Corvera Golf site by the developer. This is generally done by taking a full photographic report by an architect or person with a similar technical background who will comment on:

State of the works

Existing licenses on the different facilities and any flaws in them or their application

Expected finishing time for the works should the developer resume its activity immediately

Expected delivery time of the facilities so that they are properly usable once they are finished

The second consideration is a legal one and is slightly more complex as it refers to one question, and one question alone, which is what will determine the success of the case: were buyers' decisions to purchase at this development influenced by the promise of the above mentioned facilities, in other words, were the De Vere run 5 Star Hotel, Country Club, Equestrian Centre, the PGA label to the golf course, and so many more facilities the real reason why buyers bought in this development?

For our firm it is crucial to avoid falling into complacency and presume that by the sole fact that some facilities were not built, buyers will be entitled to a full refund. We need to go beyond that point and

prove, also beyond reasonable doubt, that buyers were lured to buy in this development, and not in any of the other hundreds available throughout the Spanish Costas (and abroad) at the time, because of the promised facilities.

There are hundreds of Court rulings in Spain relating to the above, some being in favour of the buyer and some in favour of developer but both being equally important when preparing a case. And here is where some legal practitioners get mistaken since any experienced lawyer will know that the best way to be prepared to put a solid defence to either a defendant's response or, even more so to a counter-claim, is to know, with exactitude, what type of opposition will Corvera developers put forward and not focus only what we, the claimant's lawyers, will invoke.

By mere coincidence, Lawbird Legal Services won a land mark case against Manilva Costa S.A., a Seville-based developer that teamed up with the defunct Ocean View Properties (currently being wound up in the UK following an insolvency procedure) to market, build and sell 500 or so properties in Manilva. In this case we managed to establish the missing link between both companies, since Manilva Costa S.A. were denying having received the deposits that Ocean View Properties were collecting in the UK, but more relevant to the Corvera case, we persuaded the Courts that contractual rescission had to operate because most of the promised facilities were not built:

The Judge of the Court of first instance found that the developer "misrepresented and misled buyers by promising, through marketing literature, facilities such as top restaurants, shops, a health and leisure club, tennis courts, Turkish baths, sauna, Jacuzzi, fully equipped gymnasium, heated pool and kindergarten service, and it is clear that none of those have been built". He then added that "from the documents submitted to this Court, it has been established beyond doubt that the publicizing of these facilities in brochures **was a fundamental element in the buyers' decision to buy**, as collectively they had induced them to proceed with the purchase of a property that was located in a relatively isolated development and distant from similar facilities."

The above finding is key to the Corvera case if a similar result is expected from the local Judge of First Instance and to attain this result we will have to prove that the publication of the facilities were crucial, essential, necessary and unavoidable in process of decision-making when buying in Corvera. This first hand Court ruling is freely available from us.

Being represented by Lawbird Legal Services

Lawbird Legal Services is offering persons with contracts signed with **Corvera Golf & Country Club S.L.** to join the claim we will be filing soon. A step by step explanation (albeit summarized) of how the case is likely to develop can be seen below:

1. **Notice to the financial entity issuer of bank guarantee:** it is a legal notice that will be sent to the bank requesting that bank guarantees are honoured and payment made within 10 days, failing which we will proceed with legal action through the Courts of First Instance.

