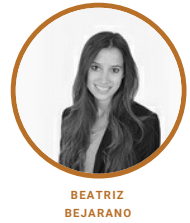


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Court rules that architectural project involving ancient oak tree does not infringe prior project proposal

Grau & Angulo | Intellectual Property - Spain



› Facts

› Decision

On 30 June 2022, Barcelona Commercial Court No. 1 fully dismissed a lawsuit filed by a sculptor against the company Josep Maria Raventós i Blanc, SA, absolving the company of all claims and imposing the costs of the proceedings on the plaintiff.

Facts

The lawsuit claimed that work carried out on an oak tree on the Raventós i Blanc property, which was a symbol of the company and several hundred years old, plagiarised one of the sculptural proposals that the plaintiff had previously presented to the defendant.

The parties had previously had professional dealings: the plaintiff had been commissioned for the preparation of a sculptural proposal aimed at exalting the remains of the tree. In this context, the plaintiff presented, by means of a preliminary project, a series of alternative sculptural proposals.

The defendant did not accept the proposals because they were not in line with the company's desires. The defendant eventually carried out the work on the emblematic oak tree itself, alleging that such work had no relation whatsoever with the plaintiff's preliminary project proposal, which the latter invoked as infringing.

Decision

In the recently issued judgment, the Court rejected the claim in its entirety, referring to the following four elements, which, according to the plaintiff, would be the basis of the plagiarism.

Location of oak tree on defendant's property

The Court considered as proven that this decision had been taken by the property long before the plaintiff's intervention. In fact, a panel of experts had been set up in 2009 to decide on the location of the remains of the tree when it died. Further, the Court took into account that the location was not a central element of the plaintiff's artistic proposal, since the plaintiff proposed various locations for his sculptural proposals.

Raising remains of tree

In the Court's opinion, it was questionable whether this was an essential aspect of the plaintiff's proposal, because the other proposals submitted by the plaintiff did not include such a solution. One suggested that the remains of the oak tree be incinerated, while another suggested that they be placed underground so they were not visible. The judge considered as proven, in any case, that there was no similarity in the specific way in which the remains of the oak tree were raised on the defendant's property. Indeed, while the plaintiff proposed a nine-metre steel platform, with pedestals at the ends of the branches and a poetic text, in the solution carried out by the defendant there was no platform or poetic resource and the pedestals were different (smaller and less slender) than those suggested by the plaintiff. Finally, the Court pointed out that the solution of elevating the remains of the oak tree may respond, as the defendant demonstrated, to functional issues (ie, to avoid deterioration), and not to an artistic consideration of enhancing the decay of nature.

Tree as protagonist

The Court considered that this protagonism was implicit in the defendant's own commission, given that, from the very beginning, the purpose of the commission was to raise the remains of the oak tree. Therefore, the decision for the oak tree's remains to be the protagonist could not be attributed to the plaintiff. Moreover, the Court considered as proven, on the other hand, that the plaintiff, in his proposal, had conceived an aesthetic solution in which the oak was not the only protagonist, since, in his sculptural proposals, other elements such as steel, bronze or aluminium, were also protagonists.

Pruning of tree

The Court considered it proven by the defendant that the pruning had been carried out according to the technical criteria of staff other than the artist, hired by the defendant, and that, therefore, it was not carried out according to the artistic criteria of the sculptor.

Final judgment

The Court considered that the defendant had provided sufficient evidence to invalidate the arguments on which the plaintiff intended to base the plagiarism and that, on the other hand, the plaintiff had failed to demonstrate the existence of the four elements identified by him to support the alleged plagiarism. The Court further pointed out that the existence of damages had not been accredited by the plaintiff either and considered it proven that the defendant had already paid the sculptor his fees for presenting the preliminary project so there would be no need to compensate the plaintiff for any economic damages. The judgment ordered the plaintiff to pay the costs, since all his claims had been dismissed. This judgment is final.

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