CASELAW VIET NAM COMPANY LIMITED

CASE LAWS OF VIET NAM

(English translations only)

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INTRODUCTION

Within this collection, there are 26 case laws adopted by the Judicial Council of the Supreme People's Court of Vietnam between 2016 and 2018. These case laws have been translated by Caselaw Viet Nam for legal researchers and law practitioners to easily access the case laws.

We are sincerely thankful for the support and valuable contributions of advisors, experts, members and collaborators specializing in dispute resolution: Ha Manh Tu, Nguyen Thu Ha, Lien Dang Phuoc Hai, Vu Thi Trung Anh, Hoang Nguyen Thuc Trinh, Nguyen Duy Thai Duong, and Do Hoang Son in helping us translate the case laws.

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We recommend that anyone in possession of this collection, including our Client, should refer to the original Vietnamese case laws and consult licensed Vietnamese lawyers for any legal advice.

Best regards,

Caselaw Viet Nam Team

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26 CASE LAWS OF VIETNAM

(VOL 1, 2016 – 2018)

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GLOSSARY

In the translations, there will be certain terms that require explanation based on historical, cultural, and colloquial context. For your ease of use, we provide the explanations below:

(1)	**Land and Housing Department**	Former name of the Department of Natural Resources and Environment.
(2)	**Land Title**	Land title document issued by the previous government regimes before 30 April 1975.
(3)	**Level 4 house**	The lowest classification for housing construction work based on scale as specified under Vietnamese construction laws.
(4)	**Overseas Vietnamese**	Vietnamese citizens and persons of Vietnamese origin who permanently reside in foreign countries.
(5)	**Pink Book**	Certificate of Ownership of Residential House and Land Use Rights recording land use rights and building ownership.
(6)	**Red Book:**	Certificate of Ownership of Residential House and Land Use Rights recording land use rights.
(7)	**Tael of gold**	37.5 grams of gold (1 “cây”, “lạng”, or “lượng”), with 0.1 tael (1 “chỉ”) as the most common unit for gold.

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CASE LAW NO. 01/2016/AL
on the case of "Murder"

This case law was adopted by the Judicial Council of the Supreme People's Court on 6 April 2016 and promulgated under Decision No. 220/QD-CA dated 6 April 2016 by the Chief Justice of the Supreme People's Court.

Source of the case law:

Cassation Decision No. 04/2014/HS-GDT dated 16 April 2014 of the Judicial Council of the Supreme People's Court on the "*Murder*" case with respect to the defendant: Dong Xuan Phuong, born in 1975; residing at No. 11/73, Dinh Tien Hoang Street, Hoang Van Thu Ward, Hong Bang District, Hai Phong City; a construction worker; son of Mr. Dong Xuan Chi and Ms. Duong Thi Thong; taken into custody on 22 June 2007.

Victim: Nguyen Van Soi, born in 1971 (deceased).

Overview of the case law:

For the case of accomplices, if it can be proven that the intent of the instigator is to hire other person(s) to cause injury to the victim without any intention to deprive the victim's life (the instigator only requested injury to the victim's legs and arms and did not request attacking the vital parts of the body which might cause human death); the accomplices acted according to the requests of the instigator; the death of the victim is beyond the intention of the instigator, then the instigator shall be liable for the crime of "Intentionally inflicting injury" with the [sentencing] framework factor being "*causing injury which caused human death*".

Applicable provisions of laws relating to the case law:

- Article 93.1(m) and (n) of the Criminal Code 1999;

- Article 104.3 of the Criminal Code 1999.

Key words of the case law:

"Murder", "Intentionally causing injury", "Causing harm to the health of other persons", "crimes of infringing upon human life and health", "hiring other persons to cause injuries".

CONTENTS OF THE CASE

At around 15:00 on 21 June 2007, the Police of Long Bien District, Hanoi received a report of a case in which a victim passed away in the area for casting the concrete beams for construction of the Thanh Tri Bridge within the area of Group 12, Thach Ban Ward, Long Bien District. The victim was Mr. Nguyen Van Soi (a construction engineer of Construction Joint Stock Company 204 of Bach Dang Construction Corporation. After investigation and verification, the Police of Long Bien District immediately arrested Dong Xuan Phuong.

According to the result of the investigation, both Nguyen Van Soi and Dong Xuan Phuong worked for Construction Joint Stock Company 204 of Bach Dang Construction Corporation (they were assigned to construct Thanh Tri Bridge). Around February 2007, Phuong was drinking alcohol during working hours, was photographed by Soi, using a mobile phone, and was reported to the supervisors. For this reason, Phuong intended to get revenge on Soi.

On 14 June 2007, Dong Xuan Phuong made a phone call to his friend, Doan Duc Lan, born in 1975 (residing at No. 11 C98 Trai Chuoi, Hong Bang District, Hai Phong City) telling Lan about the conflict and hired him to attack Lan for revenge. Lan informed Phuong that he would introduce another person to carry out the act. In the evening of 17 June 2007, Phuong, from Hanoi, went to Hai Phong to meet Lan and Lan's friend, Hoang Ngoc Manh, born in 1982 (also known as Thang, residing at So Dau Ward, Hong Bang District, Hai Phong City). Phuong retold the conflict between him and Soi and hired Lan and Manh to beat Soi by using knives to cause injury to Soi's legs and arms. Dong Xuan Phuong asked for the price, Manh and Lan said that it depends and so Phuong gave Manh VND1,500,000. Lan and Mang agreed.

At around 20:00 on 20 June 2007, Hoang Ngoc Manh with Nam (a friend of Manh; unknown address) went to Hanoi to meet Dong Xuan Phuong. They agreed that they would beat Soi on 21 June 2007. After that, Phuong gave Manh an additional VND500,000 to rent an accommodation. At around 9:00 on 21 June 2007, Phuong led Manh and Nam to the path where Soi would pass on his way to a meeting in that afternoon, afterwards he went back to the company. At around 11.00, Hoang Ngoc Manh came to a street stall at the crossroads of Highway 5 – 1B (Pham Thi Mien's stall) to hire Mien's cell phone and called Dong Xuan Phuong to ask for identification of Soi and Soi's phone number as well. Phuong did as requested. At around 13:00, Manh hired Mien's cell phone again to contact Phuong, informing him that he had identified Soi and he would carry out the plan alone as Nam had left without any notice. Dong Xuan Phuong agreed with that.

At around 14:16 on the same day, Manh hired Mien's cell phone to call Soi and ask for a meeting at the area for casting concrete beams. When Soi arrived, Manh used a sharp knife to stab twice into the back of Soi's right thigh causing Soi's death.

At Report on Forensic Test No. 146/PC21-PY dated 17 July 2007, the Criminal Technical Department – Police of Hanoi concluded: the victim had two wounds in the back of his right thigh, the higher wound penetrated 3 centimeters into the thigh muscle, the lower wound cut the femoral artery and vein which caused excessive bleeding. Cause of the death: uncontrolled hemorrhagic shock due to serious injury of femoral artery.

In addition, during the investigation, Dong Xuan Phuong stated: Beside the personal conflict between him and the victim, his action of hiring people to stab Soi was also due to Mr. Ngo Van Toan (the deputy executive committee of the Thanh Tri Bridge project) inciting him because Toan and Soi also had conflict. The investigation body took Toan's statement where Toan denied the alleged involvement. As a result, the investigation body had no basis to conclude that Toan was related to the case.

Doan Duc Lan and Hoang Ngoc Manh escaped, the investigation body issued an arrest warrant and decision to suspend the investigation of Doan Duc Lan and Hoang Ngoc Manh. They would be dealt with later after being arrested.

During the investigation, Construction Joint Stock Company 204 and its staffs voluntarily donated to support the victim's family with the total amount of VND123,000,000 of which the funeral expense is VND63,000,000 and 3 passbooks for Soi's family with the total deposits of VND60,000,000.

In First-instance Criminal Judgment No. 164/2008/HSST dated 17 November 2008, the People's Court of Hanoi applied Article 93.1(n) and Article 46.1(p) of the Criminal Code to sentence Dong Xuan Phuong seventeen (17) years of imprisonment for the crime of "*Murder*".

Dong Xuan Phuong is compelled to compensate for mental loss of the victim's family the amount of VND32,400,000 and provide financial support to the victim's two (2) children and mother.

After the first-instance judgment, the defendant, Dong Xuan Phuong, submitted an appeal to the higher court.

The victim's legal representative, Ms. Nguyen Thi Thanh, submitted an appeal to propose a more severe punishment and higher compensation.

In Appellate Criminal Judgment No. 262/2009/HSPT dated 5 May 2009, the Appellate Court of the Supreme People's Court in Hanoi applied Article 250.1 of the Criminal Procedure Code to set aside the first-instance judgment in order to reinvestigate under general procedures.

In First-instance Criminal Judgment No. 167/2010/HSST dated 31 March 2010, the People's Court of Hanoi applied Article 93.1 and Article 46.1(p) of the Criminal Code to sentence Dong Xuan Phuong seventeen (17) years of imprisonment for the crime of "*Murder*".

Dong Xuan Phuong is compelled to compensate the following amounts: VND34,583,000 for the funeral expenses, VND39,000,000 for mental loss of the victim's wife and children and monthly financial support to the victim's mother and children.

After the first-instance judgment, Dong Xuan Phuong appealed the judgment to ask for reducing the level of punishment and reconsidering the case because Manh had not been arrested and thus, there was not sufficient basis to assert that Soi was killed by Manh.

On 13 April 2010, the victim's wife, Ms. Nguyen Thi Thanh, submitted an appeal against the judgment to propose a more severe punishment for the defendant and larger compensation from him.

In Appellate Criminal Judgment No. 475/2010/HSPT dated 15 September 2010, the Appellate Court of the Supreme People's Court in Hanoi applied Article 93.1(m), (n) and Article 46.1(p) of the Criminal Code to sentence Dong Xuan Phuong with life imprisonment

for the crime of "*Murder*", compelled Dong Xuan Phuong to pay compensation for mental loss with the amount of VND43,800,000 and affirmed the other relevant rulings on compensation.

At Protest No. 13/KN-HS dated 22 July 2013, the Chief Justice of the Supreme People's Court requested the Judicial Council of the Supreme People's Court to handle the case according to the cassation procedures and set aside the above appellate criminal judgment on the following parts: crime, punishment and legal costs for appellate criminal procedure upon Dong Xuan Phuong; transfer the case to the Appellate Court of the Supreme People's Court in Hanoi to conduct the appellate procedure in accordance with the prevailing laws.

At the hearing, the representative of the Supreme People's Procuracy agreed with the Protest of the Chief Justice of the Supreme People's Court.

The Judicial Council of the Supreme People's Court finds:

On the basis of the following evidences: the defendant's statement during the investigation and at the first-instance and appellate hearings, statements and identification results of witnesses and persons related to the case, report on crime scene examination, record on forensic examination and other relevant documents, there is sufficient basis to conclude that due to conflicts arising from their relationships, Dong Xuan Phuong hired Hoang Ngoc Manh and Doan Duc Lan to stab Nguyen Van Soi by using a knife to cause injury to him for revenge. According to the case records, there is sufficient basis to assert that Phuong only wanted to injure Soi and did not want to deprive his life, also Phuong did not want Manh to randomly and recklessly stab into Soi without regard to any consequence. That was the reason why the defendant only requested Manh to attack the victim's legs and arms but no other vital parts of the body which are areas that if attacked might infringe upon life of the victim. When carrying out the crime, Manh followed Phuong's instruction to stab only twice into the victim's thigh. It is difficult to foresee the death of the victim due to Manh's offense. The fact that the victim passed away due to uncontrolled hemorrhagic shock was beyond the intention of Dong Xuan Phuong and his accomplice. Dong Xuan Phuong's offense is regulated in Article 104.3 of the Criminal Code which is the case of intentionally causing injury leading to human death. Therefore, the judgment of the courts at the first-instance and appellate levels that Dong Xuan Phuong committed the crime of "*Murder*" was not in compliance with the law.

Based on the foregoing and pursuant to Article 285.3 and Article 287 of the Criminal Procedure Code,

RULES

1. To set aside Appellate Criminal Judgment No. 475/2010/HSPT dated 15 September 2010 of the appellate court of the Supreme People's Court in Hanoi on the following parts: crime, punishment and legal cost for appellate criminal procedure upon Dong Xuan Phuong; to transfer the case to the Supreme People's Court in Hanoi to re-conduct the appellate procedure in accordance with the prevailing laws.

2. To continue holding Dong Xuan Phuong in custody until the appellate court of the Supreme People's Court in Hanoi accepts to re-accept jurisdiction over the case.

3. Other rulings of the appellate criminal judgment mentioned above that have already been effective.

CONTENTS OF THE CASE LAW

"According to the case records, there is sufficient basis to assert that Phuong only wanted to injure Soi and did not want to deprive his life, also Phuong did not want Manh to randomly and recklessly stab into Soi without regard to any consequence. That was the reason why the defendant only requested Manh to attack the victim's legs and arms but no other vital parts of the body which are areas that if attacked might infringe upon life of the victim. When carrying out the crime, Manh followed Phuong's instruction to stab only twice into the victim's thigh. It is difficult to foresee the death of the victim due to Manh's offense. The fact that the victim passed away due to uncontrolled hemorrhagic shock was beyond the intention of Dong Xuan Phuong and his accomplice. Dong Xuan Phuong's offense is regulated in Article 104.3 of the Criminal Code which is the case of intentionally causing injury leading to human death. Therefore, the judgment of the courts at the first-instance and appellate levels that Dong Xuan Phuong committed the crime of "Murder" was not in compliance with the law".

CASE LAW NO. 02/2016/AL
on case of "Dispute on reclaiming property"

This case law was adopted by the Judicial Council of the Supreme People's Court on 6 April 2016 and promulgated under Decision No. 220/QD-CA dated 6 April 2016 by the Chief Justice of the Supreme People's Court.

Source of the case law:

Cassation Decision No. 27/2010/DS-GDT dated 8 July 2010 by the Judicial Council of the Supreme People's Court on "*Dispute on reclaiming property*" in Soc Trang Province between the plaintiff, Ms. Nguyen Thi Thanh, and the defendant, Mr. Nguyen Van Tam, and the person with related rights and obligations, Ms. Nguyen Thi Yem.

Overview of the case law:

When an overseas Vietnamese purchases land use right and asks another person, residing in Vietnam, to receive transfer of such land use right on behalf of him, if there arises a dispute, the Court shall review and consider any contributions of the person receiving transfer of the land use rights in preserving, managing, and enhancing the value of the land use right. In case such contributions cannot be determined exactly, the Court rules that the person actually making payment for the land use right and the person receiving transfer of the land use right shall have the equal shares in the increased value of the land use right.

Applicable provisions of laws relating to the case law:

Articles 137 and 235 of the Civil Code 2005.

Key words of the case law:

"Invalid civil transaction", "reclaiming property", "bases for establishing ownership rights", "establishing ownership rights over profits", "Vietnamese residing abroad".

CONTENTS OF THE CASE

In the Statement of Claims dated 24 January 2005, Written Testimony dated 7 February 2005 and the resolution process of the case, the plaintiff Ms. Nguyen Thi Thanh presented:

Ms. Thanh is an overseas Vietnamese in the Netherlands, who was visiting her relatives in Vietnam and she intended to transfer land use rights. Thus, on 10 August 1993, she received transfer of the land use rights from the couple Heng Tinh and Ly Thi Sa Quenh for the area of 7,597.7m^2 of farmland at Ward 7, Soc Trang Town for the price of 2.199 taels of gold. Ms. Thanh was the person directly transacting and agreeing to the transfer and payment of money and gold to the couple Heng Tinh. Ms. Thanh intended to transfer the land to her younger brother Mr. Nguyen Van Tam and Ms. Nguyen Thi Chinh Em to cultivate crops and support her and Mr. Tam's parents. Since Ms. Thanh is a Vietnamese living abroad, she let Mr. Tam to be the transferee in documents. In addition, Ms. Thanh submitted the "*Record on Transfer of Farmland*" established on 10 August 1993 with the confirmation of the People's Committee of An Hiep Commune. After receiving transfer, she

let Mr. Tam and his wife cultivate the land. However, in 2004, without Ms. Thanh's consent, Mr. Tam transferred the entire area of farmland, being 7,595.7m^2, to Minh Chau Company Limited with the value of the land use rights being VND1,260,000,000. For this reason, Ms. Thanh requested Mr. Tam to pay her all the money from the transfer of her land.

The defendant, Mr. Nguyen Van Tam, presented:

The land area of 7,595.7m^2 that is being disputed by Ms. Thanh is land that he and his wife spent money and gold to obtain transfer from Heng Tinh, and he was the transferee on the "*Record on Transfer of Farmland*" established on 10 August 1993. This record had no confirmation of the local authority. However, afterwards, he, Heng Tinh and his wife also signed a Transfer Agreement and an Application for Transfer of Land Use Right on 11 August 1993. These documents had confirmation by the People's Committee of An Hiep Commune and the People's Committee of My Tu Town agreeing to the transfer. After the transfer, he registered, declared, and was granted a Certificate of Land Use Right on 28 May 1994 over such area of farmland. Therefore, he transferred the entire area of land to Minh Chau Company Limited with the value of VND1,260,000,000. He opined that the "*Record on Transfer of Farmland*" established on 10 August 1993 with the confirmation of the People's Committee of An Hiep Commune submitted by Ms. Thanh was fake, and based on the Conclusion of Assessment Report No. 2784/C21 (P7) dated 25 October 2005 of the Criminal Science Institute – General Police Department, it was not his signature in the farmland transfer documents that Ms. Thanh submitted. Therefore, he did not agree to Ms. Thanh's claim.

Ms. Nguyen Thi Yem (Mr. Tam's wife) as a person with related rights and obligations presented: In 1993, she and her husband received the transfer of land use right from Mr. Heng Tinh. During the transfer procedures, she did not participate, however, she did give money and gold to Mr. Tam to pay Mr. Heng Tinh and his wife. For this reason, she also did not agree to Ms. Thanh's claim.

The couple Mr. Heng Tinh and Ms. Ly Thi Sa Quenh (the other name is Le Thi Sa Venh) being the transferors in the transaction both confirmed that Ms. Thanh directly transacted the transfer and directly paid 2.199 taels of gold to them. Ms. Quenh and Ms. Thanh agreed to let Mr. Tam be the transferee on the "*Record on Transfer of Farmland*" established on 10 August 1993. The signatures on the Record on Transfer of Farmland submitted by Ms. Thanh were hers and her husband's.

In First-instance Civil Judgment No. 04/2006/DS-ST dated 28 April 2006, the People's Court of Soc Trang Province ruled that:

- Accept a part of Ms. Thanh's claim on reclaiming the money on the transfer of the land use right.

- Compel Mr. Tam and his wife to pay Ms. Thanh the amount of VND630,000,000.

Besides, the first-instance judgment ruled on the court fees, assessment fees and granted the involved parties the appellate rights in accordance with the laws.

On 10 May 2006, Nguyen Van Tam submitted an appeal against the first-instance judgment. He argued that Ms. Thanh was not the one to have the right to use the area of land which was transferred to Minh Chau Company Limited. Therefore, the first-instance court's decision to compel him to pay Ms. Thanh the amount of VND630,000,000 is not correct.

On 12 May 2006, Mr. Nguyen Huu Phong (representative of Ms. Thanh) submitted an appeal proposing that the appellate court to consider compelling Mr. Tam to pay the entire amount for the land transfer being VND1,260,000,000 to Ms. Thanh.

In Appellate Civil Judgment No. 334/2006/DS-PT dated 25 August 2006, the Appellate Court of the Supreme People's Court in Ho Chi Minh City ruled: it rejected the appeals of both the plaintiff and the defendant. Moreover, the first-instance judgment was amended as follows:

- Accept a part of Ms. Thanh's claim on reclaiming the money on the transfer of the land use right.

- Compel Mr. Nguyen Van Tam and Ms. Nguyen Thi Yem to pay Ms. Thanh the amount of VND27,047,000, equivalent to 2.199 taels of gold.

- Compel Mr. Nguyen Van Tam and Nguyen Thi Yem to submit the amount of VND1,232,266,860 to the State Budget.

Besides, the appellate court also ruled on the court fees.

After the appellate hearing, Nguyen Van Tam submitted a complaint against the above appellate civil judgment.

In Decision No. 449/2009/KN-DS on 21 August 2009, the Chief Justice of the Supreme People's Court protested Appellate Civil Judgment No. 334/2006/DS-PT dated 25 August 2006 of the Appellate Court of the Supreme People's Court in Ho Chi Minh City, proposing that the Judicial Council of the Supreme People's Court conduct cassation procedures, set aside the appellate judgment and First-instance Civil Judgment No. 04/2006/DS-ST dated 28 April 2006 of the People's Court of Soc Trang Province, assigned the case to the People's Court of Soc Trang Province to conduct first-instance procedures in accordance with the laws. The Chief Justice finds:

"*Ms. Nguyen Thi Thanh initiated a lawsuit to reclaim property from Mr. Nguyen Van Tam and opined that since she is a Vietnamese living abroad, she had asked Mr. Tam (her younger brother) receive transfer of the land use right from Mr. Heng Tinh and his wife. However, afterwards, Mr. Tam transferred such land use right to another person.*

The first-instance court and the appellate court determined that Mr. Tam was the transferee for the transfer of land use rights from Mr. Heng Tinh and his wife on behalf of Ms. Thanh, which there is basis.

Since Ms. Thanh was a Vietnamese living abroad, she was not entitled to receive transfer of the land use right but is only entitled to part of the investment value of for the land transfer.

Concerning the difference in value of the land, the time when the first-instance hearing and the appellate hearing were conducted was subject to the regulations of the Civil Code 2005 and there were no provisions to compel parties to submit to the budget, and thus, this difference in value belongs to Ms. Thanh and Mr. Tam. The first-instance court did not compel Mr. Tam to submit the value of the difference to the budget, which there is basis. However, it did not compel him to pay the initial investment value to Ms. Thanh. The appellate court did not have a legal basis but compelled Mr. Tam to submit the entire difference in value (VND1,232,226,860) to the State Budget, which is not in accordance with law".

At the cassation hearing, the representative of the Supreme People's Procuracy suggested the Judicial Council of the Supreme People's Court to accept the protest of the Chief Justice of the Supreme People's Court to set aside the above appellate judgment and First-instance Civil Judgment No. 04/2006/DS-ST dated 28 April 2006 of the People's Court of Soc Trang Province; transfer the case to the People's Court of Soc Trang Province to conduct the first-instance procedures in accordance with laws.

The Judicial Council of the Supreme People's Court finds:

Ms. Nguyen Thi Thanh initiated a lawsuit against Mr. Nguyen Van Tam to claim the amount of VND1,260,000,000, because she was the person directly transacting and paying for the transfer of the area of 7,595.7m^2 from Mr. Heng Tinh and his wife. However, since she is a Vietnamese living abroad, she asked Mr. Tam (her younger brother) to be the transferee. Without Ms. Thanh's consent, Mr. Tam transferred the land use right to Minh Chau Company Limited for the amount of VND1,260,000,000.

Mr. Tam stated that he was the person agreeing with and paying Mr. Heng Tinh, thus, he is recorded as the transferee. After he received the transfer, he directly managed and used, registered and declared, and was granted the certificate of land use right. Moreover, when he transferred to Minh Chau Company Limited, the transfer was approved by the local authorities. For this reason, he did not accept Ms. Thanh's claim.

However, during the resolution process of the case, Mr. Tam and his wife had conflicting testimonies concerning the amount of money and gold paid to Mr. Heng Tinh. Furthermore, Mr. Tam also could not prove the origin of the money and gold that he paid to Mr. Heng Tinh.

On the other hand, Mr. Heng Tinh and his wife, as the transferors, confirmed that they agreed on the transfer with and received gold from Ms. Thanh only. Writing the land transfer documents with Mr. Tam's name was due to Ms. Thanh's request because Ms. Thanh was living abroad at that time.

In the testimonies of Ms. Thai Thi Ba, Mr. Nguyen Phuoc Hoang, and Ms. Nguyen Thi Chinh Em (the mother and siblings of Mr. Tam and Ms. Thanh), Ms. Thanh was the person transacting and paying Mr. Heng Tinh and his wife. Mr. Tam was just the transferee on behalf of Ms. Thanh.

In the light of all evidences above, there is a basis to conclude that the first-instance court and the appellate court were correct to determine that Ms. Thanh was the one who paid the amount being 2.199 taels of gold to receive transfer of the above land area. Mr. Tam is only

the transferee on behalf of Ms. Thanh. Since Mr. Tam had already transferred the land use right to Minh Chau Company Limited and Ms. Thanh only requested that he pay the transfer price, *i.e.* VND1,260,000,000, the first-instance court's and appellate court's acceptance to resolve the case is in accordance with law.

Although Ms. Thanh was the person who paid 2.199 taels of gold for the land transfer (equivalent to VND27,047,700), the transfer documents recorded the name of Mr. Tam and after receiving transfer, Mr. Tam managed the land, and then transferred it to another party. Therefore, the court should have determined that Mr. Tam contributed to the preservation, management and enhancement of the value of the area of farmland so that the above-mentioned amount of money (after deducting Ms. Thanh's initial amount equivalent to 2.199 taels of gold) is the joint profits of both Mr. Tam and Ms. Thanh. Moreover, Mr. Tam's contributions must be taken into account when determining the lawful rights and interests of the involved parties (In case it is impossible to exactly determine Mr. Tam's contributions, it should be determined that Mr. Tam and Ms. Thanh have the equal shares).

The first-instance court recognized that Mr. Tam and Ms. Thanh each has ownership over 1/2 of such above-mentioned amount of money without paying Ms. Thanh the amount of 2.199 taels of gold, which is not correct.

The appellate court only recognized that Ms. Thanh was only entitled to the amount of money equivalent to 2.199 taels of gold and the remaining amount is subject to submission to the budget, which is not in accordance with provisions of the Civil Code 2005 and thus, it did not protect the lawful rights and interests of the involved parties.

Besides, Ms. Thanh initiated a lawsuit against Mr. Tam to pay her VND1,260,000,000, which was amount that Mr. Tam received for transfer of the land area of 7,595.7m^2, but she did not claim for the land use right, meanwhile Mr. Tam asserted that such amount of money belonged to him. Therefore, such amount of money was in dispute between the involved parties. As a result, it was not accurate for the first-instance court and the appellate court to determine that the legal relationship was a "*dispute on reclaiming property*".

In the light of the above-mentioned reasons and application of Article 297.3 and Article 299 of the Civil Procedure Code:

RULES

1. To set aside Appellate Civil Judgment No. 334/2006/DSPT dated 25 August 2006 of the Appellate Court of the Supreme People's Court in Ho Chi Minh City and First-instance Civil Judgment No. 04/2006/DS-ST dated 28 April 2006 of the People's Court of Soc Trang Province on the dispute on reclaiming property between the plaintiff, Ms. Nguyen Thi Thanh and the defendant, Mr. Nguyen Van Tam and Ms. Nguyen Thi Yen as the interested person.

2. To transfer the case to the People's Court of Soc Trang Province to re-conduct the first-instance procedures.

Although Ms. Thanh was the person who paid 2.199 taels of gold for the land transfer (equivalent to VND27,047,700), the transfer documents recorded the name of Mr. Tam and after receiving transfer, Mr. Tam managed the land, and then transferred it to another party. Therefore, the court should have determined that Mr. Tam contributed to the preservation, management and enhancement of the value of the area of farmland so that the above-mentioned amount of money (after deducting Ms. Thanh's initial amount equivalent to 2.199 taels of gold) is the joint profits of both Mr. Tam and Ms. Thanh. Moreover, Mr. Tam's contributions must be taken into account when determining the lawful rights and interests of the involved parties (In case it is impossible to exactly determine Mr. Tam's contributions, it should be determined that Mr. Tam and Ms. Thanh have the equal shares).

CASE LAW NO. 03/2016/AL
on case of "Divorce"

This case law was adopted by the Judicial Council of the Supreme People's Court on 6 April 2016 and promulgated by the Chief Justice of the Supreme People's Court under Decision No. 220/QD-CA dated 6 April 2016.

Source of the case law:

Cassation Decision No. 208/2013/DS-GDT dated 3 May 2013 on "*Divorce*" case of the civil court of the Supreme People's Court in Hanoi between the plaintiff being Ms. Do Thi Hong and the defendant being Mr. Pham Gia Nam. The persons with related rights and obligations were Mr. Pham Gia Phac, Ms. Phung Thi Tai, Mr. Pham Gia On, Ms. Pham Thi Lu, Mr. Bui Van Dap and Ms. Do Thi Ngoc Ha.

Overview of the case law:

In the case where parents grant the land use right of a certain land area to their child and his/her spouse, the couple has built a permanent house on that land area for their residence; when the couple was building, their parents and other family members did not have any objections; the couple even used the house and land continuously, publicly, and stably, have implemented procedures to declare their land use rights, and have been granted the certificate of land use rights, then it must be determined that the land use rights are gifted to the couple.

Applicable provisions of laws relating to the case law:

- Article 14 of the Law on Marriage and Family 1986;
- Article 242 of the Civil Code 1995;
- Article 176.2 of the Civil Code 1995.

Key words of the case law:

"Divorce", "Common property of husband and wife", "Gift of property", "Bases for establishing ownership rights", "Establishing ownership rights pursuant to agreement".

CONTENTS OF THE CASE

Ms. Do Thi Hong and Mr. Pham Gia Nam married in 1992 and registered their marriage at the People's Committee of Van Tao Commune, Thuong Tin District, Hanoi. After living together for a period of time, there arose conflict between the couple, causing them to live separately since September 2008. On 18 April 2009, Ms. Hong initiated a lawsuit to request a divorce from Mr. Nam and Mr. Nam consented.

With regard to their children: the couple had two children who were Pham Gia Khang (born in 1992) and Pham Huong Giang (born in 2000). Both Ms. Hong and Mr. Nam wanted to raise the two children alone and did not request any support from the other. Khang

wished to live with his father Mr. Nam while Giang wanted to live with her mother Ms. Hong.

With regard to the property: During their time living together, the couple built a two-story house in 2002 (additionally, an attic to relieve the heat was built in 2005). The house was built on a land lot of 80m2 in Van Hoa Village, Van Tao Commune, Thuong Tin District. The couple agreed that the house was their common property. They failed to agree with respect to the land.

According to Ms. Hong: The land belonged to the family of Mr. Pham Gia Phac (Mr. Nam's natural father), whom was granted in 1992 for resettlement. Later, Mr. Phac and his family met and announced that they were gifting to the couple the land but no documents were made. In 2001, Mr. Phac instructed and Mr. Nam implemented procedures for the red book and, thus, was granted the certificate of land use rights under Mr. Pham Gia Nam's name as the representative of the household. Therefore, such land use rights are the common property of the couple.

Ms. Hong requested that she be entitled to continue using the house and the land and in return, she was willing to pay 1/2 of the value of the land use rights and assets attached to the land to Mr. Nam in accordance with the price determined by the Valuation Council.

According to Mr. Nam: This land lot was granted to his parents in 1992. His parents only allowed the couple to temporarily live there and did not gift them the land use rights because his family had many children. In 2001, he declared and implemented procedures for land documents by himself without his family's knowledge. His opinion is that the land is to be returned to Mr. Phac.