2. **Notice to Corvera Golf & Country Club S.L.:** as above, it is a legal notice will be sent to the developer requesting payment of deposits to be effected within 10 days, failing which we will proceed with legal action through the Courts of First Instance.
3. **Filing of complain against Corvera Golf & Country Club S.L. and the financial entity issuer of the bank guarantee:** to be done jointly, presenting our arguments and requesting from the judge to uphold the contractual cancellation operated through the notarial notice of cancellation filed by Jonathan Lambert (which is legally valid for our purposes although it should have been preceded by a formal request for information from the developer) and request a refund of the deposit plus interest accrued and legal costs. This will require original contracts, marketing literature, press articles, technical reports drawn up by professionals, witness statement, certificates from the Spanish Golf Federations, certificates issued by the local Town Hall, photographic reports etc.
4. **Filing of counterclaim by Corvera Golf & Country Club S.L.:** this is a possibility which cannot be ruled out and by virtue of which the developer brings a new action against the plaintiff in the main action, to be heard in the same proceedings decided on in the same judgment. This may be followed by reply and rejoinder where we, on behalf of the plaintiffs present arguments against exceptions and defences raised by the defendant in his answers.
5. **Pre-hearing:** an initial hearing is to take place namely for the purpose of identifying the object of the claim, proposing evidence (in addition to what has been submitted) and trying to reach an amicable settlement.
6. **Oral hearing:** this is the core of the legal case and it is where the judge normally makes his/her mind up. An articulate, knowledgeable and experienced lawyer is absolutely necessary: **Luis Gonzalez Ordoñez** is Lawbird's choice of lawyer for this stage. The oral hearing stage can last for up to 2 hours while the parties defend their arguments.
7. **Judgment:** The judgment will conclude citing the facts on which it is based and the points of law alleged by the parties. It can be positive or negative, with or without costs, and in the event of a counterclaim being filed by the developer it will have to also judge this. In this particular case the Court may rule against the developer but not the bank, never vice-versa. As an example, we are attaching a very recent Court ruling obtained by Lawbird against a prominent developer of the Costa del Sol, Manilva Costa S.A. (briefly explained in the legal analysis section) although in this instance bank guarantees were, unfortunately, never secured by the lawyers dealing with the matter.
8. **Execution of judgment:** Courts in Spain not only declare rights and create, modify or terminate relationships; they also subsequently require the party against whom the judgment is entered to make it happen. If we obtain a favourable judgment against the bank (alongside the developer) execution is a very simple process. If the judgment leaves the bank out then execution will require seize orders, embargoes and other precautionary measures on liquid funds or valuable assets.

9. **Appeal:** Both parties will be entitled to attack the judgment if they consider it has been erroneously reached.

Legal Fees

This subject is always controversial even more so where a large number of claimants require a joint representation. Whichever the agreed final legal fee figure, it is clear that joining claimants under one law firm has to necessarily mean a reduction in the fees.

A claim where a plaintiff is requesting contractual rescission of a contract for a property worth €250,000 and a refund of approximately €80,000 will, by reference to the Law Society Fee Guideline Book, attract fees of approximately €26,000 per party on a single claim (the proportion given here is not linear and therefore is reduced considerably on joint claims). Parties are, however, free to negotiate these with their lawyers and structure by instalments if they so wish.

It is important to note that Courts will normally award costs (i.e. legal fees) to the losing party and therefore the successful litigant will demand payment of these from the losing litigant.

Lawbird can significantly reduce this exposure by representing a large number of clients and simultaneously reducing the applicable plaintiff fees to **10% of the sum recovered** for our clients and an upfront retainer, to be deducted from the final fee, to be calculated as follows:

- Up to 5 claimants: 10% of the sum recovered and a retainer of €5,500
- From 5 to 15 claimants: 10% of the sum recovered and a retainer of €4,500
- From 15 to 25 claimants: 10% of the sum recovered and a retainer of €3,900
- From 25 to 50 claimants: 10% of the sum recovered and a retainer of €3,500
- From 50 claimants onwards: 10% of the sum recovered and a retainer of €2,900

(Note: we understand one claimant to be all buyers on a private purchase contract for one property, regardless of the number)

The above fee includes legal, Court agent (Procurator) and VAT and encompasses the first instance and execution of the judgment. Should the defendant instigate a counter claim the applicable fee will be of 65% of the above retainer.

The retainer can be paid in the following manner:

- 35 % on signing the letter of engagement
- 35 % thirty days after filing the complaint with the Courts
- 30 % on appointment of day for hearing by the Courts

Assistance throughout the Litigation Process

Having assisted clients in joint action in the past, we have experience on the logistics of communications, paperwork etc. Two lawyers will be assigned to the case together with two personal assistants who will be contactable by email, fax or telephone.

The lawyers assigned to this case are:

- Luis Fernando Gonzalez Ordonez (Head Litigation Lawyer)
- Antonio Flores Vila
- Raymundo Larrain Nesbitt
- Roberto Leiro
- Javier Arboledas
- Robert Sanchez Saavedra

The personal assistants assigned to this case are:

- Anabel Figueredo
- Patricia Martín Benítez
- Natasha Chapman
- Louise Martin

Required Documentation

Specifically for each client we will require the following documents:

- Power of attorney, which can be easily done through a local Notary Public. We will arrange this document and advise on the closest notary public to your home
- Letter of engagement
- Original contract
- Original bank guarantee

Generally for all clients we will be requiring any document which may indicate that facilities were to be built by a certain time. Currently we have a full dossier on the matter, but if you have extra documentation we will be happy to have a look at it to assess its convenience.

Any enquiries about this service can be emailed to aflores@lawbird.com or faxed to +34 952 86 55 64 to the attention of Antonio Flores Vila.

Relevant information about this case will be published on www.lawbird.com/corvera