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EMPLOYERS' AND CONTRACTORS' JOINT AND SEVERAL LIABILITY FOR CORE BUSINESS ACTIVITIES

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I. INTRODUCTION

Basically, Argentine labor and employment law contains fundamental rights and anti-fraud rules.

To this end, Section 30 LCT (Employment Contract Act) provides a series of mechanisms in the event that an employer subcontracts services or works. In this case, the principal grants their facilities, in whole or in part, to a third party for the performance of their core business activities. Contractors and subcontractors are required to comply with Argentine labor and employment law and social security rules and regulations. [1]

[1] Julián A. de Diego, "*Límites a la aplicación de la responsabilidad solidaria del art. 30 de la Ley de Contrato de Trabajo*", LA LEY Volume 2019-F, 471

Otherwise, the principal shall be jointly and severally liable.

Scholars' opinions and case law have given conflicting interpretations of principals', contractors' and subcontractors' liability for the performance of non-core business activities. In this case, there is no joint and several liability but appropriate control mechanisms in effect. [2]

Principals shall require contractors to be registered as employers and show proof of paid wages and social security contribution obligations.

Should principals fail to control and check contractors' compliance with their duties, they shall be jointly and severally liable for the obligations of contractors or subcontractors, including any damages as a result of workers' employment termination. [3]

II. CASE LAW MAJORITY OPINION

Section 30 (LCT) has always maintained the dichotomy between the partial or total concession of facilities, in which case joint and several liability kicks in automatically for contractors and subcontractors. They must comply with all labor and social security rules and regulations. [4]

Let's analyze an example in case law.

Total or partial concession of facilities. For example, a club offered various sports activities and had tennis courts where the Plaintiff gave classes. He worked as an

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[2] Amendment in 1998 by the Department of Labor run by Carlos Tomada and Noemí Rial under Act No. 25013 "Section 30. — Subcontracting and delegation. JOINT AND SEVERAL LIABILITY: Those who grant all or part of their facilities to a contractor or subcontraction, for whatever reason, whether the performance of services or works related to the principal's core business, inside or outside the scope of their facilities, shall require contractors and subcontractors to comply with labor laws and social security rules and regulations." (...) Failure to comply with any of these requirements shall cause the principal to be held jointly and severally liable for the concessionaires', contractors' and subcontractors' obligations to the personnel carrying out such works or services as a result of the employment relationship, including termination and social security obligations. The added provisions to this Section shall be applicable to the concept of joint and several liability set forth in Section 32 of Act No. 22250. The original text of the LCT was amended by paragraph included by *Section 17 of Act No.* 25013 Official Gazette of September 24, 1998. This text has not been amended by the *Ley de Bases,* except for the inclusion of the right to retention, which was also included in the Argentine Civil and Commercial Code as a general scope rule.

[3] This rule has not been included in the *Ley de Bases*, so it keeps its original wording, with the inclusion of a paragraph under Section 17 of Act No. 25013 (Official Gazette).

[4] Related Case Law. National Labor Court of Appeals, Panel VII, December 27, 2024, Chavez Balmaceda, Cintia Elizabeth v. Ragone, Alfredo Angel et al. on employment termination, AR/Jur/203218/2024 National Labor Court of Appeals, Panel VI, September 22, 2023, MORAES, CRISTIAN DAVID v. SANCHEZ, NICOLAS ARIEL et al. on Employment Termination, AR/Jur/149253/2023. National Labor Court of Appeals, Panel VIII, July 15, 2020, Agrizio, Gonzalo Miguel v. Jockey Club Asociación Civil et al on Employment Termination, AR/Jur/27916/2020 National Labor Court of Appeals, Panel X, August 24, 2016, Dominguez, Néstor Fabián et al v. Café y Chocolate S.r.l. et al on Employment Termination, AR/Jur/68691/2016 National Labor Court of Appeals, Panel VI, September 30, 2015, Granese, Fabián Enrique v. Racing Club Asociación Civil et al on Employment Termination, AR/Jur/42851/2015 Labor Court of Appeals in Posadas, Panel I, April 17, 2009, Novi, Mario Alberto Nicolás v. Servando Menor, Gonzalo et al, AR/Jur/18949/2009.

employee of a contractor who operated the business. The Court found that the club should be held liable under Section 30 LCT for the "total or partial concession of facilities", in which case the activity conducted may not be part of the core business of the principal to establish joint and several liability.[5]

As a matter of fact, in the event of facilities concession under Section 30 LCT, the performance of services or works related to the principal's core business activity is not a legal requirement to establish the principal's joint and several liability.