According to Mr. Phac and Ms. Tai (Nam's parents): Mr. Phac was originally granted the land by the People's Committee of Van Tao Commune in 1992. He built a Level 4 house on that land. In 1993, his family allowed Mr. Nam and Ms. Hong to live in that house but did not to gift the land to the couple because Ms. Tai had been paralyzed for 15 years now. Mr. Phac and Mr. On (Mr. Nam's younger brother) was caring for her and Mr. Phac's family wished to leave the land to Mr. On because Mr. On did not have his own house. When Mr. Phac's family was granted the land, there were only four members in the family consisting of Mr. Phac, Ms. Tai, Ms. Lu, and Mr. On (Mr. Nam had already moved away). Only when Ms. Hong requested for divorce, Mr. Phac's family became aware that Mr. Nam had obtained the land documents under his name in 2001. Thus, Mr. Phac and Ms. Tai requested Mr. Nam and Ms. Hong return the land to them.

Besides, during the settlement process of the case, Ms. Hong further stated that Mr. Nam had been granted by the Army Officer [University] No. 1 of a land lot with area of 125m^2 in Thach That District. At first, she requested to divide this land lot, but later she withdrew that request.

In terms of loans: According to Ms. Hong, she and her husband received a loan from Ms. Hoang Thi Chu (Ms. Hong's mother) of 0.75 tael of gold 9999, a loan from Ms. Do Thi Ngoc Ha (Ms. Hong's older sister) of 1 tael of gold 9999, a loan from Mr. Bui Van Dap of VND150,000,000 with an interest rate of 1.25%/month. All of these loans were made

without any written agreement. Ms. Hong requested Mr. Nam to repay those loans together with her.

According to Mr. Nam, the couple only owed a loan to Ms. Chu of 0.75 tael of gold, for which he had repaid her an amount of VND13,875,000 (equivalent to 0.375 tael of gold). He is not aware of any other loans and he does not agree to repay them as requested by Ms. Hong.

On 3 November 2010, the Valuation Council valued the property as follows:

Land use rights: 80m^2 x VND22,000,000/m^2 = VND1,760,000,000.

House: VND475,865,000. The total value of the property is: VND2,235,865,000.

In First-instance Judgment No. 03/2011/HNGD-ST dated 17 May 2011, the People's Court of Thuong Tin District, Hanoi finds that:

1. In terms of husband and wife relationship: Ms. Do Thi Hong was entitled to divorce Mr. Pham Gia Nam.

2. In terms of their children: Assigning Pham Huong Giang, born on 14 August 2000, to Ms. Hong to raise until adulthood. Temporarily suspending the child support obligations of Mr. Nam until Ms. Hong requests child support. Mr. Nam has the right to visit their children, which no one can prevent.

3. Common property and contributions: Confirming that the two-story house with one attic and all other construction works on Land Lot No. 63, Cadastral Map No. 5 in Van Hoa Village, Van Tao Commune, Thuong Tin District, Hanoi were recognized as the common property of Ms. Do Thi Hong and Mr. Pham Gia Nam. Such common property had the value of VND475,865,000.

4. Confirming that the land use rights of 80m^2 of the Land Lot No. 63, Cadastral Map No. 5 in Van Hoa Village, Van Tao Commune, Thuong Tin District, Hanoi were recognized belonging to Mr. Pham Gia Phac's household. Compelling Ms. Do Thi Hong and Mr. Pham Gia Nam to return to Mr. Phac's household the land use rights of 80m^2 of Land Lot No. 63, Cadastral Map No. 5 in Van Hoa Village, Van Tao Commune, Thuong Tin District, Hanoi. Assigning Mr. Pham Gia Phac's household the ownership rights of all assets on that land lot including the two-story house and all other constructions works on the land. Compelling Mr. Pham Gia Phac to pay both Ms. Do Thi Hong and Mr. Pham Gia Nam, each of them an amount of VND237,932,500.

5. Recommending that the People's Committee of Thuong Tin District to revoke Certificate of Land Use Rights No. U060645 issued on 21 December 2001 under the name of Mr. Pham Gia Nam in order to implement procedures to grant to Mr. Pham Gia Phac when Mr. Phac requests.

6. Recognizing Mr. Pham Gia Nam's voluntary support to Ms. Do Thi Hong of an amount of VND800,000.000.

7. Compelling Ms. Do Thi Hong to pay Mr. Bui Van Dap an amount of VND179,820,000.

8. Rejecting all other requests of Ms. Do Thi Hong.

In addition, the first-instance court ruled on court fees and the right to appeal.

On 19 May 2011, Ms. Hong submitted an appeal against the entire first-instance judgment.

On 24 May 2011, Mr. Nam submitted an appeal disagreeing with the support for Ms. Hong of an amount of VND800,000,000 to find a new home. However, at the appellate hearing, Mr. Nam withdrew his request for appeal.

In Appellate Judgment No. 105/2011/LHPT dated 30 August 2011 and 6 September 2011, the People's Court of Hanoi ruled to:

- Uphold First-instance Marriage and Family Judgment No. 03/2011/HNGD-ST dated 17 May 2011 of the People's Court of Thuong Tin District, Hanoi (as mentioned above).

In addition, the Appellate Court ruled on the court fees.

After the appellate hearing, Ms. Hong and Ms. Hoang Thi Chu submitted a petition to propose cassation procedures for the aforementioned appellate judgment.

In Protest Decision No. 05/2013/KN-HNGD-LD dated 3 January 2013, the Chief Justice of the Supreme People's Court protested against Appellate Marriage and Family Judgment No. 105/2011/LHPT dated 30 August 2011 and 6 September 2011 of People's Court of Hanoi, proposing that the civil court of the Supreme People's Court to conduct cassation procedures in the direction: setting aside the appellate marriage and family judgment mentioned above and First-instance Marriage and Family Judgment No. 03/2011/HNGD-ST dated 17 May 2011 of the People's Court of Thuong Tin District, Hanoi regarding properties; transferring the case to the People's Court of Thuong Tin District, Hanoi to re-conduct the first-instance procedures in accordance with the law.

In the cassation hearing, the representative of the Supreme People's Procuracy opined that with respect to the dispute, when the resettlement land was granted to Mr. Phac's family, Mr. Nam was not there. Since there was no evidence that Mr. Nam's parents gifted the land use rights to Mr. Nam and his wife, the land still belonged to Mr. Phac's family. The determination by the two levels of courts that the land belonged to the parents of Mr. Nam has basis. There was a mistake in the loan from Ms. Chu. Therefore, it is recommended that the Council of Adjudicators do not accept the protest of the Chief Justice of the Supreme People's Court.

The Cassation Council of the Civil Court of the Supreme People's Court finds:

In terms of the marriage relationship and children, the lower courts had already resolved. The parties had no further complaints.

In terms of property: The property disputed by the parties is a land area of 80m^2 in Van Hoa Village, Van Tao Commune, Thuong Tin District, Hanoi, under the name of Mr. Pham Gia Nam.

The documents demonstrated that Mr. Phac was originally granted the land by the People's Committee of Van Tao Commune in 1992. Pursuant to the minutes on the handover of the land from the People's Committee of the commune to Mr. Phac, Ms. Hong had already married Mr. Nam by the time that the minutes was made. However, as verified by the First–instance Court of Van Tao Commune in Thuong Tin District on the procedures for granting land, Van Tao Commune had a policy of granting land for resettlement since 1991. Even though at the time when the procedures for granting land Mr. Phac's family had only four members living together including Mr. Phac, Ms. Tai, Ms. Lu, Mr. On (Mr. Nam was in the army and had not returned), the grant of land for resettlement was granted to households with many members, granted to Mr. Phac, his wife, and children. Therefore, Mr. Nam was also among the subjects to be granted the land. After receiving the land, Mr. Phac and his wife built a Level 4 house. In 1993, Mr. Phac's family allowed Mr. Nam and Ms. Hong to live on that land area and they were the persons who managed and used the land continuously since then.

Ms. Hong opined that Mr. Phac's family had announced that they were gifting the couple the land area mentioned above, but Mr. Nam and Mr. Phac asserted that the family did not gift it to the couple.

Considering: As verified by the People's Committee of Van Tao Commune, in 2001, the Commune organized the households in the commune to register for issuance of certificates of land use rights and the households made declarations at the headquarters of the commune (BL 103). All households in the commune were aware of the policy for the land declaration. Mr. Phac was the owner of the land but he did not go make the declaration. Mr. Nam, who was at that time living on that land and also the person who went to declare and implement procedures of issuance of the certificate. On 21 December 2001, Mr. Nam was granted Certificate of Land Use Rights No. U060645 under his name being Pham Gia Nam. The couple had already built the two-story permanent house in 2002 and in 2005, they built an additional attic as floor 3. Mr. Phac and other family members were aware of the construction by Mr. Nam and Ms. Hong, but no one objected. Thus, from when the certificate was granted (in 2001) until the time Mr. Nam and Ms. Hong divorced (in 2009), Mr. Phac's family did not complain regarding the land grant and house construction. This fact demonstrates the intention of Mr. Phac's family to gift the land area mentioned above to Mr. Nam and Ms. Hong. Therefore, Mr. Phac's and Mr. Nam's testimonies that Mr. Nam declared the land documents without Mr. Phac's knowledge has no basis for acceptance. There is a basis to determine that Ms. Hong's testimony that Mr. Phac's family gifted the land area mentioned above to the couple has basis.

Therefore, the rulings of the lower courts that, Mr. Phac had no knowledge of Mr. Nam's implementation of procedures the land documents, that Ms. Hong's testimony on the her husband's family gifting the property had no basis in order to determine that the land area of 80m^2 in Van Hoa Village, Van Tao Commune, Thuong Tin District, Hanoi was the property of Mr. Pham Gia Phac's household, and concurrently, Mr. Nam and Ms. Hong were compelled to return the land to Mr. Phac's family were incorrect. The above-mentioned land under dispute should have been determined as the common property of Mr. Nam and Ms. Hong. When dividing it, Mr. Nam's greater contributions should have been considered in order to divide based on each party's contributions. The division for the parties should

be based on each party's need for residence to guarantee the rights and interests of the involved parties.

In terms of the complaints of Ms. Hoang Thi Chu (Ms. Hong's natural mother), whereas: On 7 May 2011 (before the first-instance hearing), Ms. Chu submitted a petition to the People's Court of Thuong Tin District with the content as follows: "*Today is 7 May 2011, I have received an amount repaid Ms. Hong and Mr. Nam. I no longer request the court to resolve this*". The first–instance court declared that Ms. Chu's advance court fee of VND200,000 was to be submitted to the treasury but, did not declare the suspension of the settlement of Ms. Chu's request concerning the loan, which were not in accordance with the regulation specified under Article 192.1(dd) of the Civil Procedure Code. However, after the first–instance hearing, Ms. Chu did not submit an appeal and the Procuracy did not submit a protest. Therefore, based on Article 263 of the Civil Procedure Code, the Appellate Hearing Council only reviewed the parts of the first–instance judgments, which are appealed, protested against, or related to the review of the appealed or protested contents, and the protest of the Chief Justice of the Supreme People's Court against the aforesaid content was unnecessary.

Therefore, the Cassation Council of the civil court of the Supreme People's Court finds that the protest by the Chief Justice of the Supreme People's Court about the property in dispute, particularly a land lot of 80m^2 in Van Hoa Village, Van Tao Commune, Thuong Tin District, Hanoi), had basis for acceptance.

In light of the aforesaid reasons, pursuant to Article 291.2, Article 297.3 and Article 299 of the Civil Procedure Code

RULES

1. To set aside Appellate Marriage and Family Judgment No. 105/2011/LH-PT dated 30 August 2011 and 6 September 2011 of the People's Court of Hanoi and First-instance Marriage and Family Judgment No. 3/2011/HNGDST dated 17 May 2011 of Thuong Tin People's Court in Hanoi in respect of the parts concerning the property relations; the divorce case between the plaintiff Ms. Do Thi Hong and the defendant Mr. Pham Gia Nam has been settled;

2. To transfer the case to People's Court of Thuong Tin District, Hanoi for conducting first-instance procedures in accordance with the law.

CONTENTS OF THE CASE LAW

"As verified by the People's Committee of Van Tao Commune, in 2001, the Commune organized the households in the commune to register for issuance of certificates of land use rights and the households made declarations at the headquarters of the commune (BL 103). All households in the commune were aware of the policy for the land declaration. Mr. Phac was the owner of the land but he did not go make the declaration. Mr. Nam, who was at that time living on that land and also the person who went to declare and implement procedures of issuance of the certificate. On 21 December 2001, Mr. Nam was granted Certificate of Land Use Rights No. U060645 under his name being Pham Gia Nam. The couple had already built the two-story permanent house in 2002 and in 2005, they built an additional attic as floor 3.

Mr. Phac and other family members were aware of the construction by Mr. Nam and Ms. Hong, but no one objected. Thus, from when the certificate was granted (in 2001) until the time Mr. Nam and Ms. Hong divorced (in 2009), Mr. Phac's family did not complain regarding the land grant and house construction. This fact demonstrates the intention of Mr. Phac's family to gift the land area mentioned above to Mr. Nam and Ms. Hong. Therefore, Mr. Phac's and Mr. Nam's testimonies that Mr. Nam declared the land documents without Mr. Phac's knowledge has no basis for acceptance. There is a basis to determine that Ms. Hong's testimony that Mr. Phac's family gifted the land area mentioned above to the couple has basis.

Therefore, the rulings of the lower courts that, Mr. Phac had no knowledge of Mr. Nam's implementation of procedures the land documents, that Ms. Hong's testimony on the her husband's family gifting the property had no basis in order to determine that the land area of 80m^2 in Van Hoa Village, Van Tao Commune, Thuong Tin District, Hanoi was the property of Mr. Pham Gia Phac's household, and concurrently, Mr. Nam and Ms. Hong were compelled to return the land to Mr. Phac's family were incorrect. The above-mentioned land under dispute should have been determined as the common property of Mr. Nam and Ms. Hong. When dividing it, Mr. Nam's greater contributions should have been considered in order to divide based on each party's contributions. The division for the parties should be based on each party's need for residence to guarantee the rights and interests of the involved parties".

CASE LAW NO. 04 /2016/AL
on case of "Dispute on the contract on transfer of land use rights"

This case law was adopted by the Judicial Council of the Supreme People's Court on 6 April 2016 and promulgated under Decision No. 220/QD-CA dated 6 April, 2016 by the Chief Justice of the Supreme People's Court.

Source of the case law:

Cassation Decision No. 04/2010/QD-HDTP dated 3 March 2013 of the Judicial Council of the Supreme People's Court in Hanoi on "*Dispute on the contract on transfer of land use rights*" between Ms. Kieu Thi Ty and Mr. Chu Van Tien as the plaintiffs and Mr. Le Van Ngu as the defendant. The parties with related rights and obligations include Ms. Le Thi Quy, Ms. Tran Thi Phan, Mr. Le Van Tam, Ms. Le Thi Tuong, Mr. Le Duc Loi, Ms. Le Thi Duong, Mr. Le Manh Hai, Ms. Le Thi Nham.

Overview of the case law:

Where the real property is common property of husband and wife but only one of them signs the contract on transfer of real property to other parties, the other does not signs the contract; as long as there are sufficient grounds to determine that the transferor has received the agreed amount of money in full, the person who did not sign the contract is aware of the receipt of money and also spends the money for transfer of the real property; the transferee has received, managed, and used that real property publicly, the person who did not sign the contract is aware of that fact without any objection, then that person shall be deemed to agree with the transfer of the real property.

Applicable provisions of laws relating to the case law:

- Article 176.2 of the Civil Code 1995;
- Article 15 of the Law on Marriage and Family 1986.

Key words of the case law:

"Dispute on contract on transfer of land use rights", "Determination of common property of husband and wife", "Ownership establishment under an agreement".

CONTENTS OF THE CASE

In the Statement of Claims dated 5 November 2007 and during the settlement of the dispute, Ms. Kieu Thi Ty (the plaintiff) stated as follows:

In 1996, she and her husband bought two level 4 houses on an area of about 160m^2 of residential land from Mr. Le Van Ngu's family in Xuan La Commune, Tu Liem District, Hanoi (now Group 11, Residential Cluster 2, Xuan La Ward, Tay Ho District, Hanoi). The two parties entered into a contract for sale and purchase and it clearly recorded the assets, the house on the premises, the boundaries of the land lot. Because the wife and husband did not yet have permanent resident household registration in Hanoi, the local authority did

not certify the sale and purchase between her family and Mr. Ngu's family. The purchase price was 110 taels of gold. Ms. Ty paid in full the same to Mr. Ngu and his wife, and Mr. Ngu's family handed over the real property for Ms. Ty to manage and use.

After the sale and purchase of the real property, Mr. Ngu's family was building a new house and borrowed Ms. Ty's and her husband's house (the inner one) for use and storage of materials. Ms. Ty allowed her nephew to reside in the other area of the house facing Xuan La Street during his study. When Mr. Ngu's family finished building the house, they returned the borrowed real property to Ms. Ty. She demolished the old houses and built a new one (as the current status) so that her nieces and nephews can reside. In 2001, she had the house leased to a wood factory. She later stopped leasing and closed the house, leaving it unused.

In 2006 (after Ms. Ty registered permanent residence in Hanoi), upon proceeding with relevant procedures to apply for the documents for house ownership and land use right, Mr. Ngu and his wife caused trouble for her because they alleged that Ms. Ty still owed his family more than three taels of gold under their deal and that Mr. Ngu's family only sold the inner part of the real property and that the other real property facing Xuan La Street still belonged to his family. In late 2006, Mr. Ngu on his own broke down the door of the house on Xuan La Street to live in and built a wall between the awning of the level 4 house on Xuan La street (that house is currently being leased to a hair salon). Ms. Ty proposed that the Court to compel Mr. Ngu's family to strictly comply with the signed contract and to return the real property (the area facing Xuan La Street).

Mr. Le Van Ngu (the defendant) presented as follows:

In 1996, his family sold part of the real property to Ms. Ty and her husband (Mr. Tien). Both sides agreed that his family sold the house and transferred the part of the real property where that borders on Xuan La Street to Ms. Ty's family, the width of 07m and the length running all the way to the end of his land lot. Both parties agreed to deduct 21m^2 due to the State's plan to widen the road, thus the subject matter of the transfer is the level 4 house over the area of 140m^2 only.

The price for the real property is: 0.6 taels of gold per square meter with respect to 42m^2 of the land area facing the street which is 25.2 taels in total; 0.9 taels of gold per square meter with respect to 98m^2 of the inner land area which is 88.2 taels in total. The total price is 113.4 taels of gold of which Mr. Tien and Ms. Ty just paid Mr. Ngu's family 110 taels of gold, with 3.4 taels outstanding.

Mr. Ngu's family did hand over the house and land use rights to Ms. Ty's family, excluding the area of 21m^2 facing the street which is designated for road expansion. This area of 21m^2 was still under Mr. Ngu's family's use and management. The State, however, now amended the master plan which does not include road expansion toward the land area of Mr. Ngu's family, thus this area belongs to his family's use and management. Consequently, the land area of Mr. Tien and Ms. Ty has no entrance.

Now Ms. Ty claimed for the area of 21m^2 of land bordering on Xuan La Street. Mr. Ngu rejected her request. If Mr. Tien and Ms. Ty want to have manage and use the land area facing the street and have an entrance to the inner real property, then they must return to

his family the area facing the street with the width of two (2) meters and the length of the land area, they also have to pay to Mr. Ngu's family an extra amount of VND160,000,000 (one hundred and sixty million dongs).

Persons with related rights and obligations:

Ms. Tran Thi Phan's testimony is consistent with the one of Mr. Ngu.

Mr. Le Duc Loi, Mr. Le Van Tam, Mr. Le Manh Hai, Ms. Le Thi Duong, Ms. Le Thi Tuong and Ms. Le Thi Nham all have the same testimonies with Mr. Ngu's.

People's Court of Hanoi under First-instance Civil Judgment No. 27/2008/DS-ST dated 25 April 2008 ruled as follows:

The claim of Ms. Kieu Thi Ty and her husband, Mr. Chu Van Tien over the real property with area of 23.4m^2 on 39, Xuan La Street was accepted, whereby:

Mr. Ngu's family, Ms. Tran Thi Phan, Ms. Le Thi Quy (lessee) and children of Mr. Ngu were compelled to return an area of 23.4m^2 at No. 39 Xuan La Street, Xuan La Ward, Tay Ho District to Ms. Ty's family (represented by Ms. Ty).

Ms. Ty's family was compelled to pay to Mr. Ngu's family an amount of VND13,759,000 (thirteen million seven hundred and fifty nine thousand Dong) as the expense that Mr. Ngu's family spent for the renovation and maintenance of the area of 23.4m^2. Ms. Ty is entitled to own materials at this area.

Ms. Ty is entitled to actively open an entrance to the inner land area and block the rear walkway to the house of Mr. Ngu's family.

Mr. Ngu, Ms. Phan and Ms. Ty have the responsibility to go to the competent authority to complete the procedures to transfer the real property already transferred. If Mr. Ngu's family causes difficulty, then Ms. Ty can actively go to the competent authority to declare to carry out the procedures for transfer and registration of building ownership and land use rights.

In addition, the first-instance court in its judgment also ruled the court fees and the right to appeal of involved parties.

On 8 May 2008, Mr. Le Van Ngu and Ms. Tran Thi Phan filed an appeal requesting the appellate court to declare the contract on the transfer of land use rights signed with Ms. Kieu Thi Ty and Mr. Chu Van Tien invalid. The ground for their claim was that the signing of the contract and receiving purchase price were done by Mr. Ngu only and Ms. Phan was not aware of such fact.

In Decision No. 02/QD-VKSNDTC-VPT1 dated 28 May 2008, the Chief Prosecutor of the Supreme People's Procuracy protested by requesting the appellate Council of Adjudicators of the Supreme People's Court to compel Mr. Ngu's family to dismantle the house illegally built on the property of Ms. Ty and to return the same to original status. Ms. Ty had no responsibility to pay to Mr. Ngu's family the amount of VND13,759,000 (thirteen million

seven hundred and fifty nine thousand Dong). The court fees of the first-instance hearing were required to be reconsidered.

The Appellate Court of the Supreme People's Court under Appellate Civil Judgment No. 162/2008/DS-PT dated 4 September 2008 ruled as follows:

The appeal of Mr. Le Van Ngu and Ms. Tran Thi Phan was not accepted.

In Decision No. 02/QD-VKSNDTC-VPT1 dated 28 May 2008 of the Supreme People's Procuracy was accepted.

A part of the first-instance judgment was amended as follow:

The claim of Ms. Ty's family against Mr. Ngu's family over the area of 23.4m^2 and the house attached to that land at No. 39 Xuan La was accepted.

Mr. Ngu's family (Mr. Ngu, Ms. Phan and their children including Mr. Le Duc Loi, Mr. Le Van Tam, Mr. Le Manh Hai, Ms. Le Thi Duong, Ms. Le Thi Tuong, Ms. Le Thi Nham) and Ms. Le Thi Quy (the tenant of Mr. Ngu's house) were compelled to return the whole land area of 23.4m^2 and the house attached to it at 39 Xuan La Street, Xuan La Ward, Tay Ho District, Hanoi to Ms. Kieu Thi Ty's family (represented by Ms. Ty).

Regarding the amount of VND13,759,000 (thirteen million seven hundred and fifty nine thousand Dong) for the renovation and maintenance of the area of 23.4m^2 which Mr. Ngu's family must bear themselves. Mr. Ngu's family was compelled to dismantle the house illegally built on the mentioned land to return the original status of the land to Ms. Ty. Mr. Ngu's family must bear the cost for such dismantling and demolition.

Ms. Ty was entitled to actively open an entrance to the inner land area and block the backside walkway to the house of Mr. Ngu's family.

Mr. Ngu, Ms. Phan and Ms. Ty have the responsibility to go to the competent authority to complete the procedures to transfer the real property already transferred. If Mr. Ngu's family causes difficulty, Ms. Ty go to the competent authority to declare to carry out the procedures for transfer and registration of building ownership and land use rights.

In addition, the appellate court in its judgment also ruled the court fees.

After re-conducting the appellate hearing with Mr. Ngu's complaint dated 21 October 2008 and 22 October 2008, whereby Mr. Le Van Ngu and Ms. Tran Thi Phan asserted that the real property at 39, Xuan La street was their common asset. The arbitrary sale by Mr. Ngu to Ms. Ty and Mr. Tien without consent of Ms. Phan is not proper, thus requested the Court to declare this contract invalid.

In Decision No. 63/QD-KNGDT-V5 dated 14 May 2009, the Chief Prosecutor of the Supreme People's Procuracy protested the above appellate judgment and requested the Judicial Council of the Supreme People's Court for hearing the dispute under cassation procedure and to set aside the aforementioned appellate judgment and First-instance Civil Judgment No. 27/2008/DS-ST dated 25 April 2008 rendered by People's Court of Hanoi. The the case

was transferred to People's Court of Hanoi for conduct a first-instance hearing with a finding that:

In 1996, Ms. Ty and her husband bought two level 4 houses attached to the residential land from Mr. Le Van Ngu's family. The width of that land area is seven meters and the length is along the entire land area under Mr. Ngu's land use rights in Xuan La Commune, Tu Liem District (nowadays Xuan La Ward, Tay Ho District). The transfer was conducted under a handwritten agreement between the two parties. However, they afterward did not carry out necessary formalities as prescribed by the law. After purchasing the houses, Ms. Ty demolished the two houses to rebuild the foundation, walls, and roof as the current status.

In late 2005, when Ms. Ty applied for a certificate of land use rights and ownership of the house, Mr. Ngu's family disputed and alleged that Ms. Ty still owed 3.4 taels of gold and that Mr. Ngu's family only sold the inner land area, and the land facing Xuan La Street still belonged his family.

In late 2006, there was an incident due to the dispute between the two parties concerning the land area of 21m^2 facing Xuan La Street, Tay Ho District, Hanoi.

On 29 October 2007, Ms. Kieu Thi Ty and Mr. Chu Van Tien initiated a lawsuit claiming the land use right and ownership of house under the contract on transfer of land use rights dated 26 April 1996 between Mr. Le Van Ngu and Ms. Tran Thi Phan as one party and Ms. Kieu Thi Ty and Mr. Chu Van Tien as the other party. This contract did not comply with the law in both formality and content. Mr. Ngu's family alleged that Ms. Ty still owed 3.4 taels of gold and that the land area facing Xuan La Street was not included in the content of the contract. Therefore, Mr. Ngu's family refused to carry out the necessary procedures for the transfer of land use rights and ownership of the house to Ms. Ty's family as prescribed by law. Currently, the whole land use rights over the whole land area under the mentioned contract still records the names of Mr. Ngu and Ms. Phan as the owners.

The first–instance court and the appellate court both determined that the nature of dispute in this case is "*dispute on house ownership and land use right*" and applied Article 255 and Article 256 of the Civil Code to accept the claim for returning the land by Ms. Kieu Thi Ty and Mr. Chu Van Tien, which was not correct because it automatically recognized the land use rights and ownership of Ms. Ty's family to the whole land area and the house while the effect of the mentioned transfer contract was still in dispute and therefore it was impossible for Ms. Ty and Mr. Tien to apply for certificate of land use rights and house ownership. For those reasons, the first-instance civil judgment and the appellate civil judgment must be set aside. The case dossier must be returned for reorganizing a first-instance hearing to determine correctly the nature of dispute and to ensure the rights of the parties and the interest of the State.

In the cassation hearing, the representative of the Supreme People's Procuracy requested the Judicial Council of the Supreme People's Court to accept the protest of the Chief Prosecutor of the Supreme People's Procuracy.

The Judicial Council of the Supreme People's Court finds:

Based on the petition dated 5 November 2007 and the testimonies of Ms. Ty and Mr. Tien during the process of dispute settlement, Ms. Ty and Mr. Tien requested Mr. Ngu and Ms. Phan to return the whole land area and the house that they had been transferred but still occupied by Mr. and Ms. Ngu at the same time to request this couple to remove the illegitimate construction on such land area. To sum up, the plaintiff has the right to claim for the land use right and house ownership as agreed under the contract on house and land use right transfer dated 26 April 1996. Meanwhile, Mr. Ngu and Ms. Phan assumed that the disputed land still belongs to them because it has never been transferred yet. Therefore, there is sufficient basis to determine that there is a dispute over the ownership of assets and dispute on the contract on the transfer of house and land use rights, but the first–instance court and the appellate court determined only the legal relations needed to be settled being the dispute on ownership of house and land use rights, which was not exhaustive. However, in fact the two courts did settle the dispute covering the two relationships. Hence, it was incorrect and unnecessary when the Chief Prosecutor of the Supreme People's Procuracy under Protest No. 63/QD-KNGDT-V5 dated 14 May 2009 assumed that the first-instance court and the appellate court determined wrongfully the nature of the dispute and requested to set aside the judgments of both the first – instance court and the appellate court for reorganizing a first-instance hearing.

Regarding the contract on the transfer of land use rights and ownership of house dated 26 April 1996: The transfer of land use rights and ownership of house happened in 1996, after purchasing the real property, Ms. Ty and Mr. Tien paid fully the purchase price, and received the real property and remodeled the house and had their nieces and nephew come to live. Meanwhile, Mr. Ngu's family kept living on the remaining area of the land adjourning to the house of Ms. Ty's family. According to the testimony of Mr. Ngu's and Ms. Phan's children, after Mr. Ngu and Ms. Phan had transferred and delivered the real property to Mr. Tien and Ms. Ty, Mr. Ngu and Ms. Phan distributed the gold to their children. In addition, on 26 April 1996, Mr. Ngu wrote a "*commitment*" indicating that they wished to borrow the house that they had transferred to Ms. Ty to live while constructing their new house on the remaining part of the land and in actuality, they did use the land and house of Ms. Ty and Mr. Tien while constructing their house. Thus, there is sufficient basis to determine that Ms. Phan was aware of the transfer of land use rights and ownership of house between Mr. Ngu and Ms. Tien's family, did consent to that transfer and jointly carried out it. Therefore, Ms. Phan's complaint that she did not know of the transfer has no basis.

During the process of the dispute settlement, Mr. Ngu and Ms. Phan also stated that the transfer price under the contract was 113.4 taels of gold. However, they failed to submit any evidence to prove such statement. Under the transfer contract dated 26 April 1996, the agreed price was 110 taels of gold. In the receipt dated 9 May 2000, Mr. Ngu signed for confirmation that "*I received the entire remaining amount of money that Mr. Tien and Ms. Ty paid for the transfer of land use rights and ownership of the house".* The note further added that Mr. Ngu had received so far in total 110 taels of gold. Therefore, there is sufficient basis to determine that the transfer price under the contract was 110 taels of gold and that Mr. Ngu and Ms. Phan were paid that amount of money in full.

Though parties did not specify in their contract the area of transferred land but they agreed in detail the four boundaries as follows "*the width of land parcel is seven meters (7m) calculated from the edge of the wall separating from Mr. Tay's house, the northeastern side borders on Xuan La-Xuan Dinh Street; the southeastern side borders on the land of Mr. Le Van Tay; the southwestern side borders on the land of Ms. Le Thi Soat and Mr. Vinh, the northwestern borders on the remaining land area of Mr. Ngu's family. The length of the land area bordering Xuan La-Xuan Dinh Street is along the whole land area…*".

In addition, the parties also agreed that Mr. Tien would receive all the compensation from the State when the front land area was used for road construction. Hence, the land area which the two parties agreed to be transferred is calculated from the edge of Xuan La-Xuan Dinh Street to the entire land area including the disputed land area.

Therefore, the court determined that the area of 23.4m^2 facing Xuan La-Xuan Dinh Street was included in the land area that Mr. Ngu agreed to transfer to Ms. Ty's family and that Ms. Ty's family paid an amount of 110 taels of gold in full and received house and land already. Thus, there is sufficient basis to determine that Mr. Ngu's family is compelled to return the area of 23.4m^2 at No. 39 Xuan La Street, Xuan La Ward, Tay Ho District, Hanoi to wife and husband Ms. Kieu Thi Ty and Mr. Chu Van Tien.

