

_ Decision of the Superior Court of Justice points out the necessary formalities for the transfer of shares in a privately held company

When ruling on the Special Appeal No. 1.645.757, the Brazilian Superior Court of Justice (“STJ”) was asked to decide, at the buyers’ request, on the declaration of absence of a corporate relationship, termination of a share assignment agreement, as well as the return, by the sellers, of the amounts paid due to said agreement, under the argument that the buyers never, in fact, became shareholders of the company because the term of transfer of shares was not drawn up in the corporate book of registration of transfer shares.

In addition, it was alleged that the share assignment agreement provided for the said drawing up in the aforementioned corporate book, and such failure implied in the noncompliance with the obligations established in the agreement, giving rise to its termination.

In the vote of the reporting minister, Mr. Ricardo Villas Bôas Cueva, it was pointed out that Law 6,404/1976 (“Brazilian Corporation Law”) itself, in addition to the doctrine and STJ jurisprudence, provide that the transfer of shares only operates through a transfer deed drawn up in the book of registration of transfer of shares, which must be dated and executed by the assignor and assignee, therefore, the agreement entered into by the parties, by itself, does not count as title to the shares.

In addition, considering that neither the Brazilian Corporation Law nor the agreement established a time limit for drawing up the transfer term in the proper book, the reporting minister pointed out that it would be necessary to define from which moment the absence to execute such transfer deed would characterize the default of the obligations set forth in said agreement.

The reporting minister concluded that, in the absence of a fixed term in the law and in the agreement, the default is only established after the debtor is notified to comply with the obligation, and buyers cannot, from the outset, request the termination of the agreement without giving the opportunity to draw up said transfer deed.

Finally, we emphasize the importance of the formalities involved in this type of transaction, in addition to the execution of an agreement.

MORE INFORMATION REGARDING THE SPECIAL APPEAL Nº. 1.645.757 CAN BE ACCESSED IN PORTUGUESE

THROUGH THE LINK BELOW:

<https://tinyurl.com/355km77v>