Strictly speaking, in this case there was the sports club, the contractor who operated the business and paid instructors' salaries, and the instructor who worked off the books as an employee of the contractor.

The co-defendant in its capacity as contractor or concessionaire operated the business of tennis lessons, controlled scheduling and pricing, and received substantial profits. In other words, it was a company where the Plaintiff was a part of as an employee under an employment contract.

Relationship between the concessionaire and the tennis coach. The determining factor to establish whether the tennis instructor was an employee of the concessionaire operating the tennis courts at the club is whether he was part of an organization for which he had no control and that used his work to offer tennis lessons to third parties. The organization was run by the owner, who paid the Plaintiff his monthly salary based on the number of lessons given every month.

It seems quite senseless for a business perspective that a company could take up the risk of creating an organization to operate tennis courts and tennis lessons with employees of its own and only charge for the use of the courts, without getting any profits from the lessons, in particular when employees collected monthly fees and organized schedules, lessons and instructors.

Concessionaire's liability. Even though according to mere formalities, the co-defendant was the deputy director, in practice he served as the president and owner of the company. This sheds new light on elements that question a relationship that does not seem to be transparent. Therefore, it is imperative to ensure compliance with the regulations in force for each segment in the relationship.

More often than not, a mesh of individuals and relations create mechanisms intended to evade labor, social security and union obligations.

To such an extent that none of the witnesses who were employed by the club, or the other witnesses for that matter, were aware of the existence of such a president.

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[5] National Labor Court of Appeals, Panel March 17, 2025. Parties: "Neuringer, Martín Eduardo v Guiligus SA et al on Employment Termination", TR LALEY AR/JUR/25005/2025.

Therefore, the Court ruled that they should be held jointly and severally liable under Sections 59 and 274 of Act No. 19550.

Failure to report employment was a fraudulent maneuver by the legal entity that operated the tennis courts at the club, i.e. the co-defendant in these proceedings.

This fraud resulted in the personal liability of those individuals who designed and conducted the fraudulent maneuver, in this case the president, according to Section 59 of Act No. 19550, in conjunction with Section 167 of the Argentine Civil and Commercial Code.

Unreported Wages. The Court also found that the evidence showed that the Plaintiff's employment was totally unreported, thus applying the presumption of Section 55 LCT, whereby the salary claimed by the employee should be deemed to be true, as no evidence to the contrary has been submitted. It is strikingly curious that the Court did not determine the amount to be awarded on unreported amounts, i.e. lessons' fees, but on the Plaintiff's claim and the abovementioned presumption.

Annual Leave. Curiously enough, this court ruling resorts to civil law to award damages. Consequently, as the employer failed to grant the employee's annual leave in time and absent any specification, the provisions of the civil law should be applicable to determine civil liability for the intentional breach of contract. Then damages should be awarded in the amount of lost wages, i.e. the pay the employee should have received during the unused vacation period, unless there is evidence of further damage (Sections 1738 and 1740, CCCN).

It is stated that no rule expressly provides that the mechanism under Section 157 LCT is the only legal remedy available to an employee who has not been granted vacation time.

Based on this line of reasoning, Section 162 LCT establishes that vacation time cannot be cashed out. In other words, the parties cannot agree (and the employer cannot mandate) that vacation time can be cashed out.

Sections 157 and 162 LCT do not apply to this case because the parties did not agree on cashing out vacation time or the employer prevented the employee from taking them but paid for them.

In this case, the employer did not grant vacation time or pay for it, either. Relying on the provisions of Section 157 LCT as the only legal remedy for failure to grant vacation time is, to say the least, naive and questions the most basic assumptions of the legal field.