For the above reasons, pursuant to Article 291(3) and Article 297(1) of the Civil Procedure Code,

RULES

1. To reject Protest No. 63/QD-KNGGDT-V5 dated 14 May 2009 of the Chief Prosecutor of the Supreme People's Procuracy; to uphold Appellate Judgment No. 162/2008/DS-PT dated 4 September 2008 of the Supreme People's Court in Hanoi.

CONTENTS OF THE CASE LAW

"Regarding the contract on the transfer of land use rights and ownership of house dated 26 April 1996: The transfer of land use rights and ownership of house happened in 1996, after purchasing the real property, Ms. Ty and Mr. Tien paid fully the purchase price, and received the real property and remodeled the house and had their nieces and nephew come to live. Meanwhile, Mr. Ngu's family kept living on the remaining area of the land adjourning to the house of Ms. Ty's family. According to the testimony of Mr. Ngu's and Ms. Phan's children, after Mr. Ngu and Ms. Phan had transferred and delivered the real property to Mr. Tien and Ms. Ty, Mr. Ngu and Ms. Phan distributed the gold to their children. In addition, on 26 April 1996, Mr. Ngu wrote a "commitment" indicating that they wished to borrow the house that they had transferred to Ms. Ty to live while constructing their new house on the remaining part of the land and in actuality, they did use the land and house of Ms. Ty and Mr. Tien while constructing their house. Thus, there is sufficient basis to determine that Ms. Phan was aware of the transfer of land use rights and ownership of house between Mr. Ngu and Ms. Tien's family, did consent to that transfer and jointly carried out it. Therefore, Ms. Phan's complaint that she did not know of the transfer has no basis".

CASE LAW NO. 05/2016/AL
on case of "Dispute on inheritance"

This case law was adopted by the Judicial Council of the Supreme People's Court on 6 April 2016 and promulgated under Decision No. 220/QD/CA dated 6 April 2016 of the Chief Justice of the Supreme People's Court.

Source of the case law:

Cassation Decision No. 39/2014/DS-GDT dated 9 October 2014 of the Council of Adjudicators of the Supreme People's Court on the case concerning "*Dispute on inheritance*" in Ho Chi Minh City between the plaintiff being Ms. Nguyen Thi Thuong, Ms. Nguyen Thi Xuan against the defendant being Mr. Nguyen Chi Trai (Cesar Trai Nguyen), Ms. Nguyen Thi Thuy Phuong and Ms. Nguyen Thi Bich Dao; the persons with related rights and obligations being Ms. Nguyen Thi Xe, Nguyen Chi Dat (Danforth Chi Nguyen), Nguyen Thuan Ly, Nguyen Thi Trinh, Nguyen Chi Duc, Nguyen Thi Thuy Loan, Pham Thi Lien, Pham Thi Vui, Tran Duc Thuan, Tran Thanh Khang.

Overview of the case law:

In the dispute over inheritance, there was a party being entitled to part of the estate and contributed to the management and preservation of the estate, but objecting to the division of the estate (because that party thought the statute of limitations on an inheritance lawsuit had run out), no request for considering her contribution in the management and preservation of the estate was made. In case of deciding on the division of the estate, the court was supposed to consider the contribution of the heirs because the objection to division of the estate prevailed over the request for consideration of contribution.

Applicable provisions of laws relating to the case law:

Article 5.1 and Article 218 of the Civil Procedure Code 2004;

Key words of the case law:

"Claims", "Counter-claims", "Contribution effort to the management and preservation of the estate".

CONTENTS OF THE CASE

According to the petition dated 18 July 2008 and during the dispute settlement, Ms. Nguyen Thi Thuong and Ms. Nguyen Thi Xuan presented as follows: their parents, Mr. Nguyen Van Hung (passed away in 1978) and Ms. Le Thi Ngu (passed away in 1992), had 06 children, namely Ms. Nguyen Thi Xe, Mr. Nguyen Chi Trai, Ms. Nguyen Thi Xuan, Ms. Nguyen Thi Thuong, Ms. Nguyen Thi Trinh and Mr. Nguyen Chi Trai. Mr. Nguyen Chi Trai was married to Ms. Ong Thi Manh and they had 05 children, namely Mr. Nguyen Thuan Ly, Mr. Nguyen Thuan Huy, Ms. Nguyen Thi Quoi Duong, Mr. Nguyen Chi Dat (born in 1966) and Mr. Nguyen Chi Dat (born in 1968). Under Decision No. 413/2008 dated 31 March 2008, the People's Court of Ho Chi Minh City declared Mr. Trai, Ms. Manh, Mr. Thuan Huy, Ms. Quoi Duong, and Mr. Nguyen Chi Dat (born in 1968) deceased.

House No. 263 on Tran Binh Trong street, Ward 4, District 5, Ho Chi Minh City, of which Mr. Hung and Ms. Ngu received assignment of the land from Mr. Dao Thanh Phung in 1953, was built as the current residential house by the two in 1966. The real property had not yet been granted with the certificate of house ownership and land use rights and were only declared in 1999. Mr. Hung and Ms. Ngu passed away without any will and the house has been managed by Ms. Nguyen Thi Thuy Phuong, being the daughter of Mr. Nguyen Chi Trai. While managing the house, Ms. Phuong leased Ms. Nguyen Thi Bich Dao a part of the house for a bakery business. When Ms. Phuong was living there, she carried out some repair in the house, but it was not material. Mr. Trai and his wife did not contribute anything to the construction and repair of the house because Mr. Trai was sent to reeducation meanwhile his wife Ms. Tu was unemployed, their children were too young and did not have any income to contribute. If Ms. Phuong has evidence for her repair expenses and requested compensation for such expenses, Ms. Thuong and Ms. Xuan would pay such compensation.

The plaintiffs requested division of the estate over the aforesaid house pursuant to the regulations and receipt of the house in exchange for monetary reimbursement to the other heirs. Ms. Phuong is not an heir, and thus she is required to return the house. The plaintiffs did not agree to provide support Ms. Phuong in moving elsewhere.

The defendant being Ms. Nguyen Thi Thuy Phuong presented that: She acknowledged the family relationships. Her father Mr. Nguyen Chi Trai and her mother Ms. Nguyen Thi Tu had three children consisting of herself, Mr. Nguyen Chi Duc and Ms. Nguyen Thi Thuy Loan (Mr. Duc and Ms. Loan are now living in Canada). House No. 263 on Tran Binh Trong Street was purchased by her paternal grandparents in 1953, which was then a house with roof tiles and board walls. In 1955, her father got married to her mother and lived in this house together. In 1978, her father emigrated to the USA and her mother died in 1980. She has lived in this house from her youth up to now. She repaired and renovated the house many times such the installing aluminum doors, building mezzanine walls, installing ceramic bricks on the roof terrace, and building the wall in the back of the house. She was entitled to her father's part of the inheritance because in 2006, her father wrote a document completely assigning to her his inheritance in Vietnam, and thus, she should be entitled to the part of the inheritance which her father is entitled to receive from Mr. Hung and Ms. Ngu. She did not consent to the request of the plaintiffs because the statute of limitation for division of the estate had run out and now, she and her 02 children are living in this house. She had leased part of the house to Ms. Nguyen Thi Bich Dao for a bakery business and she and Ms. Dao would settle with each other with respect to the lease of the house.

The defendant being Mr. Nguyen Chi Trai presented that: Under the document dated 14 October 2009, Mr. Trai filed a petition stating that on 25 April 2006, he did write the document entitling Ms. Phuong to the inheritance which he enjoyed from his parents in Vietnam, and now by this petition, Mr. Trai requests to cancel the aforementioned document and proposes authorizing Ms. Thuong and Ms. Xuan to represent him in the court. After the court finishes the hearing, he wishes to assign all of his part of the inheritance to Mr. Duc who is currently residing in Canada.

After the first-instance hearing, on 22 April 2010, Mr. Trai submitted a statement setting out his disapproval of the division of the estate over House No. 263 Tran Binh Trong Street and delegated Ms. Phuong to continue maintaining and living, and he and his wife

contributed money to the house. However, on 14 July 2010, Mr. Trai sent another document stating that he delegated his son being Nguyen Chi Duc his part of the inheritance received from his parents. On 11 March 2011, Mr. Trai submitted a statement setting out his agreement to the decisions in the first-instance judgment and he does not appeal.

Persons with related rights and obligations:

- Ms. Nguyen Thi Trinh (child of Mr. Hung and Ms. Ngu) presented that: She agreed on the family relationships and origin of the assets as presented by the plaintiffs. In 1966, the house had leaks, and her parents repaired the house with the contribution of their children including her but, she did not request the amount that she contributed. The contention of Ms. Phuong that her parents and she contributed to the repair of the house was incorrect; Ms. Nguyen Thi Trinh proposed that her part of the inheritance be assigned to Ms. Xuan and Ms. Thuong to manage and Ms. Dao and Ms. Phuong return the house.

- Mr. Nguyen Chi Dat (born in 1966) and Mr. Nguyen Thuan Ly presented that: Their parents, Mr. Nguyen Chi Trai and Ms. Ong Thi Manh, together with their 03 siblings were dead on the ocean upon the illegal border-cross in 1982. Mr. Dat and Mr. Ly agreed with the plaintiffs on the division of the estate. They also claimed for the entitlement of inheritance of Mr. Hung and Mr. Ngu and assigned such inheritance to Ms. Thuong and Ms. Xuan to manage.

- Ms. Nguyen Thi Xe (child of Mr. Hung and Ms. Ngu) agreed with the presentations of the plaintiffs on the family relationships and the requests by the plaintiffs, and she assigned the part of her inheritance to her 02 children being Ms. Pham Thi Vui and Ms. Pham Thi Lien.

- The testimonies of Ms. Nguyen Thi Thuy Loan and Mr. Nguyen Chi Duc pursuant to the Power of Attorney dated 21 May 2007 (with consular legalization) are as follows: Ms. Loan and Mr. Duc authorized Ms. Phuong to decide all matters concerning the dispute or asset distribution in Vietnam (this Power of Attorney was produced by Ms. Phuong in accordance with the petition submitted by Ms. Phuong on 25 March 2011 after the first-instance hearing).

Ms. Loan submitted a petition (enclosed with the Power of Attorney) requesting to be absent at the hearing dated 13 August 2009. With regard to the assets in dispute, her parents made contributions in cash, while her aunts and uncles had contributed nothing. After 1975, everyone left and there was only Ms. Phuong and grandparents left behind. Therefore, Ms. Loan requested the Court to permit Ms. Phuong to stay at the house in dispute.

In First-instance Judgment No. 3363/2009/DSST dated 18 November 2009, the People's Court of Ho Chi Minh City ruled:

- To determine that the house at No. 263 Tran Binh Trong Street is inheritance property of Mr. Nguyen Van Hung and Ms. Le Thi Ngu; each part of the inheritance is VND10,655,687,000: 6 = VND1,775,947,800.

- To compel Ms. Phuong and her child as well as Ms. Dao to return the house in dispute to Ms. Thuong and Ms. Xuan. Ms. Thuong and Ms. Xuan are responsible for paying the other heirs the amount of money to which they are entitled;

- To record that Mr. Nguyen Chi Trai assigned to his son Mr. Nguyen Chi Duc to receive his part of the inheritance.

On 30 November 2009, Ms. Nguyen Thi Thuy Phuong submitted an appeal arguing that given that Mr. Hung and Ms. Ngu passed away over 10 years ago, the statute of limitation for initiating an inheritance lawsuit had run out.

On 15 March 2011, Ms. Phuong supplemented the appeal with the following amendments:

- Her father being Mr. Trai was not agreeable to the division of the estate and allowed her to manage this house. The co-heirs did not provide any documents proving that the house in dispute was a common property that has not yet been divided. Her parents and their children, including herself, have stably lived for over 50 years in the house, and preserved and conserved the house. Therefore, compelling them to move out of the house is unreasonable and irrational.

In Appellate Civil Judgment No. 116/2011/DS-PT dated 10 May 2011, the Appellate Court of the Supreme People's Court in Ho Chi Minh City ruled to uphold the first-instance Judgment.

On 16 June 2011, Ms. Nguyen Thi Thuy Phuong submitted the application for cassation against the aforesaid appellate civil judgment.

In Decision No. 158/2014/KN-DS dated 6 May 2014, the Chief Justice of the Supreme People's Court protested against the aforementioned Appellate Civil Judgment and First-instance Civil Judgment No. 3363/2009/DSST dated 18 November 2009 of the People's Court of Ho Chi Minh City; transferred the case to the People's Court of Ho Chi Minh City to re-conduct the court procedures in accordance with the law.

At the cassation hearing, the representative of Supreme People's Procuracy agreed with the protest of the Chief Justice of the Supreme People's Court.

The Judicial Council of the Supreme People's Court finds:

The couple Mr. Nguyen Van Hung (died in 1978) and Ms. Le Thi Ngu (died in 1992) had 06 children, namely Ms. Nguyen Thi Xe, Mr. Nguyen Chi Trai, Ms. Nguyen Thi Xuan, Ms. Nguyen Thi Thuong, Ms. Nguyen Thi Trinh and Mr. Nguyen Chi Trai. The couple Mr. Nguyen Chi Tranh and Ms. Ong Thi Manh had 05 children, namely Mr. Nguyen Thuan Ly, Mr. Nguyen Thuan Huy, Ms. Nguyen Thi Quoi Duong and Mr. Nguyen Chi Dat (born in 1966) and Mr. Nguyen Chi Dat (born in 1968). Mr. Trai, Ms. Manh, Mr. Huy, Ms. Duong and Mr. Nguyen Chi Dat (born in 1968) were declared dead on 31 March 2008 under Decision No. 413/2008 dated 31 March 2008 of the People' Court of Ho Chi Minh City.

Mr. Hung and Ms. Ngu left no will upon their death. Their descendants and Ms. Phuong (child of Mr. Trai) acknowledged that Mr. Hung and Ms. Ngu purchased House No. 263 Tran

Binh Trong Street, Ward 4, District 5, Ho Chi Minh City from Mr. Dao Thanh Phung in 1953. The house is the asset created by Mr. Hung and Ms. Ngu and currently being managed and used by Ms. Phuong.

In 2008, Ms. Xuan and Ms. Thuong initiated a lawsuit to request the distribution of the inheritance left behind by Mr. Hung and Ms. Ngu.

The parties in dispute unanimously determined that Mr. Trai had resided in the USA before 1 July 1991. The first-instance and appellate courts based on Resolution No. 1037/2006/NQ-UBTVQH dated 27 July 2006 of the Standing Committee of National Assembly to determine that the statute of limitation to initiate a lawsuit on inheritance against the estate of Mr. Hung had expired has sufficient basis. The statute of limitation to divide the estate of Ms. Ngu had already run out. However, Mr. Trai and the co-heirs of the two acknowledged that the estate of Ms. Ngu is the common property of the heirs that has not yet been divided and agreed to divide equally the estate to the heirs. Accordingly, the first-instance and appellate courts based on part a, point 2.4, section 2 of chapter I of Resolution No 02/2004/NQ-HDTP dated 10 August 2004 of the Judicial Council of the Supreme People's Court, guiding the application of law in settling civil, marital and family-related disputes to divide the estate of Ms. Ngu to the heirs.

Mr. Hung passed away in 1978. Pursuant to the provisions of the Law on Marriage and Family 1959, Mr. Trai shall be entitled to 1/7 of the estate of Mr. Hung. Mr. Trai's inheritance from Mr. Hung is the common property of Mr. Trai and Ms. Tu. Ms. Tu passed away in 1980, the heirs of Ms. Tu consisted of Mr. Trai and 03 children of Mr. Trai and Ms. Tu, including Ms. Phuong. Accordingly, Ms. Phuong shall be entitled to a part of the estate of Ms. Tu. However, it was unreasonable and incorrect for Mr. Trai to assign Mr. Duc the entire part of his inheritance from Mr. Hung.

Ms. Phuong was born in 1953 and the parties in dispute confirmed Ms. Phuong has lived in the house of her grandparents from her youth up to now. Since 1982, Ms. Phuong became the owner of household registration over this house. Ms. Ngu lived in another place. Ms. Thuong changed her household registration to this house from 1979 but she did not live there, thus Ms. Phuong has directly managed and used the house in dispute since the death of Ms. Ngu. The other parties in dispute have stable residence at other places. Upon the division of the estate of the common property, the first-instance and appellate courts did not consider facilitating for Ms. Phuong to have residence but compelled her to return the house to the plaintiffs even though part of the house was her inheritance from her mother being Ms. Tu. This is not appropriate

Although Ms. Phuong is not in the first class in the line of succession of Mr. Hung and Ms. Ngu, she is the grandchild of Mr. Hung and Ms. Ngu and spent much effort and money managing and repairing the house. However, during the dispute settlement, Ms. Phuong made no request for consideration of her contribution because she thought that the statute of limitation for division of the estate had already run out. Therefore, she did not agree to return the house to the other heirs. Consequently, the request of Ms. Phuong to determine the rights prevailed over the request for consideration of her contribution. However, by not considering Ms. Phuong's contribution, the first-instance and appellate courts failed to fully settle the claims of the parties in dispute.

In light of the aforementioned reasons, pursuant to Article 297.3, Article 299.1, and Article 299.2 of the Civil Procedure Code, amended and supplemented in 2011;

RULES

1. To set aside Appellate Civil Judgement No. 116/2011/DS-PT dated 10 May 2011 of the Appellate Court of the Supreme People's Court in Ho Chi Minh City in its entirety and First-instance Civil Judgment No. 3363/2009/DSST dated 18 November 2009 of the People's Court of Ho Chi Minh City in its entirety over the dispute on inheritance between the plaintiffs, Ms. Nguyen Thi Thuong and Ms. Nguyen Thi Xuan and the defendants, Ms. Nguyen Thi Thuy Phuong and other persons with related rights and obligations.

2. To transfer the case to the People's Court of Ho Chi Minh City to re-conduct the first-instance procedures in accordance with the law.

CONTENTS OF THE CASE LAW

"*Mr. Hung passed away in 1978. Pursuant to the provisions of the Law on Marriage and Family 1959, Mr. Trai shall be entitled to 1/7 of the estate of Mr. Hung. Mr. Trai's inheritance from Mr. Hung is the common property of Mr. Trai and Ms. Tu. Ms. Tu passed away in 1980, the heirs of Ms. Tu consisted of Mr. Trai and 03 children of Mr. Trai and Ms. Tu, including Ms. Phuong. Accordingly, Ms. Phuong shall be entitled to a part of the estate of Ms. Tu. However, it was unreasonable and incorrect for Mr. Trai to assign Mr. Duc the entire part of his inheritance from Mr. Hung".*

"*Although Ms. Phuong is not in the first class in the line of succession of Mr. Hung and Ms. Ngu, she is the grandchild of Mr. Hung and Ms. Ngu and spent much effort and money managing and repairing the house. However, during the dispute settlement, Ms. Phuong made no request for consideration of her contribution because she thought that the statute of limitation for division of the estate had already run out. Therefore, she did not agree to return the house to the other heirs. Consequently, the request of Ms. Phuong to determine the* rights prevailed over *the request for consideration of her contribution. However, by not considering Ms. Phuong's contribution, the first-instance and appellate courts failed to fully settle the claims of the parties in dispute*".

CASE LAW NO. 06/2016/AL
on case of "Dispute on inheritance"

This case law was adopted by the Judicial Council of the Supreme People's Court on 06 April 2016 and promulgated under Decision No. 220/QD-CA dated 06 April 2017 by the Chief Justice of the Supreme People's Court.

Source of the case law:

Cassation Decision No. 100/2013/GDT-DS dated 12 August 2013 of the Judicial Council of the Supreme People's Court on case of *"Dispute on inheritance"* in Hanoi between the plaintiff being Mr. Vu Dinh Hung and the defendant being Ms. Vu Thi Tien (also known as Hien) and Ms. Vu Thi Hau; persons with related rights and obligations are Mr. Vu Dinh Duong, Ms. Vu Thi Cam, Ms. Vu Thi Thao, Ms. Nguyen Thi Kim Oanh, and Ms. Ha Thuy Linh.

Overview of the case law:

Regarding the dispute on estate, in the case where the heirs reside abroad, if the court has requested judicial entrustment and gathered evidence in accordance with law, but still cannot determine their residence, the court must still resolve the request of the plaintiff; if it is possible to determine the estate and the class in the line of succession, and there is no will, the resolution of the division of the estate for the plaintiff will be carried out in accordance with law; the parts of the inheritance belonging to the absent heirs shall be temporarily managed by the heirs residing in Vietnam and later handed over to the absent heirs.

Applicable provisions of laws relating to the case law:

- Article 93, Article 168.1(dd) of the Civil Procedure Code 2014;
- Articles 676 and 685 of the Civil Code 2005.

Key words of the case law:

"Disputes on inheritance", "Heirs residing abroad with unknown residence", "Judicial entrustment", "Division of estate", "Management of estate".

CONTENTS OF THE CASE

In the Statement of Claims dated July 2007, Mr. Vu Dinh Hung as the plaintiff presented as follows:

His parents being Mr. Vu Dinh Quang and Ms. Nguyen Thi Thenh had 6 children, namely Mr. Vu Dinh Duong, Ms. Vu Thi Cam, Ms. Vu Thi Thao, Mr. Vu Dinh Hung, Ms. Vu Thi Tien (also known as Hien), and Ms. Vu Thi Hau. Mr. Quang and Ms. Thenh had a house of 123m^2 at No. 66 Dong Xuan Street, Hoan Kiem District, Hanoi. In 1979, Mr. Quang passed away without leaving a will; Ms. Thenh and her three children being Mr. Hung, Ms. Hau, and Ms. Tien lived in the house; Mr. Duong, Ms. Thao, and Ms. Cam went abroad. In the minutes of the family meeting dated 28 October 1982, Ms. Thenh, himself (Mr. Hung), Ms. Tien, and Ms. Hau

agreed to temporarily divide the house into 3 parts for himself, Ms. Hau and Ms. Tien to use. In 1987, Ms. Thenh passed away. In 1989, Ms. Tien secretly sold to Ms. Nguyen Thi Kim Oanh her part of the house that was temporarily divided. When he initiated a lawsuit requesting the court to divide the estate, on 31 October 1993, Ms. Hau continued to sell to Ms. Ha Thuy Linh her part of the house that was temporarily divided. The sale and purchase of the house was wrong. He confirmed that his 3 siblings residing abroad (Mr. Duong, Ms. Cam, and Ms. Thao) had written documents to gift to him their parts of the inheritance, so he requested the court to divide their parents' estate in accordance with law.

Mr. Hung presented copies of the powers of attorney dated 3 March 1992 of Mr. Vu Dinh Duong, dated 1 May 1993 of Ms. Vu Thi Cam, and dated 28 October 1991 of Ms. Vu Thi Thao with contents to authorize for Mr. Hung to manage and watch over their parts of the asset being 1/6 of the house located at No. 66 Dong Xuan. After submitting the Statement of Claims, Mr. Hung presented additional documents comprising *"Letter of assignment of the inheritance right"* dated 25 April 1995 of Mr. Vu Dinh Duong, *"Letter of assignment of the inheritance right"* dated 10 May 1995 of Ms. Vu Thi Cam, and *"Letter of gift of the inheritance right"* of Ms. Vu Thi Thao. The aforesaid documents stated that they were made in abroad and had the contents confirming that: the parents had left the house at No. 66 Dong Xuan for the 6 children, however, Ms. Tien (also known as Hien) and Ms. Hau had sold parts of the house that their parents left for them, which disobeyed their parents' instructions (they must not sell and must not let outsiders reside)… Mr. Duong, Ms. Thao, and Ms. Cam had gifted to Mr. Hung their parts of the inheritance, each being to 1/6 of the house at No. 66 Dong Xuan, for him to maintain a place for ancestor worship and also for three families residing abroad to visit and worship the ancestors. Also, they are suggested that Mr. Hung be entitled to the asset (documents presented by Mr. Hung were just photocopies).

The defendants presented:

Ms. Vu Thi Tien presented: She confirmed the consanguinity and the origin of the house No. 66 Dong Xuan as presented by Mr. Hung. In 1989, Ms. Oanh sold her part of the inheritance, handed over the house and completed procedures for the sale and purchase of the house to the buyer at the Land and Housing Department in Hanoi. Upon moving into the house, Ms. Oanh agreed with Mr. Hung and Ms. Hau on exchange some construction works in the house for the convenient use by the parties. Afterward, Mr. Hung submitted a complaint, and thus the Land and Housing Department revoked the dossier for sale and purchase of the house between her and Ms. Oanh. Ms. Hau also sold her part of the house to another person. She asserted that Ms. Thenh had already given money to the 3 people who went abroad, so they had no request regarding the house. She had already sold her part of the house to Ms. Oanh, therefore, she had no responsibility with respect to the already sold part of the house.

Ms. Vu Thi Hau presented: She confirmed the consanguinity and the origin of the house No. 66 Dong Xuan as presented by Mr. Hung. She also confirmed the division of the house and the sale of Ms. Tien's part of the house as presented by Ms. Tien. She asserted that she did notify her siblings abroad and obtained their consents when selling her part of the house.

She requested the court to divide the estate, allocating to her the part of the house that she sold to Ms. Linh and Mr. Khoi.

The persons with related rights and obligations presented:

The wife and husband Ms. Ha Thuy Linh and Mr. Hoang Manh Khoi presented: When they bought the house, Ms. Hau did show them the minutes of the family meeting, so they both agreed to buy. They paid in full, moved into the house, and have lived there since then. They request the court to legitimate the part of the house already bought from Ms. Hau.

Ms. Nguyen Thi Kim Oanh presented: On 18 October 1992, she bought the house that Ms. Tien was given, with the price of 30,000,000 Dong. The transaction was permitted by governmental authorities. Upon purchasing the house, she moved into the house and agreed with Mr. Hung to exchange certain areas of the house. She requested the court to recognize the sale and purchase agreement of the house between Ms. Tien and her.

In First-instance Civil Judgment No. 20/DSST dated 23 May 1995, the People's Court of Hanoi ruled: to accept the request of Mr. Duong, Ms. Cam, Ms. Thao represented by Mr. Hung and Mr. Hung to divide the estate of Mr. Quang and Ms. Thenh; To accept a part of the will established on 28 October 1982, to determine the estate to be about VND1,228,151,520, to divide the estate in kind being the house and land for 3 people being Mr. Hung, Ms. Hau, and Ms. Tien. The sales and purchases between Ms. Tien and Ms. Oanh and between Ms. Hau and Ms. Linh were carried out in accordance with government regulation.

Ms. Tien submitted an appeal and requested a review of the calculate method for the area of the estate. Mr. Hung also submitted appealed on the reason that the court was not objective.

In Appellate Civil Judgment No. 115 dated 10 October 1995, the Appellate Court of the Supreme People's Court in Hanoi ruled: To set aside the first-instance Judgment and to transfer the case to the People's Court in Hanoi to re-conduct first-instance procedures.

In First-instance Civil Judgment No. 50/DSST dated 11 September 1996, the People's Court of Hanoi ruled to accept the request of Mr. Hung, Mr. Duong, Ms. Cam, and Ms. Thao who was represented by Mr. Hung for the division of the estate of Mr. Quang and Ms. Thenh; To recognize the voluntary gifts of the parts of the estate from Mr. Duong, Ms. Cam and Ms. Thao residing abroad to Mr. Hung and to divide the estate in kind for Mr. Hung, Ms. Hau and Ms. Tien (each person is entitled to 1/3 of the store and a part of the back of the house). Ms. Hau and Ms. Tien must pay the difference to Mr. Hung (Ms. Hau's payment of VND156,824,381; Ms. Tien's payment of VND140,774,106). Transactions of the house between Ms. Tien and Ms. Oanh and between Ms. Hau and Ms. Linh were unlawful.

Mr. Hung submitted an appeal.

InDecision No. 82/TDC dated 15 July 1997, the Appellate Court of the Supreme People's Court in Hanoi ruled to temporarily suspend the resolution of the case.

Upon Resolution No. 1037/2006/NQ-UBTVQH11 dated 27 July 2006 of the Standing Committee of the National Assembly on civil transactions established before 1 July 1991 on houses, in which there is a party being an overseas Vietnamese, the Appellate Court of the Supreme People's Court in Hanoi resumed resolution of the case.

In Appellate Civil Judgment No. 142/2007/DSPT dated 03 July 2007, the Appellate Court of the Supreme People's Court in Hanoi set aside and transferred the case to the People's Court in Hanoi to re-conduct the first-instance procedures with the finding that: The Statement of Claims was written and signed by only Mr. Hung, the powers of attorney of Mr. Duong, Ms. Thao, and Ms. Cam also do not express the authorization to initiate a lawsuit for division of the estate (except for Ms. Thao's power of attorney); At the present, the involved parties acknowledge that Mr. Duong and Ms. Thao have passed away, therefore, it is necessary to verify these facts and involve their heirs in the litigation; To re-evaluate the land and home accordingly.

After re-accepting jurisdiction over the case, the involved parties presented: Mr. Duong and Ms. Thao passed away around 2002. The first-instance court requested Mr. Hung to provide death certificates of Mr. Duong and Ms. Thao, to supplement the Statement of Claims in accordance with Article 164.2 of the Civil Procedure Code (full name, address, nationality of Mr. Duong's and Ms. Thao's children; name, address of the person living on the land attached to a house in dispute), but Mr. Hung could not provide.

In Decision No. 04/2008/QDST-DS dated on 17 January 2008, the People's Court of Hanoi suspended the resolution of the case and returned advance cost fees to Mr. Hung.

On 29 January 2008, Mr. Hung submitted an appeal on the grounds that the court's suspension of the resolution of the case was incorrect.

In Decision No. 168/2008/DS-QDPT dated 4 September 2008, the Appellate Court of the Supreme People's Court in Hanoi accepted the appeal of Mr. Hung and set aside the first-instance decision on the grounds that: the first-instance court applying Article 192.2 to suspend the resolution of the case was incorrect, which deprived the involved parties the right to litigate.

After re-accepting jurisdiction over the case, the People's Court of Hanoi requested Mr. Hung to provide documents being name, age, address of the heirs of Mr. Duong and Mr. Thao; written authorization or waivers of inheritance of such people; name and address of people residing on the Ms. Oanh's property. However, Mr. Hung could not provide the aforementioned documents.

In Decision No. 54/DS-ST dated 30 September 2009, the People's Court of Hanoi ruled: To suspend the resolution of the case on the division of the estate, to return the petition, attached documents and evidence to Mr. Hung.

Mr. Hung submitted an appeal.

In Decision No. 44/2010/QD-PT dated 9 March 2010, the Appellate Court of the Supreme People's Court in Hanoi ruled: To upheld the first-instance decision.

Mr. Hung submitted a request for cassation procedure.

In Decision No. 35/2013/KN-DS dated 22 January 2013, the Chief Justice of the Supreme People's Court protested against Decision No. 44/2010/QD-PT dated 9 March 2010 of the Appellate Court of the Supreme People's Court in Hanoi; requested the Judicial Council of the Supreme People's Court to review the case under the cassation procedure; set aside the above-mentioned appellate civil decision and set aside the first-instance decision on the suspension of resolution of Civil Case No. 54/2009/DS-ST dated 30 September 2009 of the People's Court of Hanoi; transferred the case to the People's Court of Hanoi to re-conduct first-instance procedure in accordance with law.

