Interruption of limitation period in respect of non-sued (eventually jointly and severally liable) co-debtors

(Supreme Court Judgment no. 1496/2025 of 27 October 2025)

The Supreme Court holds that mere knowledge that the limitation period has been interrupted in relation to another eventual joint and several co-debtor is equivalent to interruption.

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1. The judgments

The Provincial Court considers the action against the building engineer to be time-barred on the grounds that no demand or claim was made against him before the expiry of the two-year period provided for in Article 18 of the Building (Unified Regulation) Act (LOE). Despite acknowledging that the building engineer, as an employee of the developer, had attended numerous commonhold association meetings at which the problem of construction defects had been discussed, had replied to emails about repairs, had visited the property with the property manager to assess the condition of the construction and had even been directly involved in some repairs, the Provincial Court held that these facts were not sufficient to consider the limitation period interrupted. It took the view that the case-law exception of connection or dependence did not apply because knowledge of the claim cannot be derived solely from the existence of a contractual or subordinate relationship, but requires the existence of a request or interruptive act addressed to the debtor itself. As this was an obligation *in solidum* (solidary obligation), it concluded that Article 1974 of the Civil Code (CC) did not apply and that the interruption produced against the deve-

loper could not be extended to the building engineer.

The Supreme Court varies the above judgment. Judgment no 418/2018, of 3 July, ratifies the previous doctrine on the effects of the liability in solidum under Article 1974, but specifies that the impossibility of extending the interruptive effect of the limitation period to the other parties liable in a case of liability in solidum has an exception when "for reasons of connection or dependence, prior knowledge of the fact of the interruption can be presumed". However, such third party connection with or dependence on the intervening party against whom the limitation period was interrupted cannot in any case be derived solely from the existence of a contractual relationship between the two, since otherwise "the entire legal doctrine of the Chamber would be undermined". Similarly, Supreme Court Judgments 331/2020, of 22 June, and 159/2021, of 22 March.

2. Commentary

§ 1. The doctrine of this ruling and those rulings on which it is based is unacceptable. It is said and repeated that the interruption is "extended" by Article 1974 CC to the building engineer as *a joint and several co-debtor,* not because he is an employee of the developer against whom the limitation period had been interrupted, but because he "knew" of the claims made against the developer and which the building engineer himself, as an employee of the developer, had handled. However, in fact, the opposite is true, and the interruption of the limitation period against this employee cannot be explained except by the very fact that he is an employee and that *he had in some way handled the claim against the developer.*

§ 2. Article 17 LOE does not make the building engineer liable because of his relationship of dependence on the developer, but because, *as an independent professional agent* (even though he has an employment relationship), he is liable for defects causing damage due to breach of the *lex artis*, which binds him to third-party purchasers. In no case, it seems, had this point been discussed with the commonhold association. The building engineer was not warned that a claim was being made against him.

Liability in solidum does not exist until there is a final and conclusive judgment in this regard

§ 3. As is well known, the Supreme Court has long established a (correct) doctrine according to which Article 1974 CC does not apply to liability in solidum. Liability is in solidum (although there is some uncertainty in case law on this point) when it has not been predetermined by contract or by law, provided that the law imposing joint and several liability does not require further conditions. If the joint and several liability of Article 17(3) LOE requires that several parties be causally involved or that it cannot be determined who is responsible for the defect, the liability is in solidum. Liability in solidum does not exist until there is a final and conclusive judgment in this regard. Therefore, if the limitation period is interrupted with respect to one party, it is not regarded as

interrupted with respect to another party who may eventually be found liable in the future as a joint and several co-debtor if the conditions for this are met.

§ 4. It should be irrelevant that the building engineer was aware of what was happening with his employer. There is no meaningful connection between this more or less vague knowledge and having already been the subject of an out-of-court demand.

§ 5. The fact that the court ruling is incorrect can be gauged by its consequences. It introduces uncertainty, insecurity and scope for unpredictable discretion. There are many niches of liability in solidum, and the application of the doctrine of knowledge leads to the chaos of unpredictability. Let us imagine a case of harm caused by a minor. It involves an unidentified minor within a group of minors, or the existence of possible multiple guarantors (parents, uncles, guardians, school, public authorities). Each of the parties involved knows that the injured party's parent is negotiating with the school principal regarding the latter's liability, but they know nothing about any claims made against the others. How can it be fair that this knowledge is sufficient to interrupt the one-year limitation period set out in Article 1968 of the Civil Code?