Section 157 LCT provides that workers who have not been granted vacation time in a timely manner may take it at their own discretion, provided they notify their employer and return to work on May 31. It goes without saying that workers who

use this remedy may be jeopardizing their job or facing adverse consequences. Use-it or lose-it.

That is the reason why it comes as no surprise that almost nobody uses this legal remedy.

The time frame under Section 3 of Executive Order No. 146/01 is intended to ensure employers' compliance with the delivery of certificates according to Section 80 LCT. Employers who fail to report their workers cannot issue such certificates, they need to pay any unpaid taxes and contributions for the unreported period by rectifying tax returns.

In such cases, the request filed by the Plaintiff within 30 days following his termination seeking delivery of certificates is evidence enough to impose the fine under Section 45 of Act No. 25345 (now repealed).

III. ANTI-FRAUD RULES AND SECTION 30 (LCT)

Before the Employment Contract Act was passed (1975), fraudulent maneuvers through the use of go-betweens, de facto business associations, shell companies, and others that end up being insolvent, had become a rather common practice.

Moreover, *employees were often misclassified* as partners of the organization for a derisory share to highlight their independent contractors' status, which they did not have, naturally.

That is why the law started to create mechanisms to prevent tax evasion. Section 30 (LCT) was one of the pillars, keeping its original wording with some small changes after amendments, the latest modification came along with Act No. 25013 (1998).

Nowadays, whenever there is a concession of facilities or the principal hires a contractor or subcontractor for the performance of their core business, the principal is required to verify compliance with their duties and obligations as employers to their workers, and they are jointly and severally liable in case of breach.

IV. REFORM OF LEY DE BASES ACT No. 27742.

Ley de Bases Act No. 27742 included the right of retention within the Employment Contract Act [6]. The retention right was alternatively applied by virtue of civil law, Sections 2587 to 2593 of the Argentine Civil and Commercial Code.

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[6] Section 136 LCT. *Contractors and intermediaries.* Employees hired by contractors or intermediaries shall have the right to request from the principal for whom such contractors or intermediaries provide services or perform works, that they withhold and pay them any owing amounts as salary, severance pay, or other monetary entitlements as a result of their employment from the payment contractors and subcontractors should receive. In accordance with

Specifically speaking, Section 136 (LCT) states that *workers hired by contractors or intermediaries shall have the right to require the principal for which such contractors or intermediaries provide services or do works to deduct any owing amounts as salary, severance pay or other payments arising out of their employment from the amounts contractors or intermediaries should receive, and pay them on behalf of their employer.*

In accordance with Section 30 of Act No. 20744 (consolidated text 1976), as amended, *the principal shall be entitled to withhold without notice any unpaid social security contributions in connection with the employment of those workers hired by such contractors or intermediaries.*

These payments shall be made to the order of the respective social security agencies as per the relevant regulation.

V. CONCLUSION

Section 30 (LCT) has not been amended, so *the principal shall be jointly and severally liable for contractors' and subcontractors' unpaid obligations. Considering the existence of individuals who interact with the principal and contractors that operate the principal's core business, the joint and several liability principle applies under all eventual circumstances.*

Additionally, the principal must ensure compliance with labor laws and social security contribution obligations.

Now, with this amendment, based on the text of the Employment Contract Act, the principal may exercise the right of retention on the unpaid invoices to contractors and subcontractors for workers' claims for unpaid obligations or social security debts to collection agencies.

Section 30 of Act No. 20744 (consolidated text 1976), as amended, the principal shall be entitled to withhold without notice any unpaid social security contributions in connection with the employment of employees hired by such contractors or intermediaries. These payments shall be made to the order of the respective social security agencies as per the relevant regulation. The Tax Authority (AFIP) shall have ninety (90) days following the enactment of this Act "Bases and Starting Points for the Liberty of Argentines" to establish a simplified mechanism to withhold social security contributions, as provided by this Section. *(This Article has been replaced by Article 92 of Act No. 27742, Official Gazette of July 8, 2024. Effective date: from the day following its publication in the Argentine Official Gazette)*