In the cassation hearing, the representative of the Supreme People's Procuracy unanimously agreed with the Protest of the Chief Justice of the Supreme People's Court.

The Judicial Council of the Supreme People's Court finds:

House No. 66 Dong Xuan Street, Hoan Kien District, Hanoi was built by Mr. Vu Dinh Quang (passed away in 1979) and Ms. Nguyen Thi Thenh (passed away in 1987). They had 6 children consisting of 3 children being Mr. Vu Dinh Duong, Ms. Vu Thi Cam, Ms. Vu Thi Thao residing abroad since 1979 and 3 other children being Mr. Vu Dinh Hung, Ms. Vu Thi Tien (also known as Hien), and Ms. Vu Thi Hau residing in Vietnam. After Mr. Quang had passed away, only Ms. Thenh, Mr. Hung, Ms. Tien, and Ms. Hau managed the house. Upon Ms. Thenh passing away, Mr. Hung, Ms. Tien, and Ms. Hau divided the house into three parts for their residence. Since 18 October 1992, Ms. Tien sold her part of the house to Ms. Nguyen Thi Kim Oanh and on 31 October 1993, Ms. Hau sold her part of the house to Ms. Ha Thuy Linh.

In 1993, Mr. Hung initiated a lawsuit requesting the division of the above-mentioned estate including the land and house of his parents in accordance with law. The resolution of the case lasted from 1993 to 1996 and was suspended in the appellate hearing in 1997. In 2007, the jurisdiction over the case was re-accepted.

When resolving the case, before the period of temporary suspension (1997), Mr. Hung had provided petitions and powers of attorney established in 1991, 1992, 1993, and 1994 of Mr. Duong, Ms. Cam, and Ms. Thao with the content of assigning to Mr. Hung to watch over their parts of the estate being the land and House No. 66 Dong Xuan Street; later on, Mr. Hung again provided documents established in 1995 of Mr. Duong, Ms. Thao, and Ms. Cam with the content of gifting Mr. Hung their parts of the estate in dispute. Documents stamped and sealed in their home countries (Mr. Duong residing in England, Ms. Cam residing in France, and Ms. Thao residing in the United States) were just photocopies. Nevertheless, the involved parties clearly stated the house number and addresses of drafter. In the process of re-accepting jurisdiction over the case after its temporary suspension, Mr. Hung, Ms. Tien, and Ms. Hau stated that Mr. Duong and Ms. Thao passed away around 2002. Mr. Hung also asserted that addresses of Ms. Cam and Ms. Thao were unchanged and he also contacted Mr. Duong's children but did not receive any reply (Records No. 376, 377, 382). The first-instance court requested Mr. Hung to provide death certificates of Mr. Duong and Ms. Thao; name and address of the children of Mr. Duong and Ms. Thao. Mr. Hung presented that he could not provide (the above-mentioned documents)

and requested the court to gather evidence to resolve the case in accordance with law (Record No. 390). Therefore, the dossier contained the addresses of people who resided abroad, and the court's request for Mr. Hung to provide death certificates of Mr. Duong and Ms. Thao was unnecessary because three people in Vietnam confirmed that Ms. Thao and Mr. Duong had passed away. The first-instance court should have requested judicial entrustment in accordance with law, collected evidence with respect to Mr. Duong and Ms. Thao to clarify the time of their deaths, and in the case where they have heirs, obtained the heirs' opinions on the resolution of the case. Depend on each situation on the collection of evidence, the case will be resolved in accordance with law. In the case where the court cannot collect any further evidence, the Mr. Hung's request to be entitled to inherit under the law must still be settled. Parts of the estate belonging to Mr. Duong and Ms. Thao shall temporarily be handed over to people residing in Vietnam to manage so that later on their heirs can receive such parts in accordance with the law; by doing so, the case will be entirely resolved. As for the people who are residing in the part of the house purchased from Ms. Tien, Mr. Tien is obliged to provide their names and ages. The first-instance court requesting Mr. Hung to provide the names and ages of the aforementioned people was incorrect. The first-instance Court ruled to suspend the resolution of the case on the ground that Mr. Hung could not provide the names and the addresses of the people who bought the house from Ms. Oanh and of the children of Mr. Duong and Ms. Thao was incorrect. The appellate court should have set aside the first-instance decision and transferred the case to the first-instance court for re-settlement as opposed to upholding the first-instance judgment is incorrect.

In addition, subject to documents contained in the dossier and the testimony of Mr. Hoang Manh Khoi on 17 October 2007 (Record No. 373) and the "*Agreement for sale of a house*" dated 31 October 1993 (Record No. 18), Ms. Hau sold the part of the house under her management to Ms. Ha Thuy Linh (Ms. Linh's husband is Mr. Hoang Manh Khoi), therefore, the name "*Nguyen Thi Thuy Linh*" stated in first-instance and appellate decisions was inaccurate and needed to be amended properly.

For the above reasons, pursuant to Article 297.3 and Article 299 of the Civil Procedure Code;

RULES

1. To set aside Decision No. 44/2010/QD-PT dated 9 March 2010 of the Appellate Court of the Supreme People's Court in Hanoi and Decision on Suspension of Resolution of the Case No. 54/2009/DS-ST dated 30 September 2009 of the People's Court of Hanoi in connection regarding a dispute on inheritance between the plaintiff being Mr. Vu Dinh Hung and the defendants being Ms. Vu Thi Tien and Ms. Vu Thi Hau; persons with related rights and obligations are Mr. Vu Dinh Duong, Ms. Vu Thi Cam, Ms. Vu Thi Thao, Ms. Nguyen Thi Kim Oanh, and Ms. Ha Thuy Linh.

2. To transfer the case to the People's Court of Hanoi to re-conduct first-instance procedures in accordance with law.

CONTENTS OF THE CASE LAW

"The first-instance court should have requested judicial entrustment in accordance with law, collected evidence with respect to Mr. Duong and Ms. Thao to clarify the time of their deaths, and in the case where they have heirs, obtained the heirs' opinions on the resolution of the case. Depend on each situation on the collection of evidence, the case will be resolved in accordance with law. In the case where the court cannot collect any further evidence, the Mr. Hung's request to be entitled to inherit under the law must still be settled. Parts of the estate belonging to Mr. Duong and Ms. Thao shall temporarily be handed over to people residing in Vietnam to manage so that later on their heirs can receive such parts in accordance with the law; by doing so, the case will be entirely resolved. As for the people who are residing in the part of the house purchased from Ms. Tien, Mr. Tien is obliged to provide their names and ages. The first-instance court requesting Mr. Hung to provide the names and ages of the aforementioned people was incorrect. The first-instance Court ruled to suspend the resolution of the case on the ground that Mr. Hung could not provide the names and the addresses of the people who bought the house from Ms. Oanh and of the children of Mr. Duong and Ms. Thao was incorrect. The appellate court should have set aside the first-instance decision and transferred the case to the first-instance court for re-settlement as opposed to upholding the first-instance judgment is incorrect".

CASE LAW NO. 07/2016/AL
on recognition of contracts for sale and purchase of house entered into before 1 July 1991

This case law No. 07/2016/AL was adopted by the Judicial Council of the Supreme People's Court on 17 October 2016 and promulgated under Decision No. 698/QD-CA dated 17 October 2016 by the Chief Justice of the Supreme People's Court.

Source of the case law:

Cassation Decision No. 126/2013/DS-GDT dated 23 September 2013 of the Judicial Council of the Supreme People's Court on "*Disputes on the rights of ownership and use of house"* in Hanoi in which Mr. Nguyen Dinh Song, Ms. Nguyen Thi Hong, and Ms. Nguyen Thi Huong are the plaintiffs and Mr. Do Trong Thanh, Ms. Do Thi Nguyet, Mr. Vuong Chi Tuong, Mr. Vuong Chi Thang, Ms. Vuong Bich Van, Ms. Vuong Bich Hop are the defendants; The parties with related rights and obligations include Ms. Nguyen Thi Lan, Ms. Nguyen Thi Hay, Ms. To Thi Lam, Mr. Nguyen Dinh Uan, Ms. Nguyen Thi Hop, Mr. Nguyen Dinh Hoa, Ms. Nguyen Thi Minh Nguyet, Ms. Tran Thi Bich, Mr. Vu Dinh Hau.

Location of contents of the case law:

Paragraph 4 of the *"Whereas"* part of the cassation decision as above-mentioned.

Overview of the case law:

- ***Background of the case law:***

  Where a sale and purchase contract of a house was made in writing before 1 July 1991 which was signed by the seller and noted that the seller received payment in full. The buyer did not sign the contract, but he/she kept the contract, managed and stably used the house over the long period without any dispute of payment.

- ***Legal resolution:***

  In this case, the contract will be proofs of the full payment of the buyer to the seller and the intention of the buyer to agree with the sale and purchase contract of the house. Therefore, the contract will be legally recognized.

Applicable provisions of laws relating to the case law:

- Articles 81, 82, and 83 of the Civil Procedure Code 2004 (corresponding to Articles 93, 94, 95 of the Civil Procedure Code 2015);

- Resolution No. 58/1998/NQ-UBTVQH10 dated 20 August 1998 of the Standing Committee of the National Assembly on civil transactions of house entered into before 1 July 1991.

Key words of the case law:

"Contracts for sale and purchase of house", "One party does not sign the contract", "Verifying evidence".

CONTENTS OF THE CASE

Pursuant to the Statement of Claims dated 6 March 2016 and in the process of handling the dispute, Mr. Nguyen Dinh Song as the plaintiff presented: His father is Mr. Nguyen Dinh Chien (pass away in 1998) and his mother is Ms. Nguyen Thi Mo (passed away in 2005). His parents had 4 children consisting of Mr. Song (the plaintiff), Ms. Nguyen Thi Hong, Ms. Nguyen Thi Huong, and Ms. Nguyen Thi Lan. Previously, his family lived at No. 2 Hang Bun and Mr. Nguyen Dinh Nhuan being his elder uncle lived at No. 10 Hang Bun. After his uncle returned from an evacuation, the State took his uncle's house and assigned it to another person for use. As such, his father gave house No. 2 Hang Bun to Mr. Nhuan and his father's family rented a house elsewhere. Mr. Do Trong Thanh signed a contract to lease to his father the 2nd floor of the house No. 19 Thuoc Bac Street on 1 February 1972. The house No. 19 Thuoc Bac Street was jointly owned by Mr. Thanh and his four siblings being Ms. Do Thi Nga, Ms. Do Song Toan, Ms. Do Thi Nguyet, and Mr. Do Trong Cao. Since Mr. Cao needed money for medical treatment, Mr. Cao sold a room of 38m^2 on the 2nd floor of the house No. 19 Thuoc Bac to his family. The contract signed by Mr. Cao did not contain date; it stated the price of VND6,550 and Mr. Cao received payment in full. When Mr. Cao sold the room of 38m^2, Mr. Cao gave his father the land title of the house No. 19 Thuoc Bac which recorded that Mr. Cao was entitled to 8/12 of the house, and the remaining parts of the house (4/12) are owned jointly by Mr. Thanh, Ms. Nga, Ms. Nguyet, and Ms. Toan. Previously, Mr. Thanh and his siblings had sold the 1st floor of the house No. 19 Thuoc Bac to the wife and husband Mr. Vu Dinh Tiep and Ms. Tran Thi Bich; Mr. Cao renovated the kitchen of 7m^2 on the 2nd floor as his residence. After Mr. Cao passed away on 5 November 1972, Mr. Thanh and his siblings being Ms. Nga and Ms. Nguyet sold entirely the area of 7m^2 on the 2nd floor to his family with the price of VND3,000 and the sellers legitimated the transaction via a contract dated 5 November 1972 (being the day Mr. Cao passed away) on the sale of the entire 2nd floor. Mr. Thanh and his siblings together signed the contract which clearly stated that the sellers received the payment in full. Mr. Thanh also handed over the power of attorney dated 9 September 1972 of Mr. Cao having the contents that Mr. Cao is the owner of the house No. 19 Thuoc Bac, due to Mr. Cao being sick, Mr. Cao made this power of attorney authorizing Mr. Thanh to sell the room of 7m^2 of the house No. 19 Thuoc Bac in case he dies. Since his family kept the transaction documents for the two (02) rooms on the 2nd floor of the house No. 19 Thuoc Bac, his parents could sign these documents at any time. Mr. Thanh's argument that his parents have not made the payment yet based on the absence of the signatures of his parents in the contract is incorrect.

Mr. Nhuan passed away in 2000. Mr. Nhuan's wife being Ms. To Thi Lam and Mr. Nhuan's children being Ms. Nguyen Dinh Uan, Mr. Nguyen Dinh Hoa, Ms. Nguyen Dinh Hop, and Ms. Nguyen Thi Minh Nguyet confirmed that Mr. Chien was the one who bought the rooms on the 2nd floor from Mr. Cao rather than Mr. Nhuan, who the nominee on behalf of Mr. Chien.

Mr. Thanh's family (living at the house No. 17 Thuoc Bac) always caused difficulties for his family to live. Mr. Thanh occupied the roof of the 2nd floor of the house No. 19 Thuoc Bac,

so his father went over to talk with Mr. Thanh not to use the roof but Mr. Thanh did not listen. Therefore, the two families made a written document which allowed Mr. Thanh to jointly use the roof but conflicts between the two families got worse over time. Afterwards, his family declared and transferred the ownership of the 2nd floor of the house No. 19 Thuoc Bac, but Mr. Thanh always caused difficulties. Now, he requests the court to recognize the contract for sale and purchase of the 2nd floor of the house No. 19 Thuoc Bac.

In addition, he had some requests as follows:

- Mr. Thanh had already sold the 1st floor of the house No. 19 Thuoc Bac to Mr. Tiep's family and the 2nd floor to his family. Therefore, Mr. Thanh no longer had any rights as to the house No. 19, Thuoc Bac, so Mr. Thanh could not use the roof of the 2nd floor and the ancillary area of the house 19 Thuoc Bac.

- When his family bought the 2nd floor, his family and Mr. Thanh had an oral agreement that allowed his family to use passageway through the 1st floor of the house No. 17 Thuoc Bac of Mr. Thanh to reach the street. Therefore, he requested Mr. Thanh not to place objects in the passageway from the Hang Ca Street to the house No. 17, the house No. 19 and up to the 2nd floor of the house No. 19 Thuoc Bac.

- Requesting Mr. Thanh to compensate for damage caused by his occupation of the roof and use of the passageway to place objects of an amount of VND540,000,000 (VND2,500,000 /month x 18 years).

- Compensation for injuries to him and his wife caused by Mr. Thanh's children of VND5,000,000/person.

- Compensation for mental loss caused by Mr. Thanh to his family of VND800,000,000.

- Mr. Thanh placed his objects causing damage of the roof, Mr. Thanh must pay for the roof's repair of an estimated amount of VND120,000,000.

- The prolonged lawsuit against Mr. Thanh caused him to lose his job, so Mr. Thanh must pay VND108,000,000 (VND12,000,000/year x 9 years).

The defendant Mr. Do Trong Thanh presented that: Mr. Do Huy Ngoc and Ms. Le Thi Huu (his parents) owned the house No. 19 Thuoc Bac which had Land Title No. 1577, Dong Xuan Area, with area of 69m^2; on 21 April 1959, the ownership of that house was transferred to their children in accordance with their will, namely: Mr. Cao was given 8/12 part of the house; other 4 children, Ms. Nga, Ms. Nguyet, Ms. Toan and he were given joint ownership of 4/12 part of the house. In 1971, he and his siblings leased to Mr. Chien and his wife Ms. Mo (Mr. Song's parents) the 2nd floor of the house No. 19 Thuoc Bac. Then also in 1971, Mr. Cao sold entirely a room of 38m^2 of the house No. 19 Thuoc Bac to Mr. Nguyen Dinh Nhuan, but Mr. Chien signed the contract for sale and purchase on behalf of Mr. Nhuan, the sale price was VND6,550 and date of contract was not recorded.

On 9 September 1972, Mr. Cao made a power of attorney for Mr. Thanh to sell the room of 7.8m^2 on the 2nd floor of the house No. 19 Thuoc Bac. On 5 November 1972, Mr. Cao passed away. Based on Mr. Cao's power of attorney, the defendant made a contract for sale of the room of 07m^2 of the house to Mr. Chien, but Mr. Chien requested that he include the room of 38m^2 on the 2nd floor that Mr. Chien had already bought from Mr. Cao, so the defendant made a contract for sale of the entire area in the 2nd floor. His siblings signed the contract, but when he brought it over for Mr. Chien and Ms. Mo to sign, Mr. Nhuan was present there and scolded them. Mr. Nhuan did not allow them to sign it. As a result, they could not sign the contract. He disagreed with Mr. Song's request because Mr. Song only temporarily resided in Mr. Nhuan's house.

Mr. Thanh also had testimony, in particular: Mr. Cao had sold one room, but he only became aware of it in 1998, and at that time he learned that he owned a part of this house, previously, he thought the house belonged to Mr. Cao. Mr. Cao authorized him to sell the room of 07m^2, the sale and purchase contract noted that the buyer had received the house, the seller had received the money, but they agreed that the buyer will sign the contract before delivering the money. Mr. Cao authorizing him was wrong because this was the common property of his brothers and sisters; he had not declared the house No. 19 Thuoc Bac, because it was still in dispute; he already registered the house No. 17 Thuoc Bac, according to his inheritance under the judgment on the division of the estate in 1992. Mr. Cao made the contract for sale and purchase of 38m^2 of the house to Mr. Nhuan sometime in 1971. He only kept this original of Mr. Cao’s sale and purchase contract to Mr. Nhuan while he did not keep the other documents. When Mr. Cao sold to Mr. Nhuan, Mr. Cao gave Mr. Nhuan the land title of the house No. 19 Thuoc Bac to Mr. Nhuan.

He did not agree with the request of Mr. Song because there was no transaction for sale and purchase of the 2nd floor of the house No. 19 Thuoc Bac and Mr. Song’s parents did not sign the contract for sale and purchase of the house and did not make the payment too; the contract for sale and purchase of the house was not lawful, so Mr. Song had no right to claim the roof of the 2nd floor; they only permitted the passageway through the 1st floor of the house No. 17 Thuoc Bac that Mr. Song used (Bl 586). Mr. Thanh’s brothers and sisters did not sell the rooms of the house No. 19 Thuoc Bac, so he is still entitled to use it. He also did not accept Mr. Song's request for compensation for income losses due to the fact that Mr. Song was the disputing party, not him. After fighting, the two sides also had injuries and police officers did not resolve so he did not agree to compensate.

On 7 April 2009, Mr. Thanh submitted a counter-claim to request Mr. Song to use another passageway to the street in the area of the house No. 19 Thuoc Bac, in other words, the 1st floor of the house No. 19 Thuoc Bac must have its own passageway for Mr. Song’s family. The house No. 17 Thuoc Bac belongs to him, when his siblings sold the 1st floor of the house at No. 19 Thuoc Bac to Mr. Tiep’s family, they also stated clearly that the area being sold was the current living area, except for the passageway.

On 23 September 2009, Mr. Thanh submitted a petition to withdraw the counter-claim on the passageway.

- Ms. Do Thi Nguyet’s and Ms. Do Thi Nga’s children being Mr. Vuong Chi Tuong, Mr. Vuong Chi Thang, Ms. Vuong Bich Van, and Ms. Vuong Bich Hop presented: The room

of 38m^2 sold by Mr. Cao was jointly owned, Mr. Cao had no right to sell it. Ms. Nga and Ms. Nguyet had sold the room of 7m^2 to Mr. Chien, but as the buyer did not make the payment yet, so they requested the return of the house.

Persons with related rights and obligations:

- Ms. To Thi Lam presented: Her husband is Mr. Nguyen Dinh Nhuan (passed away in 2000). Previously, she and her husband lived in the house No. 10 Hang Bun Street together with Mr. Chien and his wife. In 1970, Mr. Chien and his wife moved into the house No. 19 Thuoc Bac. She did not know how Mr. Chien and his wife purchased the house, but she remembered that, in 1972, Mr. Nhuan told her about the purchase of a house of Mr. Chien and Mr. Chien had asked him for being a nominee in the transaction. The house No. 19 Thuoc Bac was totally purchased by Mr. Chien and his wife, and her family did not engage in the transaction of the house with Mr. Thanh, her family also did not have any interest regarding the house No. 19 Thuoc Bac.

- The children of Ms. Lam being Mr. Nguyen Dinh Uan, Mr. Nguyen Dinh Hoa, Ms. Nguyen Quynh Hop, and Ms. Nguyen Thi Minh Nguyet presented their agreement with Ms. Lam's testimony.

- Ms. Tran Thi Bich and Mr. Vu Dinh Hau presented: They live on the 1st floor of the house No. 19 Thuoc Bac. Mr. Thanh did not have any right to request them to open a passageway for Mr. Song's family on the 2nd floor; Mr. Thanh submitted a petition for the withdrawal of the counter-claim against the passageway and they had no further opinion.

In First-instance Civil Judgment No. 78/DSST on 21 November 2007, the People's Court of Hanoi ruled:

- To reject the request of Mr. Nguyen Dinh Song.

On 21 November 2007, Mr. Nguyen Dinh Song submitted an appeal.

In Appellate Civil Judgment No. 121/2008/DSPT dated on 30 June 2008, the Appellate Court of the Supreme People's Court in Hanoi ruled: To set aside the first-instance judgment and transfer the case to the first-instance court to re-conduct resolution of the case.

In First-instance Civil Judgment No. 52/2009/DSST dated 29 September 2009, the People's Court of Hanoi ruled:

1. To not accept the request of the plaintiff to recognize the contract for sale and purchase of the entire 2nd floor of the house No. 19 Thuoc Bac.

2. To accept the request of Mr. Song to compel Mr. Thanh to clear objects, ornamental plants on the 2nd floor of the house No. 19 Thuoc Bac and move them back to the house No. 17 Thuoc Bac.

Mr. Thanh's family and Mr. Song's family shall use the roof of the 2nd floor of the house No. 19 Thuoc Bac as the commitment signed on 20 December 1987.

3. To not accept Mr. Song's request on prohibiting Mr. Thanh's family from using the rooms and the roof of the house No. 19 Thuoc Bac.

4. To determine that the passageway, from Hang Ca Street up to the 2nd floor of the house No. 19 Thuoc Bac, was on the two land areas of the house No. 17 and the house No. 19 Thuoc Bac, therefore, it is prohibited for anyone to place goods or objects which may obstruct travel.

5. To not accept Mr. Song's requests for compensation caused by Mr. Thanh.

6. To reject the other requests of the involved parties.

7. To suspend the resolution of the counter-claim of Mr. Thanh.

On 1 October 2009, Mr. Nguyen Dinh Song submitted an appeal to disagree with the first-instance court ruling.

On 12 October 2009, Mr. Do Trong Thanh submitted an appeal to disagree with the first-instance court ruling regarding the passageway and requested the court to determine that the passageway was just temporary.

Under Appellate Civil Judgment No. 86/2010/DS-PT dated 18 May 2010, the Appellate Court of the Supreme People's Court in Hanoi ruled: To uphold the first-instance judgment regarding the settlement of the contract for the sale and purchase of the house and other requests; To set aside parts of the first-instance judgment and transfer the case file to the first-instance court to re-conduct settlement regarding the passageway through the house at No. 17 Thuoc Bac.

On 20 July 2010, Mr. Nguyen Dinh Song submitted a request for cassation review requesting recognition of contract for the sale and purchase of the 2nd floor of the house No. 19 Thuoc Bac.

In Decision No. 148/2013/KN-DS dated 11 April 2013, the Chief Justice of the Supreme People's Court protested against Appellate Civil Judgment No. 86/2010/DS-PT dated 18 May 2010 of the appellate court of the Supreme People's Court in Hanoi; requested the Judicial Council of the Supreme People's Court to review the case under cassation procedure to set aside the above-mentioned appellate civil judgment and First-instance Civil Judgment No. 52/2009/DS-ST dated 29 September 2009 of the People's Court of Hanoi; transferred the case file to the People's Court of Hanoi to re-conduct the first-instance procedure in accordance with law.

In the cassation hearing, the representative of the Supreme People's Procuracy requested the Judicial Council of the Supreme People's Court to accept the protest of the Chief Justice of the Supreme People's Court but in the direction of setting aside Appellate Civil Judgment No. 86/2010/DS-PT dated 18 May 2010 of the appellate court of the Supreme People's

Court in Hanoi and transferring the case to the appellate court for re-conduct appellate procedures.

The Judicial Council of the Supreme People's Court finds:

Based on the testimonies of the plaintiff, the defendants, and documents in the case file, the house No. 19, Thuoc Bac Street, Hang Bo Ward, Hoan Kiem District, Hanoi owned by the husband and wife Mr. Do Huy Ngoc and Ms. Le Thi Huu was transferred to heirs including Mr. Do Trong Cao (passed away in 1972, no wife and children), who was given 8/12 parts of the house, and Ms. Do Thi Nga (Ms. Nga), Ms. Do Thi Nguyet, Ms. Do Thi Song Toan (passed away in 1963, no husband and children), and Mr. Do Trong Thanh, who together were given 4/12 parts of the house. On 1 July 1971, Mr. Thanh signed a contract with the family of Mr. Nguyen Dinh Nhuan (the uncle of Mr. Nguyen Dinh Song, who passed away in 2000) and Mr. Nguyen Dinh Chien and his wife (the father of Mr. Song, who passed away in 1998) for leasing the room on the 2 floor of the house No. 19 Thuoc Bac with the area of 39.36m^2 for money for medical treatment, he received VND2,000 in advance.

At the *"Document for complete sale of rooms"* (no date recorded but Mr. Thanh acknowledged that this document was written around 1971), Mr. Cao had already sold to Mr. Nhuan a room on the 2nd floor of the house No. 19 Thuoc Bac (no area recorded) for an amount of VND6,550, the seller received payment in full and it was noted that Mr. Chien represented and signed on behalf of Mr. Nhuan. Mr. Thanh asserted that the sold room was the aforementioned leased room and he sold it to Mr. Nhuan rather than Mr. Chien. However, Ms. To Thi Lam and Mr. Nguyen Dinh Uan, Mr. Nguyen Dinh Hoa, Ms. Nguyen Quynh Hop, Ms. Nguyen Thi Minh Nguyet (Mr. Nhuan's wife and children) confirmed that Mr. Chien directly transacted and made payment, Mr. Nhuan was only a nominee for Mr. Chien on the contract for sale and purchase of house sold by Mr. Cao. Therefore, there is a basis to determine that Mr. Chien was the buyer of this room.

On 9 September 1972, Mr. Cao made a power of attorney authorizing Mr. Thanh to sell the room in which Mr. Cao was staying. On 5 November 1972, Mr. Cao died without leaving a will. Also, on 5 November 1972, Mr. Thanh, Ms. Nga, and Ms. Nguyet signed *"Contract of sale and purchase of the entire 2nd floor of the house No. 19 Thuoc Bac"* having the contents of selling to Mr. Chien and his wife the main room 38.07m^2 and auxiliary room 7.095m^2, the total of 45.165m^2, with price of VND3,000, the seller already received the payment in full, the buyer had already received the 2nd floor of the house and was living there; the contract had 3 people including Mr. Thanh, Ms. Nga, and Ms. Nguyet as the sellers who signed, and the buyers being recorded as Mr. Chien and Ms. Mo did not sign.

When the dispute arose, Mr. Song presented 2 contracts for sale and purchase of the house as mentioned above and the power of attorney of Mr. Cao authorizing Mr. Thanh to sell the house. In fact, Mr. Chien's family had already managed two rooms on the 2nd floor of the house No. 19 Thuoc Bac of Mr. Thanh's family since 1972. Mr. Thanh's family living at the adjoining house No. 17 Thuoc Bac did not have any disputes regarding rental or payment. The contents of *"the contract of sale and purchase of the entire 2nd floor of the house No. 19 Thuoc Bac Street"* clearly stated that the seller received money in full, and there was no agreement that the parties would produce separately any receipt of payment, and the contract was also the receipt which the seller confirmed the payment in full from the buyer.

The buyer did not yet sign the contract for sale and purchase of the house, but this contract is to be kept by the buyer, thus, it can be used to prove the seller's obligation regarding its receipt of payment in full. The first-instance and appellate courts asserted that the buyer did not yet sign the contract for sale and purchase of the house and could not prove that full payment was made, thereby dismissing the plaintiff's request for recognition of the contract for sale and purchase of the house. This did not ensure the rights of the plaintiff.

The transaction for sale and purchase of the house between the siblings being Mr. Thanh and his sisters and the couple being Mr. Chien and Ms. Mo entered into before 1 July 1991, so Resolution No. 58/1998/NQ-UBTVQH10 on 20 August 1998 of the Standing Committee of the National Assembly shall be applied to settle the case. Ms. Nguyen Thi Lan (the daughter of Mr. Chien and Ms. Mo) participated in the proceedings as a person with related rights and obligations, because she inherited the estate of Mr. Chien and Mr. Mo without participating in this transaction. Since Ms. Lan has been living in the Czech Republic from 1997, this transaction is not a transaction of house entered into before 1 July 1991 with the participation of people residing overseas before 1 July 1991. Therefore, the first-instance court and appellate court applying Resolution No. 1037/2006/NQ-UBTVQH11 dated 27 July 2006 on civil transactions of house entered into before 1 July 1991 with the participation of Vietnamese residing overseas to resolve this case is not quite correct.

For the above reasons, pursuant to Articles 291.3, 297.3, and 299.2 of the Civil Procedure Code (as amended and supplemented under Law No. 65/2011/QH12 dated 29 March 2011 of the National Assembly);

RULES

1. To set aside in its entirety Appellate Civil Judgment No. 86/2010/DS-PT dated 18 May 2010 of the Appellate Court of the Supreme People's Court in Hanoi on the case named *"Disputes on the rights of ownership and use of house"* between the plaintiffs being Mr. Nguyen Dinh Song, Ms. Nguyen Thi Hong, and Ms. Nguyen Thi Huong, and the defendants being Mr. Do Trong Thanh, Ms. Do Thi Nguyet, Mr. Vuong Chi Tuong, Ms. Vuong Bich Van, and Ms. Vuong Bich Hop; persons with related rights and obligations include 9 people.

2. To transfer the case to the appellate court of the Supreme People's Court in Hanoi to re-conduct the first-instance procedure in accordance with law.

CONTENTS OF THE CASE LAW

"*When the dispute arose, Mr. Song presented 2 contracts for sale and purchase of the house as mentioned above and the power of attorney of Mr. Cao authorizing Mr. Thanh to sell the house. In fact, Mr. Chien's family had already managed two rooms on the 2nd floor of the house No. 19 Thuoc Bac of Mr. Thanh's family since 1972. Mr. Thanh's family living at the adjoining house No. 17 Thuoc Bac did not have any disputes regarding rental or payment. The contents of "the contract of sale and purchase of the entire 2nd floor of the house No. 19 Thuoc Bac Street" clearly stated that the seller received money in full, and there was no agreement that the parties would produce separately any receipt of payment, and the contract was also the receipt which the seller confirmed the payment in full from the buyer.*

The buyer did not yet sign the contract for sale and purchase of the house, but this contract is to be kept by the buyer, thus, it can be used to prove the seller's obligation regarding its receipt of payment in full. The first-instance and appellate courts asserted that the buyer did not yet sign the contract for sale and purchase of the house and could not prove that full payment was made, thereby dismissing the plaintiff's request for recognition of the contract for sale and purchase of the house. This did not ensure the rights of the plaintiff".

