



LaborNet No. 1388

Legal analysis: Payment in foreign currency in times of forex restrictions

Dear All,

Here at *de Diego & Asociados* we would like to share some thoughts about a very recent court decision **about payments in euros**. The Court sustained a claim for payment in foreign currency.

This is a really interesting analysis of a payment agreed in euros. *Please read it carefully and we look forward to receiving your feedback and comments.*

Legal analysis: Payment in foreign currency in times of forex restrictions

I. Legal Analysis: Payment in foreign currency

- (a) Even though there is no doubt about the amount that the Plaintiff should receive, it is essential to make some clarifying comments because the new Civil and Commercial Code was in force at that time.
- (b) As a matter of fact, the previous Argentine Civil Code specified that **payments in foreign currency are an obligation to deliver money in a currency that is not legal tender.**

- (c) However, the new language of the Civil and Commercial Code makes reference to the provisions of the Civil Code in place before the Convertibility Act [Ley de Convertibilidad], **whereby payments in foreign currency were regarded as “obligations to deliver a quantity of things”, enabling those who have a debt in foreign currency to pay its equivalent in legal tender.**
- (d) It is worth mentioning that the original text of the Preliminary Draft of the Civil and Commercial Code of Argentina kept the nominalist system of the old Civil Code based on "respect for the principles of Argentine monetary law, as well as the broad guidelines of case law and scholars' opinions".
- (e) As a result, the original text considered the obligations agreed in a currency that was not Argentine legal tender as "obligations to deliver certain amounts of money", enabling payment in foreign currency as agreed by the parties.
- (f) However, after the inclusion of Article 765 of the new Civil and Commercial Code, the Executive amended the text to read as follows: "*The obligation is to deliver a certain sum of money in the event that a debtor owes a certain amount of money, whether determined or **determinable, at the time of taking on the obligation.** If the obligation agreed is to pay in a currency that is not Argentine legal tender, it must be considered an obligation to deliver a quantity of things. As such the debtor may pay the equivalent in legal tender.*
- **Therefore, the debtor may fulfill his/her obligation by paying the equivalent in Argentine pesos. It is worth mentioning that this rule does not make it clear how the "equivalent in legal tender" should be determined** (read JOSÉ IGNACIO RAMONET, Judge)
- In addition, the text of Article 766 about obligations to deliver a certain sum of money now states that “debtors must deliver the respective amount as agreed”. Then Article 766 violates the provisions of Article 765.

II. The issue of payment in foreign currency in Argentina - Labor Courts

- - **It is made clear that payments in foreign currency are not prohibited, but the problem is how to actually make those payments**
- - According to the Code, debtors have the option to pay the equivalent in legal tender.
- - The option to pay the equivalent amount does not transform it into an optional obligation, because there is no main or ancillary obligation (Article 786 Civil and Commercial Code).
- - The following exceptions apply to this rule: *a) the parties may explicitly agree to pay in foreign currency and reject the option (Articles 95, 959 about contracts;*

1121, subsection a. about consumer contracts); b) an alternative solution is expressly offered.

- - None of the exceptions apply in this case. Here the question is the payment of a percentage imposed by the regulations, in a transaction where the Plaintiff is not a party. Evidence has shown that the payment for terminating a contract was not made (here the Plaintiff is a party), and there is no other solution expressly provided.
- - Note that the rules adopted by case law and scholars' opinions **include:**
- - **a) Debtor can pay in foreign currency or the equivalent in legal tender;**
- **b) Payment under contracts with effects outside of Argentina must be made in foreign currency, there is no other option;**
- - **c) For contracts whereby payment in foreign currency was considered an essential condition, there is no other option available"**(conf. Lorenzetti, *La Emergencia Económica y los contratos*, page 188, quoted in the Civil and Commercial Code of Argentina, commented by Lorenzetti, Volume V, p.127)
- - It is made clear that the payment for contract termination (and the respective percentage) did not have effects outside of Argentina, and as informed by Banco Santander Rio, the currency in which payment was agreed (euros) had not been regarded as an "essential condition".