CASE LAW NO. 08/2016/AL
on determining interest, adjustment of interest rate in the credit facility agreement from the day following the first-instance hearing

The case law was adopted by the Judicial Council of the Supreme People's Court on 17 October 2016 and promulgated under Decision No. 698/QD-CA dated 17 October 2016 of the Chief Justice of the Supreme People's Court.

Source of the case law: Cassation Decision No. 12/2013/KDTM-GDT dated 16 May 2013 of the Judicial Council of the Supreme People's Court on a commercial case named *"Dispute over the credit facility agreement"* in Hanoi between the Plaintiff being Joint Stock Commercial Bank for Foreign Trade of Vietnam and the Defendant being Kaoli Pharmaceutical Joint Stock Company; the related persons comprise Ms. Nguyen Thi Phuong, Mr. Nguyen Dang Duyen and Ms. Do Thi Loan.

Location of contents of the case law:

Paragraph 16 of the *"Whereas"* part of the cassation decision as above-mentioned.

Overview of the case law:

- ***Background of the case law:***

  In the facility agreement, the parties agreed on the loan interest rate, including: the interest rate, the overdue interest rate, the adjustment of loan interest rate of the lending Bank or credit institution from time to time up to the time of the first-instance hearing and the borrower has not made payment or has not made payment in full the amount of principal and interest in accordance with the facility agreement.

- ***Legal resolution:***

  In this case, the borrower must continue making payment to the Bank or credit institution for the unpaid principal, the interest accrued on the principal amount (if any), the overdue interest of the unpaid principal according to the interest rate agreed by the parties in the facility agreement until the borrower has fully repaid the principal. In case the parties agreed on the adjustment of interest rate of the bank or the lending credit institution from time to time, the interest rate that the borrower is obliged to continue paying pursuant to the court decision shall be adjusted in accordance with the adjustment of interest rate of the lending bank or credit institution.

Applicable provisions of laws relating to the case law:

- Articles 471, 474, 476 of the Civil Code 2005;

- Article 91.2 of the Law on Credit Institution 2010;

- Article 1.1 of Circular No. 12/2010/TT-NHNN dated 14 April 2010 of the State Bank

of Vietnam on guidance for lending in Vietnamese Dong at the agreed interest rate by the credit institutions to their customers;

- Article 11.2 of the Regulations on lending activities of the Credit Institutions to their customers enacted pursuant to Decision No. 1627/2001/QD-NHNN of the Governor of the State Bank of Vietnam dated 31 December 2001 as amended by Decision No. 127/2005/QD-NHNN dated 3 February 2005.

Key words of the case law:

"Interest", "Unpaid principal", "Facility Agreement", "Adjustment of interest rate", "Overdue interest".

CONTENTS OF THE CASE

Pursuant to the Statement of Claims dated 20 July 2010, documents and evidence enclosed in the case file:

Joint Stock Commercial Bank for Foreign Trade of Vietnam – Thang Long Branch (hereinafter referred to as *"Vietcombank"*) and Kaoli Pharmaceutical Joint Stock Company (hereinafter referred to as *"Kaoli"*) signed 4 facility agreements, including: Facility Agreement No. 03/07/NHNT-TL dated 25 December 2007; Facility Agreement No. 04/07/NHNT-TL dated 28 December 2007; Facility Agreement No. 144/08/NHNT-TL dated 28 March 2008 and Facility Agreement No. 234/08/NHNT-TL dated 27 May 2008. The above Facility Agreements were secured with the ownership of house(s) and the land use rights at the following addresses:

- No. 122 Doi Can, Doi Can Ward, Ba Dinh District, Hanoi (Land lots No. 46B+39C+37C, cadastral map No. 19) under the ownership and use of Ms. Nguyen Thi Phuong (pursuant to the Mortgage Agreement No. 1678.2008/HĐTC dated 25 June 2008; The secured assets shall be used for securing the loan and the maximum guarantee value for the borrower is VND4,605,000,000; the detailed terms and conditions for borrowing and lending the above-mentioned loan shall be specified in the banking documents that Vietcombank and the secured party (Kaoli) shall sign at the head office of Vietcombank (Article 1, clause 1.3). The value of the secured assets is VND4,605,000,000 as determined under the Minutes on Valuation of Assets No. 105/08/NHNT.TL; the mortgage term shall be 5 years from the date that the secured party received the loan. The Agreement shall be effective from the time that it is registered at the Land Use Right Registration Office. (Article 10, clause 10.1). This Agreement was certified by a notary of the Notary Office No. 3 of Hanoi on 25 June 2008 and the registration of mortgage over land use rights and assets attached to land under this Agreement was certified by the Natural Resources and Environment Office of Ba Dinh District on 10 July 2008). Previously, on 3 September 2007, Ms. Phuong and Vietcombank made a Minutes on Hand-over of legal documents of the mortgaged, pledged or guaranteed assets with the following contents: *"The parties shall carry out the hand-over of the original documents of the following secured assets to secure the obligations of Kaoli in Vietcombank – Thang Long Branch. Name of assets: The ownership of house(s) and the land use rights in 122 Doi Can, Doi Can ward, Ba Dinh district, Hanoi"* (Exhibit 52).

- Group 13, Hamlet 2, Nhat Tan Ward, Tay Ho District, Hanoi under the ownership and use rights of Mr. Nguyen Dang Duyen and his wife, Ms. Do Thi Loan (under the Mortgage Agreement No. 1677.2008/HDTC dated 25 June 2008, the secured assets shall be used for securing the loan with the maximum guarantee value of VND1,250,000,000; the detailed terms and conditions on borrowing and lending the above loan shall be specified in the banking documents that Vietcombank and the secured party (Kaoli) shall sign at the head office of Vietcombank (Article 1, clause 1.3). The value of the secured assets is VND1,250,000,000 as determined under the Minutes on Valuation of Assets No. 106/08/NHNT.TL dated 3 September 2007 (Article 3, clause 3.01); The mortgage term shall be 5 years from the date that the secured party receives the loan. The Agreement shall be effective from the time that it is registered at the land use right registration office. (Article 10, clause 10.1). This Agreement was certified by a notary of the Notary Office No. 3 of Hanoi on 25 June 2008 and the registration of mortgage over land use rights and assets attached to land under this Agreement were certified by the Natural Resources and Environment Office of Ba Dinh District on 1 July 2008. Previously, on 3 September 2007, Mr. Nguyen Dang Duyen and Vietcombank made a Minutes on Handover of legal documents of the mortgaged, pledged or guaranteed assets with the following contents: The parties shall carry out the hand-over of the original documents of the following secured assets to secure the obligations of Kaoli in Vietcombank – Thang Long Branch. Name of assets: The ownership of house(s) and the land use rights in Group 13, Hamlet 2, Nhat Tan Ward, Tay Ho District, Hanoi" (Exhibit 58a).

Additionally, the loans of the above-mentioned facility agreements are secured by the secured assets being houses, land under the ownership and use rights of Mr. Cao Ngoc Minh and his wife, Ms. Doan Thi Thanh Thuy; being houses and land of Mr. Giang Cao Thang and his wife, Ms. Duong Thi Sinh (which had already been released); being the land use rights of Mr. Chu Quoc Khanh; being house(s) and land of Ms. Chu Thi Hong and Mr. Nguyen Van Minh.

In order to implement the contract, Vietcombank – Thang Long Branch disbursed the loans to Kaoli pursuant to the facility agreements as mentioned above. Kaoli, however, have just repaid a part of the principal amount and the interest amount. Vietcombank initiated a lawsuit to the Court for requesting Kaoli to make the unpaid payments of the 4 facility agreements with the total amount of VND8,197,957,837 (in which, the principal amount is VND5,457,000,000, the interest amount is VND397,149,467, the overdue interest amount calculated up to the time of the first-instance hearing is VND2,343,808,370); and enforce the secured assets of Ms. Nguyen Thi Phuong, Mr. Nguyen Dang Duyen and Ms. Do Thi Loan for recovery of debts.

The Defendant's representative, Mr. Do Van Chinh, being the director of Kaoli presented the following: Mr. Do Van Chinh acknowledged the fact that Kaoli still owed the principal amounts and the original interest amounts, the overdue interest amounts under the 4 facility agreements to Vietcombank as stated by Vietcombank are true. He determined the repayment obligations under the above-mentioned 4 facility agreements belonged to Kaoli and requested to make payment within 5 years.

Vietcombank requested to conduct an auction sale of the secured assets of Ms. Nguyen Thi

Phuong, Mr. Nguyen Dang Duyen and Ms. Do Thi Loan in case Kaoli is unable to pay the loans or to pay the loans in full, Vietcombank proposed to the Court to resolve the case in accordance with the laws. Mr. Chinh confirmed that Vietcombank had disbursed the loan before the execution of the Mortgage Agreement No. 1678.2008/HDTC dated 25 June 2008 and Mortgage Agreement No. 1677.2008/HDTC dated 25 June 2008. From 25 June 2008 until now, Kaoli has not borrowed any additional loan or signed any additional facility agreement with Vietcombank.

The related persons presented the following:

- Mr. Nguyen Van Nghi (being the authorized representative of Ms. Nguyen Thi Phuong) presented as follows: Vietcombank initiated a lawsuit against Kaoli and requested the Court to order the auction sale of Ms. Phuong's secured assets in case Kaoli did not perform its repayment obligations. He did not agree with this request because Ms. Phuong signed the mortgage agreement on 25 June 2008, therefore, Ms. Phuong should not be responsible for guaranteeing the loan obligations of Kaoli with Vietcombank under the 4 facility agreements that Vietcombank based on to initiate the lawsuit. He requested the Court to order Vietcombank to implement the release of mortgage assets and return the Certificate of Ownership of House(s) and Land Use Rights to Ms. Phuong.

- Mr. Nguyen Dang Duyen and Ms. Do Thi Loan presented that: The husband and wife signed the Mortgage Agreement dated 25 June 2008. However, this agreement is used only for guaranteeing the loan of Kaoli from Vietcombank and they will be responsible for any obligations arising after 25 June 2008 until 25 April 2009. In addition, they will not be responsible for any obligations arising out of all other facility agreements signed prior to 25 June 2008 between Vietcombank and Kaoli. According to Vietcombank, after the date of 25 June 2008 until now, Vietcombank did not sign any facility agreement with Kaoli. Therefore, the legal liabilities of the husband and wife have not arisen. Thus, they requested the Court to order Vietcombank to release the secured assets under the Mortgage Agreement dated 25 June 2008 to them.

In First-instance Commercial Judgment No. 32/2011/KDTM-ST dated 24 March 2001, the People's Court of Hanoi ruled that:

1. *"To accept a part of the request for relief of Joint Stock Commercial Bank for Foreign Trade of Vietnam towards Kaoli. Kaoli is obliged to repay Vietcombank the principal amounts and the interest amounts of VND8,197,957,837.*

2. *To reject the request of Joint Stock Commercial Bank for Foreign Trade of Vietnam for the auction sale of secured assets being the value of the ownership of houses and land use rights in the land lots 46B + 39C + 27C having the cadastral map No. 19 with the address at No. 122 Doi Can, Doi Can Ward, Ba Dinh District, Hanoi under Certificate of ownership of houses and land uses rights No. 10101132587 of the People's Committee of Ba Dinh District dated 27 April 2004 issued to Ms. Nguyen Thi Phuong and the value of the house ownership and the land use rights in the address Group 13, Hamlet 2, Nhat Tan Ward, Tay Ho District, Hanoi pursuant to the Certificate of house ownership and*

land use rights in the land lots no. 13+64A (a part) having Cadastral map No. 04 at Group 13, Hamlet 2, Nhat Tan Ward, Tay Ho District, Hanoi under Certificate of ownership of houses and land uses rights No. 10103090899 of the People's Committee of Hanoi on 23 March 2004 issued to Mr. Nguyen Dang Duyen and his wife, Ms. Do Thi Loan.

Vietcombank is required to return the documents relating to the ownership of house(s) and land use rights and to carry out the procedures on release of the secured assets for Ms. Nguyen Thi Phuong, Mr. Nguyen Dang Duyen and his wife, Ms. Do Thi Loan".

In addition, the first-instance court ruled on the legal fees, the right to appeal of the parties in accordance with the laws.

On 4 April 2011, Vietcombank submitted an appeal.

In Appellate Commercial Judgment No. 148/2011/KDTM-PT dated 17 August 2011, the Supreme People's Court in Hanoi based on Article 275.2 and Article 276.1 of the Civil Procedure Code and ruled the following:

"To amend First-instance Commercial Judgment No. 32/2011/KDTM-ST dated 23 and 24 March 2011 of the People's Court of Hanoi on the guarantee obligations of Ms. Nguyen Thi Phuong and Mr. Nguyen Dang Duyen and his wife Ms. Do Thi Loan, particularly:

The Supreme People's Court ruled that: The Minutes on Hand-over of the documents relating to the mortgage, pledge or guarantee dated 3 September 2007 between Joint Stock Commercial Bank for Foreign Trade of Vietnam – Thang Long Branch and Ms. Nguyen Thi Phuong, Mr. Nguyen Dang Duyen and his wife Ms. Do Thi Loan are the guarantee agreements (Exhibits No. 52, 58a).

Kaoli is obliged to repay Joint Stock Commercial Bank for Foreign Trade of Vietnam the total amount of VND8,197,957,837 for the principal amounts and the interest amounts. In case, Kaoli does not perform its repayment obligation or does not perform its repayment obligations in full to Joint Stock Commercial Bank for Foreign Trade of Vietnam, Joint Stock Commercial Bank for Foreign Trade of Vietnam is entitled to request the Department of Enforcement of Civil Judgement of Hanoi to enforce the secured assets in accordance with the Law on Enforcement of Civil Judgement for recovery of debt for the guarantee liabilities of the guarantor.

[…] From the effective date of the judgment and the judgment creditor filed an application for enforcement of judgment, the judgment debtor is required to pay the interest amount on the payment for late enforcement of judgment according to the basic interest rates announced by the State Bank of Vietnam corresponding to the period of delay for enforcement of judgment".

In addition, the appellate court ruled on the fees for enforcement of judgment as follows;

After the appellate hearing, Ms. Nguyen Thi Phuong, Mr. Nguyen Dang Duyen and his wife Ms. Do Thi Loan submitted a number of applications for re-consideration of the appellate judgment as above mentioned in accordance with the cassation procedures.

In Protest Decision No. 34/2012/KDTM-KN dated 15 October 2012, the Chief Justice of the Supreme People's Court requested the Judicial Council of the Supreme People's Court to hear the case in accordance with the cassation procedures following the direction of offsetting aside Appellate Commercial Judgment No. 148/2011/KDTM-PT dated 17 August 2011 of the Appellate Court under the Supreme People's Court of Hanoi; and to transfer the case to the Appellate Court of the Supreme People's Court of Hanoi for appellate hearing in accordance with the laws.

In the cassation hearing, the representative of the Supreme People's Procuracy agreed unanimously with the protest of the Chief Justice of the Supreme People's Court.

The Judicial Council of the Supreme People's Court finds:

Considering the Mortgage Agreement over Land Use Rights and Assets Attached to Land for guarantee of the third party to borrow loan from the bank (Notarisation number: 1677.2008/HDTC and 1678.2008/HDTC of the same date of 25 June 2008):

Both the mortgage agreements over land use rights and assets attached to land for guarantee of the third party to borrow loans from the bank did not specify that the guarantee of the loan shall be secured for which facility agreement and were signed after the loans had been disbursed under the 4 facility agreements No. 03/07/NHNT-TL dated 25 December 2017, No. 04/07/NHNT-TL dated 28-12-2007, No. 144/08/NHNT-TL dated 28 March 2008 and No. 234/08/NHNT-TL dated 27 May 2008. Pursuant to clause 1.3 of Article 1 of both the above-mentioned mortgage agreements: *"The detailed terms and conditions on borrowing and lending of the above amount of money shall be specified in the banking documents that Party B (Vietcombank – Thang Long Branch) and the secured party shall sign banking documents at the head office of Party B (Vietcombank – Thang Long Branch) (The secured obligations are the loan and the maximum guarantee value is VND4,605,000,000 pursuant to clause 1.2 of Article 1 of the mortgage agreement). Therefore, it can be understood that Ms. Phuong, Mr. Duyen and Ms. Loan only guaranteed for Kaoli to borrow loan under the facility agreements which shall be signed in the head office of Vietcombank after the signing date of the mortgage agreement (25 June 2008) and they did not guarantee for the loans of the 4 facility agreements signed previously [prior to 25 June 2008]*".

Vietcombank based on clause 6.2 of Article 6 of the 4 facility agreements as above-mentioned on the creation of security over the loan, which recorded (handwritten) the followings: *"The detailed agreements on assets, rights and obligations of the parties shall be determined in the Mortgage Agreement No. 1677.2008/HDTC dated 25 June 2008 and the Mortgage Agreement No. 1678.2008/HDTC dated 25 June 2008"* to request the court to order Ms. Phuong, Mr. Duyen and his wife – Ms. Loan to implement their guarantee obligations to the loans of Kaoli under the 4 facility agreements as above-mentioned. These contents, according to the representative of Vietcombank stated in the first-instance hearing, were *"written by the accountant of the bank"*. In the first-instance hearing, Mr. Do Van Chinh, being the Director of Kaoli presented: "*Kaoli did not know about these additional written parts of these agreements*" and *"Kaoli does not agree with the request for auction sale of secured assets of the bank. The assets of Ms. Phuong and Mr. Duyen and his wife – Ms. Loan added into the facility agreement by the bank".*

On the other hand, in the appellate hearing, the authorized representative of Ms. Nguyen Thi Phuong presented that Ms. Nguyen Thi Phuong has not received any facility agreement from Vietcombank, Mr. Duyen and Ms. Loan received the facility agreements from Vietcombank. Thus, Mr. Chinh, Ms. Phuong, Mr. Duyen and Ms. Loan did not know about the handwritten contents of the accountant of the bank that are recorded in the facility agreements. They also did not sign on the facility agreements, therefore, there is no basis to determine that the above facility agreements are guaranteed by the mortgage agreements No. 1677.2008/HDTC and 1678.2008/HDTC on the same date of 25 June 2008.

In addition to the two above-mentioned mortgage agreements, in the case file, there are 2 case files relating to the mortgage of assets: 1 case file of Ms. Phuong and 1 case file of Mr. Duyen and Ms. Loan. In each case file, there are the following documents: (i) Minutes on valuation of assets and Minutes on hand-over of assets with the same date of 3 September 2007; (ii) An application for registration of mortgage (dated 29 January 2008 of Ms. Phuong, and dated 25 June 2008 of Mr. Duyen and Ms. Loan). However, these Minutes and the Application for registration of mortgage did not specify clearly about the creation of security for the loan of any facility agreement.

The appellate court opined (briefly) as follows: *"The Minutes on hand-over of documents relating to the mortgage, pledge, guarantee of assets between Vietcombank – Thang Long Branch with Ms. Phuong, Mr. Duyen and Ms. Loan made on 3 September 2017 all have the contents on mortgage, pledge and guarantee for the obligations of Kaoli in the Bank. Therefore, these minutes should be deemed as a contract, and the appellate court ruled that: The Minutes on hand-over of documents relating to the mortgage, pledge, guarantee of assets between Vietcombank – Thang Long Branch between Joint Stock Commercial Bank for Foreign Trade of Vietnam – Thang Long Branch with Ms. Phuong, Mr. Duyen and Ms. Loan are the guarantee agreements (Exhibits 52, 58a)"* and *"In case that Kaoli did not perform its obligations or perform fully its repayment obligations to Joint Stock Commercial Bank for Foreign Trade of Vietnam, Joint Stock Commercial Bank for Foreign Trade of Vietnam is entitled to request the Department of Enforcement of Civil Judgement to enforce the secured assets in accordance with the Law on Enforcement of Civil Judgement for recovery of debt for the guarantee obligations of the guarantor".*

The above opinions and decision of the appellate court has no basis and is not in accordance with law. Therefore,

- The Minutes on hand-over of documents relating to the mortgage, pledge, guarantee of assets dated 3 September 2007 between Ms. Nguyen Thi Phuong (as well as Mr. Duyen and Ms. Loan) and Vietcombank – Thang Long Branch is not a guarantee agreement as determined by the appellate court.

In the appellate hearing dated 17 August 2011, the representative of Vietcombank only confirmed that: "*the Minutes on hand over of assets and the Minutes on valuation of assets are inseparable part of the mortgage agreement over assets*".

- Pursuant to the Minutes on hand-over of documents relating to the mortgage, pledge, guarantee of assets, the Minutes on valuation of assets and the Vietcombank's representative's statement at the appellate court hearing, the date of

hand-over of the documents and valuation of assets is 3 September 2007. The mortgage agreement between Ms. Phuong (as well as Mr. Duyen and Ms. Loan) and Vietcombank – Thang Long Branch were signed on 25 June 2008 (after the date of the Minutes on hand-over and receipt of documents on assets and the Minutes on Valuation of Assets), therefore, these Minutes cannot be seen as inseparable parts of the above-mentioned mortgage agreement. The appellate court also determined that: "*The mortgage agreement dated 25 June 2008 does not relate to the minutes on hand-over of documents […]"*.

- Pursuant to the date of the Minutes and the statement of Vietcombank's representative in the appellate court hearing, the date of hand-over of the documents (the original Certificate of ownership of house(s) and land use rights) and the valuation date is 3 September 2007. However, these Minutes on valuation of assets provided that *"Based on the land price table of each district of Hanoi attached to Decision 150/2007/QD-UBND dated 28 December 2007 of the People's Committee of Hanoi"* and this Minutes is an inseparable part of the Mortgage Agreement No. 1678.2008/HDTC and No. 1677.2008/HDTC dated 25 June 2008. For the case of Ms. Phuong, the value of land use rights shall be determined in accordance with the Minutes on valuation of actual land price dated 4 September 2017 and the Application for mortgage registration dated 29 January 2008 of Ms. Phuong, which recorded that *"the Mortgage Agreement 1678.2008/HDTC dated 25 June 2008".* On the other hand, pursuant to the statement and documents presented by Ms. Phuong, Mr. Duyen and his wife – Ms. Loan, on 3 September 2007, the house(s) and land of Ms. Phuong were being mortgaged to Vietnam Bank for Agriculture and Rural Development – Quang An Branch in Tay Ho District and were only to be released upon 11 January 2008. The house(s) and land of Mr. Duyen and Ms. Loan were being mortgaged in Vietnam Prosperity Joint Stock Commercial Bank – Thang Long Branch and were to be released upon 16 January 2008.

Based on the above-mentioned evidence, the court concluded that: the Minutes on hand-over of documents relating to the mortgage, pledge, guarantee of assets and the Minutes on Valuation of Assets were not made on 3 September 2007, the Certificate of ownership of house(s) and land use rights were not assigned on 3 September 2007, and the valuation of assets was not conducted on 3 September 2007 as presented and stated by the Vietcombank's authorized representative and accepted by the appellate court.

On 3 September 2007, the Mortgage Agreement and the Guarantee Agreement over land use rights and assets attached to land must be notarized and registered with the security registration authority as stipulated under Article 130.1(a) of the Land Law 2003, Article 12.1(a) of Decree No. 163/ND-CP dated 29 December 2006 and Section 2 subsection 2.4 of Joint Circular No. 03/2006/TTLT-BTP-BTNMT dated 13 June 2006; thus, this is contrary to the appellate court's findings that these agreements are not required to be notarized and registered.

The appellate court did not clarify whether, in addition to the above-mentioned documents, there are any documents or evidence indicating that the mortgage agreements signed by Ms. Phuong, Mr. Duyen and Ms. Loan are used for securing the 4 facility agreements of Kaoli or not. Instead, the appellate court found that the Minutes on hand-over of documents

relating to the mortgage, pledge, guarantee of assets are mortgage agreements, which is not true and accurate. Because these minutes cannot be considered as mortgage agreements when considering its formality and contents.

- If there are bases to determine that the Mortgage Agreements dated 25 June 2008 of Ms. Phuong and Mr. Duyen and his wife Ms. Loan are used for securing the facility agreement, then the guarantee agreement of Ms. Phuong only guaranteed the loan and the maximum guarantee value is VND4,605,000,000; the guarantee agreement of Mr. Duyen and Ms. Loan only guaranteed the loan and the maximum guarantee value is VND1,250,000,000. Meanwhile, the appellate court stated that the Minutes on hand-over of documents relating to the mortgage, pledge, guarantee of assets dated 3 September 2007 are mortgage agreements and ruled *"In case that Kaoli did not perform its obligations or fully perform its repayment obligations to Joint Stock Commercial Bank for Foreign Trade of Vietnam, then Joint Stock Commercial Bank for Foreign Trade of Vietnam is entitled to request the Department of Enforcement of Civil Judgement to enforce the secured assets in accordance with the Law on Enforcement of Civil Judgement for recovery of debt for the guarantee obligations of the guarantor"*. This means that Ms. Phuong, Mr. Duyen and Ms. Loan must be responsible for the guarantee obligations for the whole debt of Kaoli and there is no separation of guarantee obligations of Ms. Phuong, Mr. Duyen and Ms. Loan, which is untrue.

In addition, the first-instance court and the appellate court ruled that *"From the date when the judgment is effective and the judgment creditor has filed an application for enforcement of judgement, the judgment debtor is required to pay the interest amount on the late enforcement of judgment according to the basic interest rates announced by the State Bank of Vietnam corresponding to the period of delay for enforcement of judgment",* which is also not correct. With respect to the loans of the banking and credit institutions, in addition to the principal, the interest amount, the overdue interest amount, and the fees that the borrower is obliged to pay to the lender under the facility agreement calculated up to the date of the first-instance hearing, the borrower shall be responsible to pay the overdue interest amount of the outstanding principal from the date immediately after the first-instance hearing according to the agreed interest rate in the facility agreement until the borrower has paid the principal in full. In case in the facility agreement the parties had an agreement on adjustment of interest rate from time to time of the lending bank, the interest amount that the borrower is required to pay to the lending bank pursuant to the court decision shall be adjusted in accordance with the adjustment of interest of the lending bank.

For the above reasons, based on Article 291.3, Article 297.3, Article 299 of the Civil Procedure Code (as amended and supplemented in 2011)

RULES

1. To set aside Appellate Commercial Judgment No. 148/2011/KDTM-PT dated 17 August 2011 of the Appellate Court of the Supreme People's Court of Hanoi on hearing the commercial dispute over the facility agreement between the Plaintiff being Joint Stock Commercial Bank for Foreign Trade of Vietnam and the Defendant being Kaoli Pharmaceutical Joint Stock Company and the related persons being Ms. Nguyen Thi Phuong, Mr. Nguyen Dang Duyen and Ms. Do Thi Loan.

2. To transfer the case to the Appellate Court of the Supreme People's Court in Hanoi for an appeal court hearing in accordance with the laws.

CONTENTS OF THE CASE LAW

"The first-instance court and the appellate court ruled that "From the date when the judgment is effective and the judgment creditor has filed an application for enforcement of judgement, the judgment debtor is required to pay the interest amount on the late enforcement of judgment according to the basic interest rates announced by the State Bank of Vietnam corresponding to the period of delay for enforcement of judgment", which is also not correct. With respect to the loans of the banking and credit institutions, in addition to the principal, the interest amount, the overdue interest amount, and the fees that the borrower is obliged to pay to the lender under the facility agreement, the borrow shall be responsible to pay from the date after the first-instance hearing the overdue interest amount of the outstanding principal according to the agreed interest rate in the facility agreement until the borrower has paid the principal in full. In case in the facility agreement the parties had an agreement on adjustment of interest rate from time to time of the lending bank, the interest amount that the borrower is required to pay to the lending bank pursuant to the court decision shall be adjusted in accordance with the adjustment of interest of the lending bank".

CASE LAW NO. 09/2016/AL
on determining average overdue interest rate on the market and payment of interest on penalties for breach and compensation for damages

This case law was adopted by the Judicial Council of the Supreme People's Court on 17 October 2016 and promulgated under Decision No. 698/QD-CA dated 17 October 2016 by the Chief Justice of the Supreme People's Court.

Source of the case law:

Cassation Decision No. 07/2013/KDTM-GDT dated 15 March 2013 of the Judicial Council of the Supreme People's Court on commercial case *"Dispute on contract for sale of goods"* in Bac Ninh Province between the plaintiff being Vietnam – Italy Steel Joint Stock Company against the defendant being Hung Yen Metallurgy Joint Stock Company; persons with related rights and obligations are Ms. Le Thi Ngoc Lan and Mr. Le Van Dung.

Location of contents of the case law:

Paragraphs 4, 5 and 6 of Section 2 *"Findings"* of the aforesaid cassation decision.

Overview of the case law:

- ***Background 1 of the case law:***

  The contract for sale of goods is breached because the seller failed to deliver or delivered insufficient goods to the buyer, causing the seller to be obligated to return the advance payment and overdue interest for late payment.

- ***Legal resolution 1:***

  In this case, the overdue interest is determined on the basis of the average overdue interest rate on the market of at least three local banks at the time of payment (first-instance hearing), unless otherwise agreed by the parties or stipulated by the law.

- ***Background 2 of the case law:***

  With respect to the contract for sale of goods, there arise the obligations to pay penalties for breach and compensation for damages.

- ***Legal resolution 2:***

  In this case, the obligor is liable for paying the penalties for breach and compensation for damages, but is not obligated to pay interest on the penalties for breach and compensation for damages.

Applicable provisions of laws relating to the case law:

- Article 34, Article 37, Article 297.3, Articles 300, 301, 302, 306 and 307 of the Commercial Law 2005;

- Articles 307, 422, 474 and 476 of Civil Code 2005;

Key words of the case law:

"Contract for sale of goods", "Breach of contract", "Return the advance payment", "Overdue interest due to late payment", "Overdue interest rate", "Average overdue interest rate on the market", "penalties for breach", "compensation for damages".

CONTENTS OF THE CASE

Pursuant to the statement of claims dated 7 July 2007, application for amendment of the Statement of Claims dated 10 October 2007, documents in the case and submissions of the plaintiff's representative:

On 3 October 2006, Vietnam – Italy Steel Joint Stock Company (hereinafter referred to as *"Vietnam – Italy Steel Company"*) entered into Economic Contract No. 03/2006-HDKT with Hung Yen Metallurgy Joint Stock Company (hereinafter referred to as *"Hung Yen Metallurgy Company"*) by Mr. Nguyen Van Tinh – Deputy Director acting as the authorized representative under the Power of Attorney No. 621 dated 10 September 2005 by the General Director of the company. Under this contract, Vietnam – Italy Steel Company (party A) purchased steel billets GOST 380-94 Grade CTS-5SP/PS from Hung Yen Metallurgy Company (party B) with the quantity of 3,000 metric tons +/-5%, unit price of VND6,750,000/ton; time of delivery was from 25 to 31 October 2006; the total contract price was VND20,250,000,000 +/-5%.

On 4 October 2006, Vietnam – Italy Steel Company remitted the entire amount of VND20,250,000,000 to Hung Yen Metallurgy Company via the bank wire instructions through Joint Stock Commercial Bank for Foreign Trade of Vietnam – Hai Duong Branch. Hung Yen Metallurgy Company delivered 2,992,820 tons of steel billets to Vietnam – Italy Steel Company and left 7,180 tons undelivered, which corresponded to an amount of VND48,465,000.

On 20 December 2006, both parties signed Contract No. 05/2006-HDKT. Hung Yen Metallurgy Company's authorized representative who signed the contract was Mr. Le Van Manh – Deputy Director (under Power of Attorney No. 1296/UQ/HYM by the General Director). Under this contract, Vietnam – Italy Steel Company purchased 5,000 metric tons of steel billets (with specifications and quality are the same as those in Contract No. 03), unit price of VND7,290,000/ton (included VAT and transportation expenses). The total contract price was VND36,450,000,000+/-5%; time of delivery was from 18 January 2007 to 30 January 2007. Vietnam – Italy Steel Company would advance an amount of VND500,000,000 to Hung Yen Metallurgy Company immediately after the contract was signed; the remaining amount would be paid in two instalments after Vietnam – Italy Steel Company took the delivery. The contract also provided for Hung Yen Metallurgy Company's obligation on paying a penalty for breach equivalent to 2% of the contract price if it failed to deliver the conforming goods or failed to deliver the goods. According to Vietnam – Italy Steel Company's representative, on 21 December 2006, Vietnam – Italy Steel Company remitted the advance payment of VND500,000,000 to Hung Yen Metallurgy Company, but Hung Yen Metallurgy Company did not perform the contract and did not have any reasons for not performing.

On the same date of 20 December 2006, Vietnam – Italy Steel Company signed Contract No. 06/2006 with Hung Yen Metallurgy Company (with the authorized representative being Mr. Le Van Manh – Deputy Director) to purchase 3,000 metric tons of steel billets of which the unit price was VND7,200,000/ton from Hung Yen Metallurgy Company. The contract price was VND21,600,000,000; the time of delivery was from 5 January 2007 to 15 January 2007.

On 22 December 2006, Vietnam – Italy Steel Company remitted the full amount of VND21,600,000,000 to Hung Yen Metallurgy Company under the bank wire instructions through Techcombank – Hung Yen Branch, but Hung Yen Metallurgy Company delivered only 2,989,890 tons of steel billets to Vietnam – Italy Steel Company, leaving 7,640 tons undelivered, equivalent to VND55,008,000.

On 1 February 2007, Vietnam – Italy Steel Company signed Contract No. 01/2007 with Hung Yen Metallurgy Company (with the authorized representative being Mr. Le Van Manh – Deputy Director) to purchase 5,000 metric tons of steel billets of which the unit price was VND7,800,000/ton from Hung Yen Metallurgy Company. The contract price was VND39,000,000,000 +/-5%. During the contract performance, Vietnam – Italy Steel Company remitted an amount of VND37,100,000,000 to Hung Yen Metallurgy Company and Hung Yen Metallurgy Company delivered 3,906.390 tons of steel billets to Vietnam – Italy Steel Company with the value of VND30,469,842,000. The quantity of steel billets which Hung Yen Metallurgy Company had not delivered to Vietnam – Italy Steel Company was 928,255,38 tons being valued at VND7,240,158,000.

Vietnam – Italy Steel Company sent a number of letters requesting Hung Yen Metallurgy Company to perform the contracts but Hung Yen Metallurgy Company failed to do so, causing Vietnam – Italy Steel Company purchase steel billets from other manufacturers to ensure its production and business activities.

As Hung Yen Metallurgy Company breached the contracts signed between both parties, Vietnam – Italy Steel Company initiated a lawsuit against Hung Yen Metallurgy Company to hold Hung Yen Metallurgy Company liable for the payment and compensation for damages due to the breaches in delivery in Contracts No. 03/2006, 05/2006, 06/2006, 01/2007 at the time of the lawsuit, amounting to VND12,874,208,683, wherein the pending payment amounts of VND11,181,662,503 was for 1,777,020 kilograms of steel billets, the amount for penalties for breach was VND1,316,490,480, and the overdue interest was VND376,145,700.

At the first-instance hearing on 3 September 2009, the plaintiff's representative requested that Hung Yen Metallurgy Company pay an amount of VND28,145,956,647 to Vietnam – Italy Steel Company being calculated until the time of the first-instance hearing of 3 September 2009 and Hung Yen Metallurgy Company be compelled to issue VAT invoices to Vietnam – Italy Steel Company with regards to the delivered quantity of the goods under Contract No. 06/2006 being VND21,544,992,000 and under Contract No. 01/2007 being VND30,469,842,000.

In the written testimony, mediation minutes and hearing minutes, the Defendant's representative presented:

At the time Hung Yen Metallurgy Company signed those aforementioned contracts with Vietnam – Italy Steel Company, Ms. Le Thi Ngoc Lan was still the General Director and Mr. Le Van Dung (Ms. Lan's husband) was the business consultant. On 22 March 2007, Ms. Le Thi Ngoc Lan transferred all of her shares in Hung Yen Metallurgy Company to Ms. Nguyen Thi Toan who then became the acting General Director from 2 April 2007. Pursuant to the agreement on division of property during marriage between Mr. Le Van Dung and Ms. Le Thi Ngoc Lan and the debt commitment document of the Company, Mr. Le Van Dung agreed to bear all responsibilities to pay all of Hung Yen Metallurgy Company' debts arising before 1 April 2007. Now Vietnam – Italy Steel Company claimed for compensation for damages from Contracts No. 03/2006, 05/2006, 06/2006 and 01/2007, and Hung Yen Metallurgy Company does not agree because the responsibility to compensate such damages belong to Mr. Dung, Ms. Lan and other former leaders and managers of Hung Yen Metallurgy Company. Hung Yen Metallurgy Company was attempting to work with Mr. Dung so that Mr. Dung would directly pay Vietnam – Italy Steel Company or Mr. Dung would pay such amount to Hung Yen Metallurgy Company for Hung Yen Metallurgy Company to pay to Vietnam – Italy Steel Company.

Hung Yen Metallurgy Company proposed the Court to review and re-evaluate the validity of Contracts No. 03/2006, 05/2006, 06/2006, and 01/2007 signed by Mr. Manh on behalf of Hung Yen Metallurgy Company with Vietnam – Italy Steel Company in this case and review the responsibility of Mr. Dung, Mr. Manh, Mr. Tinh and Ms. Lan with respect to the debts requested by Vietnam – Italy Steel Company. At the first-instance hearing, Hung Yen Metallurgy Company basically agreed with the numbers relating to the contract performance that were provided by Vietnam – Italy Steel Company; however the financial data was not agreed, because the financial data have not been compared to the debt numbers; the overdue interest on the contracts needed to be recalculated, the defendant did not agree with the interest in contract No. 05 because both parties had agreed to cancel the contract and transfer the amount of VND500,000,000 advanced by Vietnam – Italy Steel Company to perform Contract No. 01/2007. Therefore, there was no contractual breach committed by Hung Yen Metallurgy Company with regard to Contract No. 05.

The person with related rights and obligations – Ms. Le Thi Ngoc Lan presented: in early 2004, she and her husband purchased the shares in Hung Yen Metallurgy Company from Mr. Nguyen Luong Tuan and Mr. Nguyen Van Thanh; at that time Hung Yen Metallurgy Company was during its early development. Due to that reason, Ms. Lan became the General Director and Chairperson of the Board of Management meanwhile Mr. Dung became the business consultant of Hung Yen Metallurgy Company. Due to the conflicts arising in their marriage, on 5 September 2005, Ms. Lan and Mr. Dung entered into an agreement on division of property during marriage at Hong Ha Law Office (registered with Hanoi Bar Association). According to this agreement, Ms. Lan owned the house at No. 250 Ba Trieu Street, Mr. Dung owned the entire VND48,000,000,000 being the shares of the spouses in Hung Yen Metallurgy Company and Mr. Dung had to be responsible for all the debts of Hung Yen Metallurgy Company during the early development of Hung Tai Steel Rolling Mill (which belonged to Hung Yen Metallurgy Company). Since Ms. Lan no longer had shares and had transferred them to Mr. Dung, Ms. Lan authorized Mr. Tinh and then Mr. Manh to manage the company. Although Ms. Lan did not own any shares, she remained the General Director, but in reality, Hung Yen Metallurgy Company was managed by Mr. Dung (Ms. Lan's husband), Mr. Tinh and Mr. Manh. In July 2007, Ms. Lan handed over the

outstanding debts and the General Director position to Ms. Toan. Ms. Lan further confirmed the fact that Mr. Manh and Mr. Tinh (both of whom were Deputy Directors of Hung Yen Metallurgy Company) signed economic contracts with Vietnam – Italy Steel Company with her authorization regularly. However, when the handover (of the rights and obligations) to Ms. Toan occurred, Mr. Dung as well as Ms. Toan and Ms. Lan confirmed that the responsibility to pay the debts to Vietnam – Italy Steel Company did not belong to Ms. Lan.

The person with related rights and obligations – Mr. Le Van Dung presented: Although he and his wife had agreed to divide property during their marriage and Mr. Dung was able to own the shares in Hung Yen Metallurgy Company, Mr. Dung only held the position of business consultant without being entitled to sign any economic contracts as well as to make payment, therefore, he had no responsibility. Mr. Dung disagreed with Hung Yen Metallurgy Company's statement that he must be the one to be responsible for paying the debts. He asserted that the responsibility fell on Hung Yen Metallurgy Company and Ms. Toan. Mr. Dung confirmed that on 1 April 2007, he signed a commitment with Ms. Toan. The commitment document showed the total value of debts for both parties to finalize and this was for internal use between him and Ms. Toan as the basis for the finalization and handover; however, there was no actual purchase of shares in the Company between him and Ms. Toan. Both parties did not sign any agreement on purchase of shares and he was not aware of the transfer of shares between Ms. Lan and Ms. Toan. As for the lawsuit initiated by Vietnam – Italy Steel Company against Hung Yen Metallurgy Company to request it to pay pursuant to the contracts, Mr. Dung noted that, from the legal perspective, Hung Yen Metallurgy Company must be responsible as a legal person. He does not have any responsibility with any clients or business partners. His responsibilities, if any, were only with Hung Yen Metallurgy Company. Mr. Dung requested to be absent from all court hearings.

In First-instance Commercial First-instance Judgment No. 01/2007/KDTM-ST dated 14 November 2007, the People's Court of Bac Ninh Province ruled to: *"Compel Hung Yen Metallurgy Company to pay Vietnam – Italy Steel Company the total amount of money from the 04 Contracts No. 03 dated 3 October 2006; No. 05 dated 20 December 2006; No. 06 dated 20 December 2006 and No. 01 dated 1 February 2007, being valued at VND24,674,428,500".* In addition, the first-instance court ruled on the court fees and the right to appeal of the involved parties.

On 27 November 2007, Hung Yen Metallurgy Company submitted an appeal.

In Appellate Commercial Judgment No. 120/2008/KDTM-PT dated 18 June 2008, the Appellate Court of the Supreme People's Court in Hanoi ruled to: *"Set aside First-instance Commercial First-instance Judgment No. 01/2007/KDTM-ST dated 14 November 2007 of the People's Court of Bac Ninh Province. Transfer the case to the People's Court of Bac Ninh Province for re-settlement in accordance with the law"* for the reason: the first-instance court had not collected the statements of Ms. Lan, Mr. Dung, Ms. Toan, Mr. Tinh, and Mr. Manh and had not determined the persons participating in the proceedings, and thus failed to determine who shall bear the responsibility to pay the debts to Vietnam – Italy Steel Company. Furthermore, other documents such as debt commitment documents, money receipts of Mr. Dung, power of attorney for the company management… are all copies without being duly notarized, certified or without being compared with the originals of the

first-instance court.

In First-instance Commercial First-instance Judgment No. 09/2008/KDTM-ST dated 23 October 2008, the People's Court of Bac Ninh Province ruled to: *"Compel Hung Yen Metallurgy Company to pay Vietnam – Italy Steel Company the amount of VND31,902,035,179.56 as the remaining payment under the 04 Contracts No. 03 dated 3 October 2006; No. 05 dated 20 December 2006; No. 06 dated 20 December 2006 and No. 01 dated 1 February 2007".*

On 5 November 2008, Hung Yen Metallurgy Company submitted an appeal.

In appellate Commercial Judgment No. 32/2009/KDTM-PT dated 19 February 2009, the Appellate Court of the Supreme People's Court of Hanoi ruled: *"1. To set aside First-instance Commercial Judgment No. 09/2008/KDTM-ST dated 23 October 2008 of the People's Court of Bac Ninh Province on "Dispute on contract for sale of goods" between Hung Yen Metallurgy Company and Vietnam – Italy Steel Company. 2. Transfer the case to the first-instance court for re-settlement",* for the reason: the General Director being Mr. Tran Van Vi only initiated a lawsuit to claim the amount of VND12,874,298,683 from Hung Yen Metallurgy Company but the authorized representative had amended and supplemented the claims continuously, which exceeded his authorization and was in violation of Article 164.2.1 of the Civil Procedure Code and Resolution No. 02/2006/NQ-HDTP dated 12 May 2006 of the Judicial Council of the Supreme People's Court. All the applications for amendment and supplementation of the claims of the authorized representative were not in compliance with the law, and that the first-instance court accepted all claims of the authorized representative was a serious violation of the civil proceedings, thus the appellate court did not review the contents of the appeal in respect of Hung Yen Metallurgy Company.

In First-instance Commercial Judgment No. 18/2009/KDTM-ST dated 3 September 2009, the People's Court of Bac Ninh Province ruled: *"1. To compel Hung Yen Metallurgy Company to pay Vietnam – Italy Steel Company the total amount of VND28,145,956,647 as the remaining payment under the 04 contracts: Contract No. 03 dated 3 October 2006; Contract No. 05 dated 20 December 2006; Contract No. 06 dated 20 December 2006 and Contract No. 01 dated 1 February 2007 and issue VAT invoices to Vietnam – Italy Steel Company for the amount of VND21,544,992,000 in regard to Contract No. 06/2006 and an amount of VND30,469,842,000 in regard to Contract No. 01/2007".* In addition, the first-instance court ruled on the court fees, the enforcement and the right to appeal of the involved parties in accordance with the law.

On 23 September 2009, Hung Yen Metallurgy Company submitted an appeal.

In Appellate Commercial Judgment No. 63/KDTM-PT dated 5 April 2010, the Appellate Court of the Supreme People's Court of Hanoi ruled: *"To set aside First-instance Commercial Judgment No. 18/2009/KDTM-ST dated 3 September 2009 of the People's Court of Bac Ninh Province. Transfer the case to the People's Court of Bac Ninh Province for re-settlement in accordance with the law".*

On 25 July 2010, People's Court of Bac Ninh Province issued Official Letter No. 110/2010/CV-TA requesting the Chief Justice of the Supreme People's Court to reconsider the appellate judgment by following cassation procedures.

In Decision on appeal No. 17/2012/KDTM-KN dated 25 June 2012, the Chief Justice of the Supreme People's Court requested that the Judicial Council of the Supreme People's Court to conduct the cassation procedures to set aside Appellate Commercial Judgment No. 63/KDTM-PT dated 5 April 2010 of the Appellate Court of the Supreme People's Court of Hanoi; transfer the case to the Appellate Court of the Supreme People's Court of Hanoi for settlement following appellate procedures in accordance with the law.

At the cassation hearing, the representative of the Supreme People's Procuracy agreed with the protest of the Chief Justice of the Supreme People's Court.

The Judicial Council of the Supreme People's Court finds:

1. From October 2006 to February 2007, Vietnam – Italy Steel Company and Hung Yen Metallurgy Company entered into 04 economic contracts (No. 03/2006/HDKT dated 3 October 2006, No. 05/2006-HDKT, No. 06/2006-HDKT dated 20 December 2006 and No. 01/2007-HDKT dated 1 February 2007).

   At the time of the signing of the contracts, with respect to Hung Yen Metallurgy Company, Ms. Le Thi Ngoc Lan was still the legal representative (pursuant to the Enterprise Registration Certificate with fifth amendment dated 12 August 2005 and sixth amendment dated 6 July 2007 of Hung Yen Metallurgy Company and Decision on changes of business registration No. 140/QD-HDCD dated 2 July 2007 of Hung Yen Metallurgy Company). Under Power of Attorney No. 621/UQ-KKHY dated 10 September 2005, Ms. Lan had *"1. Authorized Mr. Nguyen Van Tinh to manage and operate Hung Yen Metallurgy Company. 2. Mr. Nguyen Van Tinh shall be responsible for: a/ Representing the Company in relations with the Banks, organizations, individuals and other involved units to ensure the normal operation of the company; b/ On behalf of the Company, performing civil, economic and commercial transactions within the business lines of the Company…"* On 20 November 2006, Ms. Lan issued Power of Attorney No. 1296/UQ/HYM empowering Mr. Le Van Manh to manage and operate the Company (contents of the authorization were the same as those for Mr. Tinh).

   It was lawful that Ms. Lan issued the aforesaid power of attorney in favor of Mr. Nguyen Van Tinh and Mr. Le Van Manh (who were Deputy Directors of the Company) to sign those economic contracts. The fact that Mr. Tinh and Mr. Manh, on behalf of the company but not themselves, signed the contracts leaves them to have no related rights and obligations in this case. As a result, it cannot be determined that Mr. Tinh and Mr. Manh are persons with related rights and obligations in this case as requested by the defendant and opined by the appellate court.

   The fact that the appellate court based on the Agreement on division of property during marriage between Ms. Le Thi Ngoc Lan and Mr. Le Van Dung and the Debt commitment document of the Company between Mr. Le Van Dung and Ms. Nguyen Thi Toan to state that Mr. Dung, Ms. Lan and Ms. Toan are persons with related rights and obligations is not correct. That is because, the agreement on division of property during marriage was between Mr. Le Van Dung and Ms. Le Thi Ngoc Lan; and that Ms. Nguyen Thi Toan and Mr. Le Van Dung had an agreement on

responsibility in paying the debts was an internal matter of Hung Yen Metallurgy Company. The debt commitment made between Mr. Dung and Ms. Toan had not been accepted by Vietnam – Italy Steel Company being the party having related rights". Pursuant to Article 315.1 of the Civil Code 2005, *"The obligor may transfer a civil obligation to a substitute obligor, if the obligee consents".* During the dispute settlement, Mr. Dung and Ms. Lan gave clear statements on their agreement on division of property during marriage, the signing of contracts with Vietnam – Italy Steel Company, responsibility of Hung Yen Metallurgy Company in performing the obligations in the contracts; Mr. Dung also requested to be absent from the court hearings. Therefore, that the summons of Mr. Dung and Ms. Lan to give testimony and be cross-examined as requested by the appellate court is not necessary. As a consequence, it is not lawful for the appellate court to set aside First-instance Commercial Judgment No. 18/2009/KDTM-ST dated 3 September 2009 of the People's Court of Bac Ninh Province and transfer the case to the People's Court of Bac Ninh Province for re-settlement.

2. As to the contents: During the contract performance, Vietnam – Italy Steel Company remitted money via bank wire instructions to Hung Yen Metallurgy Company; Hung Yen Metallurgy Company delivered the goods to Vietnam – Italy Steel Company (proved by Minutes of goods delivery duly stamped by Hung Yen Metallurgy Company). According to Article 93.1 of the Civil Code 2005, it is provided that: *"A legal person shall bear civil liability for the exercise of its civil rights and performance of its civil obligations established and performed by its representative in the name of the legal person"*. Therefore, in this case, Hung Yen Metallurgy Company shall be responsible for paying the debts to Vietnam – Italy Steel Company.

   Since Hung Yen Metallurgy Company failed to fulfill its commitments as agreed in the contracts (i.e. failure to deliver sufficient goods to Vietnam – Italy Steel Company), there is sufficient basis for Vietnam – italy Steel Company to initiate a lawsuit against Hung Yen Metallurgy Company to request Hung Yen Metallurgy Company to return the received money (corresponding to the undelivered goods), the overdue interest for late payment, penalties for breach and compensation for damages (due to the non-delivery, Vietnam – Italy Steel Company had to purchase the goods from other sellers at higher price than that of Hung Yen Metallurgy Company), which is in accordance with Article 34, Article 297.3, Articles 300, 301, 302, 306 and 307 of the Commercial Law 2005.

   However, the first-instance court made an incorrect calculation as to the amount that Hung Yen Metallurgy Company is obligated to pay Vietnam – Italy Steel Company, in particular:

   As to the advance payments with regard to the undelivered goods in the 4 economic contracts, the first-instance court had correctly calculated the correct amount of money that Hung Yen Metallurgy Company had to return Vietnam – Italy Steel Company. However, as to the overdue interest on the aforesaid amount, although the first-instance court applied Article 306 of the Commercial Law 2005, it did not apply the average overdue interest rate on the market of at least three local banks at the time of payment (at the first-instance hearing) to make the calculation, instead,

the first-instance court was wrong in applying the basic interest of the State Bank at the time of the first-instance hearing at the plaintiff's request to determine the overdue interest (being 10.5%/year). In this case, the Court needs to apply the average overdue interest on the market of at least three local banks (Agribank, Vietcombank and VietinBank) to calculate the overdue interest in accordance with the law.

As to penalties for breach: both parties agreed that: party B shall be subject to a penalty equivalent to 2% of the value of the approved shipments when party B commits one of the following breaches: either failure to deliver conforming goods, or failure to deliver the goods. As such, Hung Yen Metallurgy Company, since Hung Yen Metallurgy Company failed to deliver sufficient goods, it shall pay a contractual penalty equivalent to 2% of the value of the breached contractual obligation portion to Vietnam – Italy Steel Company in accordance with Article 300 and Article 301 of the Commercial Law 2005. There is a basis for the first-instance court to accept the claim for penalties for breach of Vietnam – Italy Steel Company; however, calculating interest over the penalties for contractual breach is not correct.

As to the compensation for damages: According to Vietnam – Italy Steel Company's submissions, it was because Hung Yen Metallurgy Company breached the contracts for not delivering sufficient goods, Vietnam – Italy Steel Company had to purchase steel billets at higher price from other manufacturers to ensure the continuity of the production and business of the Company. The first-instance court relied on only the contracts for sale of steel billets which Vietnam – Italy Steel Company signed with other manufacturers to compel Hung Yen Metallurgy Company to pay Vietnam – Italy Steel Company the difference in value due to the purchase of the substitute goods at higher price, but the Court failed to determine whether the purchase of substitute goods from other manufacturers would serve for the purpose of substituting the undelivered and insufficient goods from Hung Yen Metallurgy Company to ensure the continuity of the business operation as planned. In this regard, the Court should have requested Vietnam – Italy Steel Company to submit documents, evidence (such as goods orders from third parties, production and business plan…) to prove that the actual damage had occurred, and from that there would be a basis to compel Hung Yen Metallurgy Company to compensate the damages in a proper manner. Besides, the first-instance court's calculations of interest on the damages are not compliant with Article 302 of the Commercial Law 2005.

In light of the aforementioned reasons, pursuant to Article 291.3, Article 297.3, Article 299 of the Civil Procedure Code (amended and supplemented in 2011),

RULES

1. To set aside Appellate Commercial Judgment No. 63/KDTM-PT dated 5 April 2010 of the Appellate Court of the Supreme People's Court of Hanoi and First-instance Commercial Judgment No. 18/2009/KDTM-ST dated 3 September 2009 of the People's Court of Bac Ninh Province; to transfer the case to the People's Court of Bac Ninh Province for re-settlement in accordance with the law.

"As to the advance payments with regard to the undelivered goods in the 4 economic contracts, the first-instance court had correctly calculated the correct amount of money that Hung Yen Metallurgy Company had to return Vietnam – Italy Steel Company. However, as to the overdue interest on the aforesaid amount, although the first-instance court applied Article 306 of the Commercial Law 2005, it did not apply the average overdue interest rate on the market of at least three local banks at the time of payment (at the first-instance hearing) to make a calculation, instead, the first-instance court was wrong in applying the basic interest of the State Bank at the time of the first-instance hearing at the plaintiff's request to determine the overdue interest (being 10.5%/year). In this case, the Court needs to apply the average overdue interest on the market of at least three local banks (Agribank, Vietcombank and VietinBank) to calculate the overdue interest in accordance with the law".

There is sufficient basis for the first-instance court to accept the request for penalties for breach of Vietnam – Italy Steel Company; however, calculating interest over the penalties for breach is not correct".

"That the first-instance court calculated interest over the damages is not compliant with Article 302 of the Commercial Law 2005".

CASE LAW NO. 10/2016/AL
on the administrative decision being the subject matter of the administrative complaint

This case law was adopted by the Judicial Council of the Supreme People's Court on 17 October 2016 and promulgated under Decision No. 698/QD-CA dated 17 October 2016 by the Chief Justice of the Supreme People's Court.

Source of the case law:

Cassation Decision No. 08/2014/HC-GDT dated 19 August 2014 of the Judicial Council of the Supreme People's Court regarding administrative case on *"complaint against decision on compensation, support and resettlement upon land expropriation by the State"* in Vinh Long Province between the plaintiff being Ms. Vo Thi Luu against the defendant being the People's Committee of Vinh Long Province.

Location of contents of the case law:

Paragraph 1 section *"Rulings"* of the aforementioned cassation decision.

Overview of the case law:

- ***Background of the case law:***

  The decision on approval of the plan of support and resettlement of the People's Committee of Vinh Long Province had contents referring to other document which directly affected the right and interest of the plaintiff.

- ***Legal resolution:***

  In this case, the content of the referred documents is part of the administrative decision and such administrative decision is the subject matter of the administrative case.

Applicable provisions of laws relating to the case law:

- Article 3.1 and Article 28.1 of the Administrative Procedure Law 2010 (Article 3.1 and Article 30.1 of the Administrative Procedure Law 2015 correspondingly);
- Articles 41 and 42 of the Law on Land 2003;
- Decree No. 197/ND-CP dated 3 December 2004 of the Government on compensation, support and resettlement upon land expropriation by the State;
- Decree No. 69/2009/ND-CP dated 13 August 2009 of the Government supplementing regulations on land use planning, land prices, land recovery, compensation, support and resettlement.

Key words of the case law:

"Administrative decision", "subject matter of administrative case", "Land recovery", "Compensation, resettlement for those having land recovered".

CONTENTS OF THE CASE

On 7 April 2008, the People's Committee of Vinh Long Province issued Decision No. 567/QD-UBND on approval of the master plan for compensation, support and resettlement of the project on construction of livestock breeding farm of Vinh Long Province in Tan An Luong Commune, Vung Liem Town, with the following contents:

"Approve the master plan on compensation, support and resettlement of the project on construction of the livestock breeding farm of Vinh Long Province:

The total area of land recovery: 122,909m²;

Total compensation value expected: VND7,342,730,000".

On 17 September 2008, the People's Committee of Vinh Long Province issued Decision No. 1768/QD-UBND with the following contents: Recover a land area of 117,863m² in Tan An Luong Commune, Vung Liem Town managed and used by households and individuals to carry out the project on construction of livestock breeding farm of the province and assign the People's Committee of Vung Liem Town to issue decision on land recovery.

On 2 October 2008, the People's Committee of Vung Liem Town issued Decision No. 2592/QD-UBND with the following contents: Recover a land area of 2,353.1m² of Ms. Vo Thi Luu, being part of parcel No. 222, farming land under cadastral map No. 03, located in Rach Coc Hamlet, Tan An Luong Commune, Vung Liem Town to construct the livestock breeding farm of Vinh Long Province.

On 1 December 2008, the Committee on compensation, support and resettlement of Vung Liem Town carried out procedures for declarations about houses, land, trees and structures of households which had been affected by the project on livestock breeding farm of the province.

On 15 May 2009, the Department of Finance of Vinh Long Province submitted Statement No. 177/TTr/STC to the People's Committee of Vinh Long Province regarding application for approval of the plan on compensation for site clearance for the livestock breeding farm of Vinh Long Province. Accordingly, Ms. Luu's household is to be compensated for the land recovery in the amount of VND155,155,000 (under the decision, the compensation for land recovery was VND50,000/m²); compensation for assets on land, support for life stabilization and vocational training in the amount of VND19,286,200. The total compensation is VND174,441,200.

On 4 June 2009, the Chairman of the People's Committee of Vinh Long Province issued Decision No. 1216/QD-UBND on approval of the plan for compensation, support and resettlement of the project on livestock breeding farm of the province in Tan An Luong Commune, Vung Liem Town with the following contents:

"Article 1. Approve the plan for compensation, support and resettlement of the project: Livestock breeding farm of the province, in Tan An Luong Commune, Vung Liem Town;

1. The total amount for compensation, support and resettlement: VND9.467,085,000, consisting of:

- Value for compensation and support on land: VND8,071,914;

- Value for land and structure: VND161,560,000.

- Value for trees: VND273,152,000;

- Other support: VND654,600,000.

- Other costs (costs for committtees, measuring cost): VND305,859,000.

2. Costs: Within the total cost estimate of the project paid by the investor.

Article 2. Pursuant to Article 1 of this Decision, the Director of Department of Finance, Chairman of the People's Committee of Vung Liem Town, Committee of compensation, support and resettlement of Vung Liem Town have the following responsibilities:

- Chairman of the People's Committee of Vung Liem Town shall instruct the Committee of compensation, support and resettlement of Vung Liem Town to pay the compensation in accordance with the current regulations of the State and complete the site clearance for contractors.

- Director of Department of Finance is responsible before the People's Committee of the province for the outcome of the data, volume and unit price in the Statement No. 177/TTr.STC dated 15 May 2009".

Disagreeing with the aforementioned decision, Ms. Luu submitted a complaint to request increased compensation.

On 28 October 2009, Chairman of the People's Committee of Vung Liem Town issued Decision No. 2023/QD-UBND rejecting the complaint of Ms. Luu.

On 8 August 2011, Ms. Luu initiated a lawsuit at the People's Court of Vinh Long Province to request setting aside Decision No. 1216/QD-UBND dated 4 June 2009 of the People's Committee of Vinh Long Province in respect of the the part of the price and compensation; to request increasing the compensation amount of the land recovery to be equivalent to the market sale price at the place of land recovery.

In First-instance Administrative Judgment No. 12/2012/HC-ST dated 18 December 2012, the People's Court of Vinh Long Province rejected the statement of claim of Ms. Vo Thi Luu.

On 29 December 2012, Ms. Luu submitted an appeal.

In Appellate Administrative Judgment No. 96/2012/HCPT dated 25 April 2013, the Appellate Court of the Supreme People's Court in Ho Chi Minh City set aside First-instance

Administrative Judgment No. 12/2012/HCST dated 18 December 2012 of the People's Court of Vinh Long Province and suspended the settlement of the case.

On 28 June 2013, the People's Court of Vinh Long Province issued Letter No. 1816/UBND-NC and on 2 August 2013, the Judicial Committee of the People's Court of Vinh Long Province issued Letter No. 547/TAT-HC requesting cassation procedures over the aforesaid appellate administrative judgment.

In Decision No. 05/2014/KN-HC dated 5 March 2014, the Chief Justice of the Supreme People's Court protested against the appellate Administrative Judgment No. 96/2013/HC-PT dated 25 April 2013 of the Appellate Court of the Supreme People's Court in Ho Chi Minh City; request the Judicial Council of the Supreme People's Court to conduct the cassation procedures to set aside the aforementioned appellate administrative judgment and transfer the case to the Appellate Court of the Supreme People's Court in Ho Chi Minh City to conduct the appellate procedures.

At the cassation hearing, the representative of the Supreme People's Procuracy agreed with the protest by the Chief Justice of the Supreme People's Court.

The Judicial Council of the Supreme People's Court finds:

Article 2 of Decision No. 1216/QD-UBND dated 4 June 2009 of the People's Committee of Vinh Long Province on approval of the plan for compensation, support and resettlement of the project on livestock breeding farm of the province provided that: *"Director of Department of Finance is responsible before the People's Committee of the province for the outcome of the data, volume and unit price in the Statement No. 177.TTr.STC dated 15 May 2009".* Statement No. 177/TTr dated 15 May 2009 of the Department of Finance provided for the compensation for Ms. Luu's household; therefore, such approved part had direct impact on the right and interest of Ms. Luu's household and was the subject matter of the administrative case.