III. The exchange rate for calculation (The Court ruling is dated April 2022, so the foreign exchange restrictions were in force back then).

- **I. In accordance with the court ruling, the payment should be made in legal tender (Argentine pesos), and converted at the exchange rate at the time of payment.**
- II. The interest on the amount awarded in the court ruling is set at 6% annually **as from the date on which the wire transfer is received**, i.e. on August 5, 2016 as reported by Banco Santander Rio on page 182, (conf. Section 767 Civil and Commercial Code). This interest rate must be calculated on the amount in euros (i.e. on €750,000.-) on the date when the calculation is made, and the resulting amount should be converted into Argentine pesos as explained above.
- III. If the calculation is made as provided by Article 132 of the organic law, and on the expiration date the debtor does not comply with his obligation to pay, interest will be capitalized (conf. Article 770 Civil and Commercial Code). Interest will accrue on the resulting amount (already expressed in Argentina pesos) as provided by Ruling No. 2658 of November 8, 2017 as amended from the date of default and until effective payment.

IV. Really interesting analysis of the exchange rate for payment in foreign currency

1. On April 26, 2022, The National Labor Court of Appeals, Panel VIII, ratified the Lower Court decision, ordering C.A. Huracán to pay the Plaintiff €750,000 (SEVEN HUNDRED AND FIFTY THOUSAND EUROS) or the equivalent in Argentine pesos at the time of payment.
2. The Court decision was rendered on October 18, 2018, **when there were no restrictions on buying foreign currency.** The announcement on restrictions was first made on September 1, 2019 by the Argentine Central Bank and then tightened over time.
3. The National Civil Court of Appeals ruled (Panel L, "O, S .A. et al v B, AG on housing", case file No. 3833/2018, dated November 5, 2020) that **"there is no reason to interpret that the equivalent in legal tender referred to in Article 765 of the Civil and Commercial Code means that the conversion must be made according to the official exchange rate"**.
4. **A simple calculation shows that the Defendant's claim seeking to convert the debt in euros at the official exchange rate does not result in an "equivalent" amount in Argentine pesos to fully comply with the court ruling because on the forex market, the plaintiff cannot buy the same amount in euros with such an amount in Argentine pesos.**
5. *Consequently, taking into account the restrictions imposed by the Central Bank of Argentina (Comunicado A6815 and related provisions) and the variations regulated by this authority on foreign exchange transactions on the financial market, paying an equivalent amount does not provide a solution to the conflict.*
6. **However, within the range of possibilities offered by the legal and regulated foreign exchange market, there is the so-called "MEP" dollar (electronic payment market) which this Court finds to be the most appropriate solution to comply with the court ruling.**
7. This is the price arising from the buying and selling of public securities (with specific regulations), according to market values that do not affect public reserves.
8. *The foreign currency price is also reported in the press daily. That is how foreign currency may be bought legally with Argentine pesos and there is also the exchange rate between US dollars and euros.*

<https://www.cronista.com/finanzas-mercados/super-cepo-al-dolar-una-por-una-todas-las-restricciones-vigentes-y-que-alternativas-quedan/>

1. **In other words, if a debt in Euros cannot be paid off, it may be paid in Argentine pesos at the price of the MEP dollar on the date of payment, according to the exchange rate between US Dollars and Euros.**
2. There is an additional valid reason to do so. As explained in this court ruling, the amount awarded is 15% of the payment for terminating the

Plaintiff's contract, which was paid in Euros in due course by the Spanish club to the Plaintiff.

3. **In a nutshell, admitting the delivery of Argentine pesos at the official exchange rate** would imply that the defendant would have been enriched without cause. *It would reward an entity that illegitimately withheld a significant amount of money that had a specific intended recipient: Espinoza. The Court of Appeal unanimously found that the Defendant's misconduct was malicious and should be punished.*

We hope you find this information useful to add value to your analysis.

Please do not hesitate to contact us for further information.

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