Therefore, the People's Court of Vinh Long Province's acceptance to resolve the petition of Ms. Luu on the part of compensation and support for her family as provided for in Decision No. 1216/QD-UBND dated 4 June 2009 was in compliance with regulations in Article 3.1 and Article 28.1 of the Administrative Procedure Law. However, the first-instance Court did not review and clarify whether the purpose of the land recovery in constructing the livestock breeding farm of Vinh Long Province was based on the State or private economic reasons to determine the basis for compensation and support when recovering the land of Ms. Luu's household in accordance with the law.

Ms. Luu submitted an appeal to request compensation for land recovery based on the market price. In this case, the appellate Court should have reviewed the appeal of Ms. Luu on whether the issue of the compensation and support for Ms. Luu's family was in compliance with regulations, but instead, it ruled that Decision No. 1216/QD-UBND dated 4 June 2009 of the People's Court of Vinh Long Province is a decision on general matters and not a subject matter for initiating an administrative case, so that it set aside First-instance Administrative Judgment No. 12/2012/HC-ST dated 18 December 2012 of the People's Court of Vinh Long Province and suspended the settlement of the case. This is a serious violation in application of the administrative procedural laws.

In light of the aforesaid reasons and pursuant to Article 219.3, Article 225.3, Article 227.1 and Article 227.2 of the Administrative Procedure Law,

RULES

1. To accept Protest No. 05/2014/HN-HC dated 5 March 2014 of the Chief Justice of the Supreme People's Court.

2. To set aside Appellate Administrative Judgment No. 96/2013/HC-PT dated 25 April 2013 of the Appellate Court of the Supreme People's Court in Ho Chi Minh City and First-instance Administrative Judgment No. 12/2012/HC-ST dated 18 December 2012 of the People's Court of Vinh Long Province;

3. To transfer the case to the People's Court of Vinh Long Province to conduct first-instance procedures in accordance with the law.

CONTENTS OF THE CASE LAW

"Article 2 of Decision No. 1216/QD-UBND dated 4 June 2009 of the People's Committee of Vinh Long Province on approval of the plan for compensation, support and resettlement of the project on livestock breeding farm of the province provided that: "Director of Department of Finance is responsible before the People's Committee of the province for the outcome of the data, volume and unit price in the Statement No. 177.TTr.STC dated 15 May 2009". Statement No. 177/TTr dated 15 May 2009 of the Department of Finance provided for the compensation for Ms. Luu's household; therefore, such approved part had direct impact on the right and interest of Ms. Luu's household and was the subject matter of the administrative case".

CASE LAW NO. 11/2017/AL
on recognition of the mortgage agreement on land use rights with property on the land not owned by the mortgagor

This case law was adopted by the Judicial Council of the Supreme People's Court on 14 December 2017 and promulgated under Decision No. 299/QD-CA dated 28 December 2017 of the Chief Justice of the Supreme People's Court.

Source of the case law:

The Cassation Decision No. 01/2017/KDTM-GDT dated 01 March 2017 of the Judicial Council of the Supreme People's Court on the commercial case *"Disputes over a credit agreement"* in Hanoi between the plaintiff being Joint Stock Commercial Bank A (represented by Mr. Pham Huu P as the legal representative and Ms. Mai Thu H as the duly authorized representative) and the defendant being Company B Ltd (represented by Mr. Tran Luu H1 as the legal representative); the persons with related rights and obligations, namely Mr. Tran Duyen H, Ms. Luu Thi Minh N, Mr. Tran Luu H1, Ms. Pham Thi V, Mr. Tran Luu H2, Ms. Ta Thu H, Mr. Nguyen Tuan T, Ms. Tran Thanh H, Mr. Tran Minh H, and Ms. Do Thi H.

Location of contents of the case law:

Paragraph 4 of the section *"Findings of the Court".*

Overview of the case law:

- ***Background 1 of the case law:***

  A party mortgages its land use rights and the assets attached to such land lot owned by it in order to secure the performance of its civil obligations, however, there is other property owned by a person other than the mortgagor on such land; the form and content of the agreement in accordance with the law.

- ***Legal resolution 1:***

  In this case, the court must determine that the mortgage agreement is valid.

- ***Background 2 of the case law:***

  The mortgagor and the mortgagee agree that the mortgagee is allowed to sell the secured assets, i.e. land use rights over a land lot having a house not owned by the land user (mortgagor).

- ***Legal resolution 2:***

  When the court settles the case, it must reserve for the owner of the house priority to receive the transfer of such land use rights if it has a demand.

Applicable provisions of laws relating to the case law:

- Article 342 of the Civil Code 2005 (corresponding to Article 318 of the Civil Code 2015);

- Article 715 and Article 721 of the Civil Code 2005;

- Article 1.19.4 of the Decree No. 11/2012/ND-CP dated 22 February 2012 by the Government amending and supplementing a number of articles of the Decree No. 163/2006/ND-CP dated 29 December 2006 on secured transactions (codified under Article 325.2 of the Civil Code 2015).

Key words of the case law:

"Mortgage of land use rights", "Other person's property on the land lot", "Recognition of a mortgage agreement on land use rights", "Agreement on enforcement of secured assets", "Priority to receive transfer".

CONTENTS OF THE CASE

In the Statement of Claims dated 6 October 2011 and the testimony in the court, the plaintiff being Joint Stock Commercial Bank A presented as follow:

On 16 June 2008, Joint Stock Commercial Bank A (hereinafter referred to as the *"**Bank**"*) and Company B Ltd (hereinafter referred to as *"**Company B**")* signed the credit agreement No. 1702-LAV -200800142. Accordingly, the Bank granted Company B a loan of VND10,000,000,000 and/or equivalent amount in foreign currency for the purpose of supplementing working capital for conducting Company B's registered business.

During performance of the agreement, the Bank disbursed a total amount of VND3,066,191,933 to Company B under the credit agreements and the promissory notes. Until 5 October 2011, Company B had the outstanding principal and interest of VND4,368,570,503 (the principal amount is VND2,943,600,000 and the interest amount is VND1,424,970,503) under 03 promissory notes.

The secured assets of the aforementioned loan were the residential house and land [land lot No. 43, map No. 51-1-33 (1996)] at No. 432, Group 28, Ward E, District G, Hanoi owned and used by Mr. Tran Duyen H and Ms. Luu Thi Minh N (under the Certificate of Land Use Rights and Ownership of Residential House No. 10107490390 issued by the People's Committee of Hanoi on 7 December 2000), mortgaged by Mr. Tran Duyen H and Ms. Luu Thi Minh N under the mortgage agreement on land use rights and the assets attached to land dated 11 June 2008. This agreement was notarized by Notary Public Office No. 6 in Hanoi and registration of the secured transaction was certified by the Department of Natural Resources and Environment of Hanoi dated 11 June 2008.

On 30 October 2009, the Bank and Company B continued to sign the credit agreement No. 1702-LAV-200900583. Pursuant to the agreement, the Bank extended to Company B a loan of USD180,000. The purpose of the loan was to pay for the transportation of goods for

export; the term of the loan was 09 months; the interest rate was 5.1% per annum; the overdue interest rate was 150% [thereof].

In performing the agreement, the Bank fully disbursed the loan of USD180,000 to Company B. Company B only repaid the principal amount of USD100,750 and the interest amount of USD1,334.50. As of 05 October 2011, Company B still owed the principal amount of USD79,205 and the interest amount of USD16,879.69. The total of the principal amount and the interest amount was USD96,120.69.

The secured assets for the loan under the credit agreement No. 1702-LAV-2009058 consisted of:

- Shipment of 19 JMP-branded trucks with capacity of 1.75 tons of finished products, which are 100% brand new and valued at VND2,778,750,000 (assembled by Company B under the stock keeping unit mode), the Bank held manufacturer's quality certificates), mortgaged by Company B under the mortgage agreement No. 219/2009/EIBHBT-CC dated 29 October 2009. This agreement was registered as a secured transaction at the Registration Agency for Secured Transactions in Hanoi on 2 November 2009;

- The balance of 3-month term deposit account of VND1,620,000,000 issued by the Bank. Since Company B made the partial payment, the Bank released the amount of VND1,620,000,000 into the Company B's savings account, corresponding to the amount repaid.

At the first-instance hearing, the representative of the Bank confirmed that as to the loan of USD180,000, Company B repaid the principal in full with the interest of USD5,392.81 outstanding; as to the secured assets being 19 trucks, 18 out of them were sold and there was 01 remaining truck. The Bank requested the court to allow it to take the remaining vehicle to recover the outstanding loan amount.

The bank requested the court to compel:

- Company B to pay the outstanding principal and interest of VND4,368,570,503 in VNDunder the credit agreement No. 1702-LAV-200800142;

- Company B to pay the outstanding interest of USD5,392.81 in USDunder the credit agreement No. 1702-LAV-200900583.

In the case where Company B failed to make payment or did not make full payment, it requested the court to liquidate the secured assets as follow:

- Rights of ownership of residential house and use of land at No. 432, Group 28, Ward E, District G, Hanoi under the ownership and use of Mr. Tran Duyen H and Ms. Luu Thi Minh N;

- 01 JMP truck with capacity of 1.75 tons of finished products, which is 100% brand new assembled by Company B, under the mortgage agreement No. 219/2009/EIBHBT-CC dated 29 October 2009.

The representative of the defendant, i.e. Mr. Tran Luu H1 - the General Director of Company B, presented that: Company B confirmed the outstanding amount of principal, interest and the secured assets as presented by the Bank but it requested the Bank to allow gradual repayment.

Persons with related rights and obligations, namely Mr. Tran Duyen H and Ms. Luu Thi Minh N, presented that: they acknowledged that they entered into the mortgage agreement on the residential house and land at No. 432 mentioned above to secure repayment of the loan with the maximum amount of VND3,000,000,000 owed by Company B. The mortgage agreement was notarized and registered as a secured transaction. The family Mr. Tran Duyen H and Ms. Luu Thi Minh N supported Company B in repaying nearly VND600,000,000 for the loan that had the mortgage on their residential house and land lot. Thus, they proposed that the Bank should grant Company B an extension of repayment period so that Company B had reasonable time to recover its production and arrange repayment to the Bank. They also requested that the court does not summons their sons, daughters-in-law, daughters, and sons-in-law to appear in the court.

Mr. Tran Luu H2 on behalf of the children and grandchildren of Mr. Tran Duyen H and Ms. Luu Thi Minh N living at the residential house and land at No. 432 presented as follows:

At the end of 2010, he became aware that his parents had mortgaged their family's residential house to secure repayment of a loan of Company B. After Mr. Tran Duyen H and Ms. Luu Thi Minh N had been granted the Certificate of Land Use Rights and Ownership of Residential House in 2000, Mr. Tran Luu H2 and Mr. Tran Minh H had spent money to build another 3.5-story house on the land lot and 16 family members currently live at the house and land at No. 432. When signing the mortgage agreement, the Bank did not consult with him and the other people living at the house and land lot. Therefore, he requested that the court should not recognize the mortgage agreement and should consider that the amount of VND550,000,000 contributed by them and their siblings to repay for Company B under the credit agreement having its secured assets as the aforementioned residential house and land at No. 432. It was incorrect for the Bank to arbitrarily deduct the loan in foreign currency having its secured assets as 19 trucks.

In First-instance Commercial Judgment No. 59/2013/KDTM-ST dated 24 September 2013, the People's Court of Hanoi ruled to:

- *Accept the claims by Joint Stock Commercial Bank A against Company B Ltd;*

- *Compel Company B Ltd to repay to Joint Stock Commercial Bank A the outstanding amount under the credit agreement No. 1702-LAV-200800142, consisting of: the principal amount of VND2,813,600,000; the interest amount of VND2,080,977,381; the overdue interest amount until 23 September 2013 of VND1,036,575,586; the penalty interest amount due to late payment until 23 September 2013 of VND123,254,156; the total amount of VND6,054,407,123.*

- *Compel Company B Ltd to repay to Joint Stock Commercial Bank A the outstanding amount under the credit agreement No. 1702-LAV- 200800583 as the overdue interest amount of USD5,392.81.*

In the case where Company B Ltd fails to repay or fully repay the outstanding amount of the credit agreement No. 1702-LAV-200800142, Joint Stock Commercial Bank A may request the Civil Judgment Enforcement Agency of Hanoi to handle related secured assets in accordance with the law, being the rights to ownership of residential house and use of land at land at No. 432, map No. 51-1-33 (1996) under the Certificate of Land Use Rights and Ownership of Residential House No. 10107490390 issued by the People's Committee of Hanoi on 7 December 2000 to Mr. Tran Duyen H and Ms. Luu Thi Minh N, having their residential address at No. 432, Group 28, Ward E, District G, Hanoi in order to recover the outstanding loan amount...

Where Company B Ltd fails to repay or fails to fully repay the outstanding amount of the credit agreement No. 1702-LAV-200800583, Joint Stock Commercial Bank A may request the Civil Judgment Enforcement Agency of Hanoi to handle related secured assets in accordance with the law, namely 01 remaining JMP truck with capacity of 1.75 tons of finished products, which is 100% brand new assembled by Company B, under the mortgage agreement No. 219/2009/EIBHBT-CC dated 29 October 2009 in order to recover the outstanding loan amount".

In addition, the first-instance court ruled on the court fees and the right to appeal of involved parties pursuant to the law.

After that the first-instance hearing, the defendant and the persons with their related rights and obligations submitted appeals against the aforesaid commercial first-instance judgment.

According to Appellate Commercial Judgment No. 111/2014/KDTM-PT dated 7 July 2014, the Appellate Court of the Supreme People's Court in Hanoi ruled to:

"Uphold First-instance Judgment No. 59/2012/KDTM-ST dated 24 September 2013 of the People's Court of Hanoi on the credit agreements, the loans and other outstanding amount incurred by Company B Ltd to Joint Stock Commercial Bank A; set aside part of First-instance Judgment No. 59/2013/KDTM-ST dated 24 September 2013 of the People's Court Hanoi on the parts of the mortgage agreement relating to the third party, specifically:

... Set aside the parts of the ruling on the mortgage agreement on land use rights and the assets attached to such land of the third party (i.e. the residential house and land at No. 432, Group 28, Ward E, District G, Hanoi) signed on 11 June 2008 at the Notary Public Office No. 6 in Hanoi and registered as a secured transaction at the Department of Natural Resources and Environment of Hanoi on June 11, 2008...

Transfer the case file to the People's Court Hanoi for verification, evidence collection and re-hearing to determine which property legally owned by Mr. Tran Duyen H and Ms. Luu Thi Minh N is used as the secured assets securing repayment of the loan of Company B Ltd towards Joint Stock Commercial Bank A under the credit agreement No. 1702-LAV-200800142 dated 16 June 2008".

In addition, the appellate court also determined the court fees.

After the appellate hearing, the Bank and the People's Court of Hanoi submitted written requests for review of the appellate judgment according to cassation procedures.

According to Cassation Protest No. 14/2016/KDTM-KN dated 12 April 2016, the Chief Justice of the Supreme People's Court protested against Appellate Commercial Judgment No. 111/2014/KDTM-PT dated 7 April 2014 of the Appellate Court of the Supreme People's Court in Hanoi and requested the Judicial Council of the Supreme People's Court to set aside Appellate Commercial Judgment No. 111/2014 /KDTM-PT dated 7 July 2014 of the Appellate Court of the Supreme People's Court in Hanoi and First-instance Commercial Judgment No. 59/2013/KDTM-ST dated 24 September 2013 of the People's Court of Hanoi and to transfer the case file to the People's Court of Hanoi to re-conduct first-instance procedures in accordance with the law.

At the cassation hearing, the representative of the Supreme People's Procuracy agreed with the cassation protest of the Chief Justice of the Supreme People's Court and requested the Judicial Council of the Supreme People's Court to set aside the appellate judgment and transfer the case file to the Superior People's Court in Hanoi re-conduct appellate procedures.

FINDINGS OF THE COURT

[1] The case file indicated that in order to secure repayment of the loan provided by the Bank under the credit agreement No. 1702-LAV-200800142 dated 16 June 2008 to Company B in which Mr. Tran Luu H1, i.e. the son of Mr. Tran Duyen H and Ms. Luu Thi Minh N acted as the Director, on 11 June 2008, Mr. Tran Duyen H and Ms. Luu Thi Minh N mortgaged their house and land at No. 432, Group 28, Ward E, District G, Hanoi owned and used by Mr. Tran Duyen H, Ms. Luu Thi Minh N under the mortgage agreement on land use rights and the assets attached to such land on 11 June 2008. This agreement was notarized and registered as a secured transaction in accordance with the law.

[2] According to the certificate of ownership of residential houses and residential land use rights dated 7 December 2000, the residential house and land at No. 432, Group 28, Ward E, District G, Hanoi (hereinafter referred to as the *"**house and land No. 432**"*), including: the land area of 147.7m^2, the residential area of 85m^2, the house structure: concrete and brick construction; Number of floors: 02 + 01. When appraising the secured assets, even though the Bank acknowledged there were the registered 2-story house and the 3.5-story house, which had not registered ownership yet on the land area of 147.7m^2, the Bank only appraised the value of the land use rights and the registered 2-story house with the total value of VND3,186,700,000 but did not gather information and documents to clarify the origin of the 3.5-story house as well as the owner of such 3.5-story house. which is an omission and does not ensure the lawful rights and interests of the involved parties.

[3] During the resolution of the case, on 06 June 2012, the People's Court of Hanoi carried out on-site examination and evaluation and determined that the house and land No. 432 had 02 blocks of houses (the first block: the land area of 37.5m^2, length of 5.9 m, width of 6.35 m; the second block was the three-story concrete house with balcony, the land area of 61.3m^2) and currently there were 16 permanent residents being registered and regularly living there. Before the first-instance hearing, on 21 September 2013, Mr. Tran Luu H2 (the

son of Mr. Tran Duyen H and Ms. Luu Thi Minh N) submitted an appeal to the People's Court of Hanoi, asserting that after having been granted the Certificate of Land Use Rights and Ownership of Residential House in 2000, due to difficult living arrangements, in 2002, the family Mr. Tran Duyen H and Ms. Luu Thi Minh N agreed for Mr. Tran Luu H2 and their other children to spend money to build a new 3.5-story house next to the old 02-story house on the land lot. Thus, the People's Court of Hanoi was aware that in fact there were 02 houses, i.e. the old 02-story house and the 3.5-story house, on the land lot at the time of signing the mortgage agreement, which was not the same as detailed in the Certificate of Land Use Rights and Ownership of Residential House in 2000 and the mortgage agreement on land use rights and the assets attached to such land on 11 June 2008. When resolving the case, although the People's Court of Hanoi considered the request of Mr. Tran Luu H2 and the children of Mr. Tran Duyen H and Ms. Luu Thi Minh N relating to the 3.5-story house, the People's Court of Hanoi did not rule clearly on whether or not the 3.5-story house should be liquidated, which is incorrect and does not ensure the lawful rights and interests of the involved parties.

[4] Pursuant to Article 1.19.4 of the Decree No. 11/2012/ND-CP dated 22 February 2012 by the Government amending and supplementing a number of articles of the Decree No. 163/2006/ND-CP dated 29 December 2006 of the Government on secured transactions: *"4. In case of mortgage of land use rights only, and not mortgage of assets attached to land, and the land users are not concurrently the owners of the assets attached to land, when handling land use rights, owners of the assets attached to land may continue to use the land according to agreements between land users and owners of the assets attached to land. unless otherwise agreed. The rights and obligations between the mortgagor and the owner of the assets attached to the land shall be transferred to the buyer and recipient of the land use right".* In this case, when signing the mortgage agreement on land use rights and the assets attached to such land, both the mortgagor (Mr. Tran Duyen H and Ms. Luu Thi Minh N) and the mortgagee (the Bank) were aware that on the land lot of Mr. Tran Duyen H and Ms. Luu Thi Minh N, in addition to the 02-story house of which ownership was registered, there was the 3.5-story house of which ownership had not been registered, however, the parties only agreed on the mortgage of the assets including land use rights and the 02-story house attached to the land. Where there are many assets attached to the land, including the assets are owned by land users and the assets are owned by other persons, and the land user only mortgaged their land use rights and assets and the mortgage agreement contained contents and form consistent with the law, the mortgage agreement is valid. Therefore, the appellate court ruling that the mortgage agreement on land use rights and the assets attached to the land on 11 June 2008 was partially invalid (i.e. the part relating to the 3.5-story house); setting aside the part of the first-instance judgment on the mortgage agreement and transferring the case to the People's Court of Hanoi to verify, collect evidence to determine the property legally owned by Tran Duyen H and Luu Thi Minh N and re-hear the case was not correct. As to the documents and evidence in the case file, the appellate court should have considered and ruled to settle the secured assets being the land use rights and the house legally owned by Mr. Tran Duyen H and Ms. Luu Thi Minh N according to the law. When re-settling the case, the appellate court should have requested the involved parties to provide documents and evidence proving the origin of the 3.5-story house mentioned above in order to ensure the lawful rights and interests for those persons who had spent money building the house and currently living there. At the same time, the appellate court must consult and encourage the involved parties to reach an agreement on handling on the

secured assets. Where the mortgagor and the mortgagee agreed that the mortgagee was entitled to sell the secured assets as the rights to use the land having the house owned by other persons who are not the land users, it was necessary to reserve for the owners of the house priority if they had demand to buy (receive transfer)".

[5] In addition, given the fact that the first-instance court based on the parties' agreement in Article 5.4 of the credit agreement on the penalty interest amount due to late payment of unpaid interest amount *"the penalty interest due to late payment shall be after 10 days from the due date, the penalty interest rate is 2% of the unpaid interest amount; after 30 days from the due date, the penalty interest rate is 5% of the unpaid interest amount"* to accept the request of the Bank to compel Company B to pay the penalty interest amount of VND123,254,156, which is incorrect with law and cannot be accepted because this is interest-on-interest. The appellate court not discovering this error and upholding the first-instance judgment was incorrect.

In light of the aforementioned reasons:

RULES

Pursuant to Article 337.2, Article 343.3, and Article 345 of the Civil Procedure Code 2015; Resolution No. 103/2015/QH13 dated 25 November 2015 on the implementation of the Civil Procedure Code;

1. To accept Cassation Protest No.14/2016/KDTM-KN dated 12 April 2016 of the Chief Justice of the Supreme People's Court.

2. To set aside Commercial Judgment No. 111/2014/KDTM-PT dated 7 July 2014 of the Appellate Court of the Supreme People's Court in Hanoi on the commercial case with regard to disputes over the credit agreement between the plaintiff as Joint Stock Commercial Bank A, the defendant as Company B Ltd and 10 persons with related rights and obligations.

3. To transfer the case file to the Superior People's Court of Hanoi for re-hearing according to the appellate procedures under the law.

CONTENTS OF THE CASE LAW

"[4] Where there are many assets attached to the land, including the assets are owned by land users and the assets are owned by other persons, and the land user only mortgaged their land use rights and assets and the mortgage agreement contained contents and form consistent with the law, the mortgage agreement is valid

… Where the mortgagor and the mortgagee agreed that the mortgagee was entitled to sell the secured assets as the rights to use the land having the house owned by other persons who are not the land users, it was necessary to reserve for the owners of the house priority if they had demand to buy (receive transfer)".

CASE LAW NO. 12/2017/AL
on determination of the situation where the involved party is properly summonsed for the first time after the court postponed the hearing

The case law was adopted by the Judicial Council of the Supreme People's Court on 14 December 2017 and promulgated under Decision 299/QD-CA dated 28 December 2017 of the Chief Justice of the Supreme People's Court.

Source of the case law:

Cassation Decision 14/2017/KDTM-GDT dated 6 June 2017 of the Judicial Council of the Supreme People's Court on a commercial case named *"Dispute over the sale of goods contract"* in Quang Tri Province between the Plaintiff being Q Joint Stock Company (the legal representative is Mr. Dang Cong D, the authorized representative is Mr. Ho Nghia A) and the Defendant being T Company Limited (the legal representative is Mr. Vo Van T, the authorized representative is Ms. Vo Thi T).

Location of contents of the case law:

Paragraph 1 of the "Findings of the Court".

Overview of the case law:

- ***Background of the case law:***

  The court ruled to postpone the hearing and the reason for the postponement of the court hearing was not caused by the fault of the involved parties (the plaintiff, the defendant, the persons with related rights and obligations) or the representative, the lawyer protecting lawful rights and interests. The court was re-opened, however, the involved party or the legal representative, the lawyer protecting lawful rights and interests of the involved party were absent from the hearing.

- ***Legal resolution:***

  The court must determine that this situation is where the legal representative, the lawyer protecting lawful rights and interests of the involved party, who were properly summonsed, were absent for the first time from the court hearing.

Applicable provisions of laws relating to the case law:

Article 199.1, Article 202, Article 266.2 of the Civil Procedure Code 2004, (Article 227.1, Article 228, Article 296.2 of the Civil Procedure Code 2015).

Key words of the case law:

"Summonsed properly", "summonsed properly for the first time", "the involved party was absent from the court hearing", "Postponement of the court hearing"

CONTENTS OF THE CASE

Pursuant to the Statement of Claims dated 5 November 2012; the amended and supplemented Statement of Claims dated 26 May 2013 and the testimonies in the Court, the Plaintiff being Q Joint Stock Company presented the following:

On 3 January 2011, Q Joint Stock Company (hereinafter referred to as Q Company) and T Company Limited (hereinafter referred to as T Company) signed a Sale and Purchase Agreement on rubber plant seedlings No. 011/2011/HDKT; on 23 February 2011, the parties continued to sign Contract No. 021/2011/HDKT with the same contents. The total quantity of rubber plant seedlings under both contracts are 400,000 rubber plant seedlings with two layers of leaves with the value of 2,800,000,000 Lao Kip (each contract 200,000 seedlings valued at 1,400,000,000 Lao Kip). After signing the agreements, Q Company paid an advance of 930,000,000 Lao Kip (equal to VND2,511,000,000).

During the performance of the agreements, T Company requested to borrow 449,455 bare Stump seedlings and Q Company accepted. Q Company signed a purchase contract for such seedlings with V Company for the price of VND6,500/seedling. T Company made payment for over 40,600 seedlings to Q Company and owed the amount for 408,885 seedlings to Q Company. For phase 1, T Company only delivered 79,924 seedlings and then did not perform the contract. Q Company had invited T Company many times to meet to solve the problems, but T Company did not do so. On 5 October 2011, Mr. Vo Van T sent his daughter being Ms. Vo Thi T to work with Q Company. In order to mitigate the damages occurred, Q Company conducted a stock-take on the existing number of seedlings. Up to 14 September 2011, the total number of seedlings was 194,776 seedlings, however this was just the stock-take number and not the actual number of seedlings delivered. Up to the time of delivery of September 2011, the number of seedlings delivered only accounted for 20% of the total amount, which is 76% of the advance payment that T Company received previously from Q Company. Therefore, Q Company agreed with Ms. Vo Thi T to let Q Company designate their workers to use and pick up for phase 2, which was 117,883 seedlings, increasing the total number of seedlings being delivered to 197,757 Stump seedlings, equal to the total value of VND3,623,987,000 dong.

In addition, Q Company lent T Company other types of materials and fertilizers with the total value of VND243,913,211, however, T Company has not returned yet.

T Company delivered 163,376 [bags] of potting soil valued at 39,414,000 Lao Kip, equal to VND105,629,500; a wooden garden valued at 20,491,200 Lao Kip, equal to VND54,916,000 and VND18,096,000; the total amount is VND178,641,500. Therefore, Q Company requested the court to resolve the dispute as follows:

- To compel T Company to compensate damages for failure to perform both above-mentioned contracts with the total number of seedlings that were not fully delivered being 202,243 seedlings (valued at VND3,706,102,975). Pursuant to the contract, the parties had an agreement on the penalty in which the breaching party shall bear

a penalty of 5 times the value of the undelivered seedlings being VND18,530,514,875;

- To compel T Company to return 408,885 bare Stump seedlings that were borrowed from Q Company, the monetary value of these seedlings is VND2,657,557,500.

- To compel T Company to return the materials belonging to Q Company including: PE growbags (18x40) 5,170 kg, Kali fertilizer 500 kg, DAP fertilizer 1,000kg, phosphorus fertilizer 2,800 kg with the total value of 91,212,392 Lao Kip, equal to VND243,913,211.

At the court hearing, Q Company only requested for application of the penalty amount of 8% of the value of the undelivered seedlings being VND296,488,000 dong for breach of the contract. The total amount that T Company is required to pay to Q Company is VND3,088,822,500. After setting off the amount of VND1,367,934,000, T Company must pay to Q Company an amount of VND1,720,888,500.

The defendant being T Company Limited presented the following:

It confirmed that the contents of the contract are the same as presented by Q Company. T Company fully performed the contract, however, at the time of delivery of the seedlings, Q Company postponed and did not receive the seedlings because there was a lack of workers and means of transportation for transporting the seedlings. The representative of Q Company stated that at that moment due to the Company's planting plan for rubber plants compared to the previous year's planting plan, therefore, Q Company did not know where to plant the seedlings after receiving. Thus, until 19 July 2011, Q Company accepted to receive 79,924 seedlings in the phase 1 and until 21 September 2011, the aforesaid-mentioned seedlings were fully received. T Company had repeatedly requested Q Company to receive the remaining seedling, however, Q Company did not come to receive those seedlings. At the beginning of September 2011, Q Company told T Company that on 14 September 2011, their technical staff will be sent to T Company to inspect the remaining seedlings. If the remaining seedlings can still be used, they would count and receive such seedlings and request to leave those seedlings temporarily in the nursery garden of T Company, until Q Company has a new planting plan to plant such seedlings. The number of seedlings that Q Company counted on 14 September 2011 was 194,766 seedlings, and adding the 79,924 seedlings received in phase 1, then the total quantity of seedlings received by Q Company was 274,690 seedlings. The seedlings that Q Company did not receive on time and died were 125,310 seedlings. Thus, with respect to 400,000 seedlings under both agreements, T Company had fully provided them. The failure of not receiving the seedlings, leading to seedlings dying was caused by Q Company. The obligations of delivery of seedlings under the two agreements have been fully performed by T Company, and T Company had repeatedly requested Q Company to pay. However, Q Company did not agree to pay.

Q Company had advanced an amount of 930,000,000 Lao Kip for T Company under the two contracts, equal to VND2,511,000,000, the amount of fertilizer and materials that Q Company lent to T Company is 91,212,932 Lao Kip. The total amount of money that T Company is required to pay to Q Company is 1,021,212,392 Lao Kip, equal to VND2,757,273,454.

The total value of both contracts that T Company had made payments were 2,800,000,000 Lao Kip. Q Company received the wooden garden valued at 20,491,200 Lao Kip and VND18,096,000. PE growbags that Q Company has received from T Company valued at 32,865,000 Lao Kip, the value of PE growbags for phase 2 is 7,875,000 Lao Kip, the money spent for the potting soil is 39,406,291 Lao Kip. As such, the total amount of money that Q Company is required to pay to T Company is 2,900,637,491 Lao Kip, equal to VND7,831,721,225. After setting off the obligations of the parties, T Company made a counterclaim to request Q Company for the payments of 1,879,425,009 Lao Kip (equal to VND5,074,447,767) and VND18,096,000. The total value is VND5,092,543,767.

At the court hearing, T Company only requested the following payments:

- The value of 400,000 seedlings that has been performed under the contract being 1,870,000,000 Lao Kip (after the deduction of an advance 930,000,000 Lao Kip) equal to VND4,895,288,000.

- The value of the wooden garden is 20,491,200 Lao Kip, equal to VND53,642,000 and VND18,096,000.

- The value of 163,376 bags of soil is 39,414,000 Lao Kip, equal to VND103,158,000. The total value that T Company requested Q Company to make payment is VND4,967,026,000.

- For 449,445 seedlings that T Company borrowed from Q Company, T Company returned 40,600 seedlings and kept the remaining 408,885 seedlings. T Company agreed to pay by materials, T Company did not accept to pay in cash.

In First-instance Commercial Judgment No. 08/2013/KDTM-ST dated 4 September 2013, the People's Court of Quang Tri province ruled:

To apply Article 34.1, Article 35.1, Article 37.1, Articles 54, 55, 56, 300, 301 of the Commercial Law, Article 131.1 of the Civil Procedure Code, Articles 27.4 and 27.5 of the Ordinance on Case Fees, Fees for Dispute Resolution in the Courts.

- *To accept the claims of the plaintiff, to compel the defendant being T Company Limited to make payment to the plaintiff being Q Joint Stock Company for an amount of VND1,720,888,500.*

- *Not to accept the counterclaim of the defendant to the claim for payment of VND3,602,837,000*

The first-instance court ruled on the court fees and the right to appeal of the involved parties.

On 4 September 2013, T Company submitted an appeal against the first-instance judgment in its entirety.

On 1 October 2013, the Chief Prosecutor of the People's Procuracy of Quang Tri Province issued Protest Decision No. 2110/QDKNPT-P12 to protest against First-instance Commercial Judgment No. 08/2013/KDTM-ST dated 4 September 2013 of the People's Court of Quang Tri Province.

In the appellate Commercial Judgment No. 19/2014/KDTM-PT dated 26 February 2014, the appellate court of the Supreme People's Court in Da Nang ruled:

- *To suspending the appellate hearing with respect to the appeal of defendant being T Company Limited.*

- *Not to accept the Protest Decision 2110/QDKNPT-PT12 dated 1 October 2013 of the Chief Prosecutor of the People's Procuracy of Quang Tri Province. Uphold the first-instance judgment.*

- *After the appellate hearing, T Company submitted a petition requesting cassation review with respect to the above-mentioned appellate commercial judgment.*

In the Cassation Protest No. 01/2017/KN-KDTM dated 24 February 2017, the Chief Justice of the Supreme People's Court protested against the appellate Commercial Judgment No. 19/2014/KDTM-PT dated 26 February 2014 of the appellate court of the Supreme People's Court in Da Nang and requested the Judicial Council of the Supreme People's Court to set aside the appellate commercial judgment as above-mentioned and First-instance Commercial Judgment No. 08/2013/KDTM-ST dated 4 September 2013 of the People's Court of Quang Tri Province, to transfer the case to the People's Court of Quang Tri Province to re-conduct the first-instance procedures as provided by the laws.

In the cassation hearing, the representative of the People's Procuracy requested the Judicial Council of the Supreme People's Court to accept the protest of the Chief Justice of the Supreme People's Court.

FINDINGS OF THE COURT

[1] Procedures: Pursuant to the Minutes of appellate hearing dated 26 November 2013, in the court hearing, the involved parties were all present pursuant to the summons of the court. However, the Council of Adjudicators ruled to postpone the hearing so that the involved parties can provide additional evidence. In the appellate hearing re-opened on 26 February 2014, the defendant and the lawyer protecting the lawful rights and interests were absent. Where the Council of Adjudicators ruled to postpone the court hearing and the postponement of court hearing was due to the court, in the re-opened hearing, the

absence of the involved parties or the representative, the lawyer protecting lawful rights and interests of the involved parties shall be deemed as the first absence from the court.

The appellate court should have determined that the defendant and the lawyer protecting lawful rights and interests of the defendant were summonsed properly but were absent for the first time at the court hearing in accordance with Article 199.1 and Article 266.2 of the Civil Procedure Code to postpone the hearing. The appellate court found in the appellate hearing that the defendant and the lawyer protecting lawful rights and interest of the defendant were validly summonsed and were absent at the court hearing for the second time. Therefore, the court's decision on suspend the appellate hearing with respect to the defendant's appeal did not comply with Articles 199, 202, and 266 of the Civil Procedure Code, depriving the right to appeal and affect the lawful rights and interests of the defendant.

[2] On determination of the parties' faults: Pursuant to Article 3 of the Sale and Purchase Agreement on rubber plant seedlings dated 3 January 2011, the parties agreed that at the latest on 31 July 2011, Party B (T Company) must fully deliver 200,000 seedlings meeting the quality requirements to Party A (Q Company). The Working Minutes dated 15 July 2011 on carrying out the examination and assessment of the quality of seedlings in the gathering area until 15 July 2011 between Mr. Ho Duy Ly being the staff of the Agriculture Technique Department of Q Company and Ms. Vo Thi T being the representative of T Company recorded the conclusions: "15,550 Stumps with layer of leaves were delivered to the gathering area; Stumps with 2-3 layers of leaves were delivered to the gathering area; the layer of leaves is stable, the quality of Stump with layer of leaves is good". From 15 July 2011 to 31 July 2011 (the last date for delivery of the seedlings under the contract) the parties did not deliver and receive seedlings and had no written agreement on extension of the deadline for delivery of the seedlings. Q Company stated that on 15 July 2011, T Company had 15,550 seedlings that met quality requirements, therefore, on 31 July 2011 it would be impossible for T Company to have all 400,000 seedlings for delivery of seedlings. Therefore, T Company breached the agreement. T Company stated that until 31 July 2011, Q Company only received 3,268 seedlings (although T Company had 15,550 seedlings for delivery), therefore Q Company breached the agreement.

[3] In the Minutes of the appellate court hearing dated 26 November 2013, Q Company explained the following: until 31 July 2011 (the last day of delivery of seedlings under the contract), Q Company did not make a Minutes on Handover of Seedlings and until September 2011, Q Company continue to perform the contract by receiving the seedlings because Q Company examined those seedlings, however, T Company only delivered 79,000 seedlings. The remaining seedlings did not meet the standards for delivery as specified in the agreement. Therefore, Q Company agreed to lengthen the time of delivery the seedlings for deduction of debt and allowing T Company to take care of the seedlings until they qualified for delivery. Simultaneously, Mr. H (the head of the Agriculture Technique Department of Q Company being the witness) explained that on 31 July 2011, Q Company only received 3,000 seedlings because Q Company only had 3 vehicles to transport (2 Kazma cars and 1 Isuzu car). At this time, it was raining in Laos, the road was slippery, Ms.

T had a cellphone therefore Q Company asked her to pick up the seedlings. However, due to the difficulties, Q Company did not pick up the seedlings.

[4] With regards to the above-mentioned developments, it can be determined that the parties agreed on the time of delivery shall be from 30 June 2011 to 31 July 2011 with the total quantity of seedlings is 200,000. (The total quantity of seedlings to be delivered under the 2 contracts is 400,000). Although, up to 15 July 2011, T Company had 15,500 seedlings for delivery, Q Company only received 3,200 seedlings due to the rainy weather and slippery roads and there were only 3 vehicles to transport. Although these facts were not presented in writing, until 5 October 2011, Q Company accepted to extend the time for delivery of the seedlings and continued to receive the seedlings within 12 days. Up to 21 September 2011, Q Company received 79,924 seedlings and until 24 October 2011, the parties continued to deliver the seedlings (pursuant to the Minutes on Handover of the seedlings dated 24 October 2011, in which the court determined that from 6 October 2011 to 24 October 2011, Q Company delivered 83,867 PB260 seedlings with 2 layers of leaves and good quality seedlings). Therefore, there were grounds that both T Company and Q Company had faults in delivering the seedlings. The first-instance court and the appellate court determining that the faults belong to T Company and applied the highest penalty level pursuant to Article 301 of the Commercial Law (8%) to T Company was not appropriate, the court should re-determine the level of fault of the parties to rule correctly on penalty.

[5] On the borrowed seedlings: The case file presented that the parties did not have any agreement on borrowing the seedlings. However, both parties confirmed that Q Company lent 449,455 seedlings to T Company, T Company has returned 40,600 seedlings, and owed 408,855 seedlings. T Company stated that there were enough seedlings for a return and agreed to return those seedlings, but did not agree to pay in cash. Q Company stated that T Company does not have the capacity to return those seedlings, therefore Q Company requested T Company to pay in cash. Articles 471 and 474 of the Civil Code 2005 on the contract for property loan, Article 514 of the Civil Code 2005 on property borrowing provided on the repayment obligations that the borrower (the property borrower) must return the same type of property, however, the first-instance and the appellate court did not review on whether or not T Company was able to return the same type of seedlings, which were not consistent with the laws. If T Company is incapable of return the same type of seedlings, T Company is required to pay in cash.

For the above reasons:

RULES

Based on Article 337.2, Article 343.3, Article 345 of the Civil Procedure Code 2015; Resolution No. 103/2015/QH13 dated 24 November 2015 of the National Assembly on implementation of the Civil Procedure Code.

1. Accept the Cassation Protest No. 01/2017/KN-KDTM dated 24 February 2017 of the Chief Justice of the Supreme People's Court to the appellate Commercial Judgment No. 19/2014/KDTM-PT dated 26 February 2014 of the appellate court of the Supreme People's Court in Da Nang on the commercial case named "Dispute over the sale of goods agreement" between the plaintiff being Q Joint Stock Company and the defendant being T Company Limited.

2. To set aside the appellate Commercial Judgment No. 19/2014/KDTM-PT dated 26 February 2014 of the appellate court of the Supreme People's Court in Da Nang and First-instance Commercial Judgment No. 08/2013/KDTM-ST dated 4 September 2013 of the People's Court of Quang Tri Province.

3. To transfer the case to the People's Court of Quang Tri Province to re-conduct the first-instance procedures as provided under the laws.

CONTENTS OF THE CASE LAW

"[1] Procedures: Pursuant to the Minutes of appellate hearing dated 26 November 2013, in the court hearing, the involved parties were all present pursuant to the summons of the court. However, the Council of Adjudicators ruled to postpone the hearing so that the involved parties can provide additional evidence. In the appellate hearing re-opened on 26 February 2014, the defendant and the lawyer protecting the lawful rights and interests were absent. Where the Council of Adjudicators ruled to postpone the court hearing and the postponement of court hearing was due to the court, in the re-opened hearing, the absence of the involved parties or the representative, the lawyer protecting lawful rights and interests of the involved parties shall be deemed as the first absence from the court. The appellate court should have determined that the defendant and the lawyer protecting lawful rights and interests of the defendant were summonsed properly but were absent for the first time at the court hearing in accordance with Article 199.1 and Article 266.2 of the Civil Procedure Code to postpone the hearing. The appellate court found in the appellate hearing that the defendant and the lawyer protecting lawful rights and interest of the defendant were validly summonsed and were absent at the court hearing for the second time. Therefore, the court's decision on suspend the appellate hearing with respect to the defendant's appeal did not comply with Articles 199, 202, and 266 of the Civil Procedure Code, depriving the right to appeal and affect the lawful rights and interests of the defendant".

CASE LAW NO. 13/2017/AL
regarding the validity of letter of credit (L/C) in the event that an international contract for sale of goods being the basis of the L/C is cancelled

This case law was adopted by the Judicial Council of the Supreme People's Court on 14 December 2017 and promulgated under Decision No. 299/QD-CA dated 28 December 2017 by the Chief Justice of the Supreme People's Court.

Source of the case law:

Cassation Decision No. 17/2016/KDTM-GDT dated 10 November 2016 of the Judicial Council of the Supreme People's Court on commercial *case "Dispute on contract for sale of goods"* in Ho Chi Minh City between single member limited liability company A being the plaintiff (where Mr. Nguyen Duy T is the authorized representative) against Company B being the defendant; the persons with related rights and obligations are Joint Stock Commercial Bank E (where Mr. Hua Anh K is the authorized representative) and Bank N (where Ms. Nguyen Thi V is the authorized representative).

Location of contents of the case law:

Paragraphs 34 and 36 of the section *"Findings of the Court"*.

Overview of the case law:

- ***Background of the case law:***

  An international contract for sale of goods contains the payment method by letter of credit (L/C) of which performance is agreed to apply international trade practices (Uniform Customs and Practice for Documentary Credits 2007 (UCP 600) of the International Chamber of Commerce) and in compliance with the law of Vietnam. The international contract for sale of goods being the basis for the L/C is cancelled.

- ***Legal resolution:***

  In this case, the court shall determine that the letter of credit (L/C) is still valid regardless of the fact that the international contract for sale of goods being the basis for the letter of credit (L/C) is cancelled.

Applicable provisions of laws relating to the case law:

- Article 3 of the Civil Code 2005 (Article 5 of the Civil Code 2015 correspondingly);

- Decision No. 226/2002/QD-NHNN dated 26 March 2002 of the State Bank on the issuance of the regulation on payment activities through payment service supplies",

- The 6th amendment of the Uniform Customs and Practice for Documentary Credits (UCP 600) of the International Chamber of Commerce.

Key words of the case law:

"Letter of credit", "L/C", "UCP 600", "International trade practices", "Contract for sale of goods", "International contract for sale of goods", "cancelled contract".

CONTENTS OF THE CASE

According to the Statement of Claims dated 15 September 2011, Amended and Supplemented Statement of Claims dated 22 September 2011 and during the proceedings, the plaintiff, being represented by Ms. Mai Thi Tuyet N – the duly authorized representative of Single Member Limited Liability Company A, made its submission as follows:

On 7 June 2011, Single Member Limited Liability Company A (hereinafter referred to as the *"Buyer"* or *"Company A"*) and Company B (hereinafter referred to as the "*Seller"*) entered into an international contract for sale of goods No. FARCOM/RCN/IVC/036/2011 dated 7 June 2011 (hereinafter referred to as the *"Sales Contract of 7 June 2011"*). Pursuant to the Sales Contract of 7 June 2011, the Buyer shall purchase Ivory Coast raw cashew nuts with the quantity of 1,000 metric tons x USD1,385.50/ton following the deferred payment of 98% L/C to be paid within 90 days from the delivery date in the bill of lading (B/L) in accordance with the following specifications:

- Outturn: 47 lbs/80kg and (right to refuse delivery of goods if the outturn is below 45 lbs/80kg.

- Nut count: maximum of 205 /kg. Refuse if 220 nuts/kg.

- Maximum moisture is 10%. Refuse if moisture is over 12%.

Quantity and quality of the goods shall be inspected by Vinacontrol at the time of delivery in the port of destination being Ho Chi Minh City.

Payment method by deferred payment letter of credit (L/C) within 90 days, on 7 July 2011, the Buyer had requested the Joint-stock Commercial Bank E - Branch D to issue deferred payment L/C No. 1801ILUEIB110002 (hereinafter referred to as *"L/C No. 1801"*) for the Buyer to complete procedures for the purchase of goods from the Seller.

After the delivery, pursuant to Article 8 of the Contract, the Buyer had inspected the quantity and quality of the goods at the port of discharge being the Cat Lai Port of Ho Chi Minh City under the supervision of Vinacontrol. The Buyer however discovered that the quality of the Seller's delivered goods did not achieve the quality specifications. Specifically, according to Vinacontrol's certificates No. 11G04HN05957-01 and No. 11G04HN05939-01 both dated 31 August 2011 inspecting the quantity, quality and status of the goods, the inspection results indicated that the average outturn of the cashew nuts for the two cuttings of the cashew nut samples was 37.615 lbs/80kg (this ratio is too low compared to the refusal condition, by almost 10 lbs). With this commercial fraud, the Buyer, on many occasions, attempted to contact the Seller to resolve the outstanding problems concerning the quality of the imported cashew nuts but received no responses from the Seller.

Therefore, on 15 September 2011, the Buyer submitted a Statement of Claims to Ho Chi Minh City's People's Court to request the court to compel the Seller to receive the return of the shipment of 1,000 tons of the cashew nuts because the out-turn was within the conditions for refusal of the goods under the Contract, being under 45 lbs. He Buyer disagreed to pay the purchase price, and also requested the court to apply a provisional measure to compel Joint-stock Commercial Bank E to temporarily suspend payment to the Seller of the amount of USD1,313,308.85 under L/C No. 1801 pursuant to the Buyer's payment commitment until the court has ruled otherwise.

On 12 August 2013, the Buyer paid the advance court fee for the additional claims being the requests for cancellation of the Sales Contract of 7 June 2011 and L/C No. 1801.

At the first-instance court hearing, the plaintiff requested that the court:

1. Cancel Sales Contract of 7 June 2011.

2. Compel the Seller to receive the return of the entire shipment of the delivered goods at the Buyer's address at Hamlet C2, National Highway 1A, C Commune, L Town, Dong Nai Province immediately after the judgement comes into effect. After 30 days from the date on which the judgment is effective, if the Seller fails to receive the return the delivered goods, the enforcement agency is entitled to sell the aforementioned goods to return the space to the Buyer.

3. Cancel the payment obligation of the Buyer under L/C No. 1801 and request Joint-stock Commercial Bank E immediately return the escrow deposit of USD1,313,308.85 to the plaintiff.

4. Maintain its Decision on application of the provisional measure No. 101/2011/QD-BPKCTT dated 23 September 2011 until the judgment becomes effective. Concurrently, grant the Buyer the right to receive the return of the security amount of VND1,500,000,000 at Bank T - Branch P under the court's decision when the judgment becomes effective.

The defendant being Company B (the Seller), with head office in a foreign country and was properly served by the court through the Ministry of Justice of Vietnam in accordance with regulations of the Civil Procedure Code, Law on Mutual Legal Assistance 2007 and Joint-Circular No. 15/2011/TTLT-BTP-BNG-TANDTC dated 15 September 2011, but the Seller was still absent and did not answer.

The person with related rights and obligations being Joint-stock Commercial Bank E presented:

At the Buyer's request, on 7 July 2011, Joint-stock Commercial Bank E - Branch D issued L/C No. 1801 with the following contents:

- L/C value: USD1,357,790
- Purpose: import of 1,000 metric tons of raw cashew nuts from Ivory Coast;
- Beneficiary bank: Bank N, Singapore
- Beneficiary: Company B.

- Deferred payment L/C pursuant to UCP 600, with confirmed terms.
- Security measure: third-party guarantee; secured asset; passbook savings card.
- Payment due dates: 29 September 2011 (USD961,813.66) and 17 October 2011 (USD351,495.19).

After having received the valid set of documents, the Buyer signed to acknowledge that it had received full value and on time under the L/C. Based on the Buyer's confirmation, Joint-stock Commercial Bank E - Branch D endorsing the draft.

Based on the confirmation of the L/C, according to the status of the set of documents, Bank N negotiated without recourse to the Seller with respect to the 03 sets of documents, valued at USD1,313,308.85 on the dates of 25 July, 28 July and 8 August 2011.

According to the contents of issued L/C, the L/C is governed by and applies the *"Uniform Customs and Practice for Documentary Credits"*, with the most recent version (currently UCP 600). According to UCP 600, Joint-stock Commercial Bank E being the issuing bank shall commit to pay based on the sets of documents and payment commitments, which also means that the Buyer had made the payment to the Seller. Based on the valid set of documents and acceptance of payment by the Buyer, Joint-stock Commercial Bank E endorsed the draft. Bank N had negotiated without recourse to the Seller with respect to the 03 sets of documents of the said L/C.

Joint-stock Commercial Bank E did not agree with the plaintiff's requests that the court cancel L/C No. 1801 and compel Joint-stock Commercial Bank E to immediately return the escrow deposit of USD1,313,308.85 to the plaintiff. Joint-stock Commercial Bank E requested that the court set aside the Decision on application of the provisional measure No. 101/2011/QD-BPKCTT dated 23 September 2011 in order for Joint-stock Commercial Bank E to pay Bank N in accordance with the agreement in the L/C.

The person with related rights and obligations being Bank N presented that:

According to Sales Contract of 7 June 2011 and L/C No. 1801, Bank N (Singapore branch) is the bank nominated by the Seller to implement the payment under the L/C issued by Joint-stock Commercial Bank E.

In accordance with UCP 600, Bank N had negotiated the complying presentation by the Seller and paid the value under the letter of credit to the Seller on 25 July 2011, 28 July 2011 and 8 August 2011. Therefore, Bank N had lawfully obtained L/C No. 1801 together with relevant documents and became the direct beneficiary of all and any payment under this letter of credit. After the set of documents was presented in accordance with the provisions of the letter of credit, Joint-stock Commercial Bank E had confirmed and accepted the full set of documents and committed to pay Bank N on 29 September 2011 and 17 October 2011. However, the payment was not made due to the fact that the Buyer had requested and the court had applied the provisional measure under Decision No. 101/2011/QĐ-BPKCTT dated 23 September 2011.

Bank N requested the court to immediately set aside Decision on applying the provisional measure No. 101/2011/QD-BPKCTT dated 23 September 2011 and requested that the Buyer compensate for losses suffered by Bank N due to the unlawful request for applying

the provisional measure, causing Bank N to not be able to receive the payment under the letter of credit from Joint-stock Commercial Bank E. The compensation requested by Bank N is the interest amount that Bank N was paying on basis of the total payable amount in accordance with the 03 sets of documents duly presented to Joint-stock Commercial Bank E corresponding to the overdue period being from the due date as committed by Joint-stock Commercial Bank E (29 September 2011) to the date on which Bank N submitted its application to join the proceedings of this case and based on the interbank interest rate at the time of the application (3.8%/12 months). The total damages that Bank N requested the Buyer to pay was USD33,270.49 which was equivalent to VND694,188,744.

According to First-instance Commercial Judgment No. 356/2014/KDTM-ST dated 7 April 2014, the People's Court of Ho Chi Minh City ruled to:

"1. Cancel the contract for sale of goods No. FARCOM/RCN/IVC/036/2011 dated 7 June 2011 between the Seller being Company B and the Buyer being Single Member Limited Liability Company A.

Compel Company B to receive the return of the entire shipment of Ivory Coast raw cashew nuts with the quantity of 1,000 metric tons delivered under the Sales Contract No. FARCOM/RCN/IVC/036/2011 which were being stored at: warehouse of Single Member Limited Liability Company A, Hamlet C2, National Highway 1A, C Commune, L Town, Dong Nai Province. After 30 days from the date on which the judgment becomes effective, if Company B fails to receive the return of the said shipment, the judgment enforcement agency is entitled to sell the shipment in accordance with the law and return the space to Single Member Limited Liability Company A.

2. Deferred payment L/C No. 1801ILUEIB110002 issued by Joint-stock Commercial Bank E - Branch D on 7 July 2011 was no longer valid. Joint-stock Commercial Bank E is not obliged to pay Bank N under deferred payment L/C No. 1801ILUEIB110002 issued by Joint-stock Commercial Bank E - Branch D on 7 July 2011.

Compel Joint-stock Commercial Bank E to return to Single Member Limited Liability Company A the secured assets for the payment under the L/C being the escrow deposit of USD1,313,308.85.

3. Maintain the effectiveness of the provisional measure under Decision No. 101/2011/QD-BPKCTT dated 23 September 2011 by the People's Court of Ho Chi Minh City and the security measure under Decision No. 100/2011/QD-BPBD dated 23 September 2011 of the People's Court of Ho Chi Minh City until the judgment becomes effective. Single Member Limited Liability A is entitled to receive the entire amount of VND1,500,000,000 (one billion five hundred million Dong) deposited in the escrow account No. 1022130.3441.012 at Bank T - Branch P in which Single Member Limited Liability Company A deposited the money under Decision on performance of the security measure No. 100/2011/QD-BPBD dated 23 September 2011 by the People's Court of Ho Chi Minh City when the judgment becomes effective.

4. Not to accept Bank N's request for compensation of losses for an amount of USD33,270.49, equivalent to VND694,188,774 from Single Member Limited Liability Company A".

In addition, the judgment also deals with the court fee, overdue interest and time limit for appeal.

On 21 April 2014, Joint-stock Commercial Bank E submitted an appeal against the entire aforesaid first-instance commercial judgment.

According to Decision on suspension of the appellate hearing No. 29/2015/QDPT-KDTM dated 26 August 2015, the Superior People's Court in Ho Chi Minh City ruled:

1. To suspend the appellate hearing over the Commercial Case No. 40/2014/TLKDTM-PT dated 18 August 2014 on "Dispute on contract for sale of goods".

2. First-instance Commercial Judgment No. 356/2014/KDTM-ST dated 7 April 2014 of the People's Court of Ho Chi Minh City takes effect as from 26 August 2015.

In addition, the court ruled on the court fees.

On 10 September 2015, Joint-stock Commercial Bank E submitted a request to the Chief Justice of the Supreme People's Court for consideration of the aforementioned first-instance commercial judgment and Decision on suspension of the appellate hearing under the cassation procedures.

In Decision No. 11/2016/KN-KDTM dated 7 March 2016, the Chief Justice of the Supreme People's Court protested against Decision on suspension of the appellate hearing over the Commercial Case No. 29/2015/QDPT-KDTM dated 26 August 2015 by the Superior People's Court in Ho Chi Minh City; requested the Judicial Council of the Supreme People's Court to conduct the cassation procedures to set aside Decision on suspension of the appellate hearing No. 29/2015/QDPT-KDTM dated 26 August 2015 by the Superior People's Court in Ho Chi Minh City and First-instance Commercial Judgment No. 356/2014/KDTM-ST dated 7 April 2014 of the People's Court of Ho Chi Minh City; transfer the case file to the People's Court of Ho Chi Minh City re-conduct the first-instance procedures in accordance with the law.

At the cassation hearing, the representative of the Supreme People's Procuracy requested that the Judicial Council of the Supreme People's Court accept the protest of the Chief Justice of the Supreme People's Court.

FINDINGS OF THE COURT

[1] On 7 June 2011, Single Member Limited Liability Company A (the Buyer) and Company B (the Seller) entered into Sales Contract of 7 June 2011, wherein the Buyer buys 1,000 metric tons of raw cashew nuts under 98% deferred payment L/C within 90 days from the date of delivery specified in the bill of lading.

[2] To perform the aforesaid contract, Company A made a request and deposited an amount of USD1,313,308.85 in order for Joint-stock Commercial Bank E to issue L/C No. 1801.

[3] When the goods were transported to the port of destination in Ho Chi Minh City, the Buyer had requested Vinacontrol of Ho Chi Minh City to inspect the quantity and quality of the goods as in accordance with Article 8 and Article 11 of the Contract.

[4] Pursuant to Vinacontrol's certificate on inspection of the quality and quantity of the goods dated 31 August 2011, the ratio of out-turn of the cashew nuts for the two cuttings was determined as follow: first cutting was 38.2 lbs/80kg; second cutting was 37.03 lbs/80kg.

[5] Since the out-turn ratio of the cashew nuts was much lower than the agreed ratio in the Contract, the Buyer raised a complaint to the Seller via email but the Seller did not cooperate to resolve the problem. As a consequence, the Buyer initiated a lawsuit to request cancellation of the Sales Contract of 7 June 2011, return of the entire shipment to the Seller and cancellation of the payment obligations under L/C No. 1801 issued by Joint-stock Commercial Bank E on 7 July 2011 and requested Joint-stock Commercial Bank E return the escrow deposit of USD1,313,308.85 securing the payment obligation under L/C No. 1801 of 7 July 2011.

[6] Based on the documents and evidence in the case file, it is seen that: the form and contents of the Sales Contract of 7 June 2011 do not violate the provisions of law and are in accordance with the Articles, Clauses, Section 2 concerning the rights and obligations of the parties to contracts for sales of goods as provided for in the Commercial Law 2005; under Article 15 of the Contract, both parties agreed to apply the laws of Vietnam to govern any disputes arising therefrom.

[7] With respect to the dispute settlement, the first-instance court had duly complied with the judicial entrustment procedures in summonsing the defendant (the Seller), notifying the defendant of the plaintiff's claims; concurrently, requested the defendant to send its written opinions on the claims. Although the defendant had duly received these summons and notice, it submitted no objections to the plaintiff's claims.

[8] Pursuant to Vinacontrol's certificates presented by the Buyer, there is basis to determine that the Seller was at fault in delivering non-conforming goods as agreed in the Sales Contract of 7 June 2011. Therefore, in accordance with Article 15 of the Commercial Law, the Buyer has the right to refuse to take delivery of the goods. On the other hand, after having received Vinacontrol's inspection certificates, the Buyer had made complaints about the quality of the goods but the Seller did not cooperate to resolve the problem. Since the Seller failed to deliver goods confirming to the quality as agreed in the contract, the Buyer could not achieve the purpose for which it had entered into the Contract. Therefore, there is basis to determine that the Seller had committed a fundamental breach of the Contract. Accordingly, the first-instance court ruling to cancel the Contract has basis and in accordance with Article 3.13 and Article 312 of the Commercial Law. However, when resolving with the legal consequences of cancellation of the Contract, the first-instance court did not resolve the issue of compelling the Seller to return the money received (if any) and to compensate the Buyer for damages, which is not correctly resolving the case.

[9] With regard to the settlement of request for cancellation of L/C No. 1801:

[10] Pursuant to the application for issuance of deferred payment L/C of the Buyer, Joint-stock Commercial Bank E - Branch D opened L/C No. 1801 on 7 July 2011, of which the details are as follows:

[11] - Value of the L/C: USD1,357,790;

[12] - Form of the documents: irrevocable;

[13] - Purpose: purchase of 1,000 metric tons of raw cashew nuts from Ivory Coast;

[14] - Beneficiary bank: Bank N, Singapore;

[15] - Beneficiary: Company B;

[16] - Requesting party: Company A;

[17] - Applicable rules: most recent version of UCP.

[18] After that, Joint-stock Commercial Bank E received the 03 sets of documents requesting payment from Bank N with the total requested amount of USD1,313,308.85, specifically:

[19] On 25 July 2011: set of documents regarding USD961,813.66, due date of 29 September 2011;

[20] On 29 July 2011: set of documents regarding USD312,517.11, due date of 17 October 2011;

[21] On 9 August 2011: set of documents regarding USD38,978.08, due date of 17 October 2011;

[22] After receiving the sets of documents being compliant with the conditions under the L/C, Joint-stock Commercial Bank E sent official letter and sets of documents to the Buyer and obtained the Buyer's confirmation that "*Having received complete documents and committed to timely making the full payment*"; on that basis, Joint-stock Commercial Bank E notified Bank N by telegraphy of its acceptance of paying Bank N for the bill of exchanges on the due dates specified in the aforesaid 03 sets of documents.

[23] In accordance with Vietnamese laws on payment for documents, it is found that:

[24] Article 3.4 of the Law on Credit Institutions 2010 provides that: *"Organizations and individuals engaged in banking operations are entitled to reach agreement on the application of commercial practices, including: International commercial practices provided by the International Chamber of Commerce; Other commercial practices which are not contrary to the law of Vietnam"*.

[25] Article 16.1 of Decision No. 226/2002/QD-NHNN dated 26 March 2002 of the State Bank on "Regulation on payment activities through payment service suppliers" provides that: *"Letter of credit is a conditional written commitment opened by banks at the request of a payment service user (the applicant for opening the letter of credit) to:*

[26] To pay or authorize other banks to pay immediately at the instruction of the payee upon receipt of a set of presented documents complying with the conditions of letter of credit; or accept to pay or authorize other banks to pay at the instruction of the payee at a specific time in future upon receipt of a set of presented documents complying with the conditions of letter of credit".

[27] Article 19.1 of the aforementioned Decision 226 provides: *"Payment by letter of credit: The opening, issuance, amendment, notification, confirmation, examination of documents, payment and rights, obligations, etc. of related parties in payment by letter of credit shall be implemented in accordance with general principles on documentary credits issued by the International Chamber of Commerce (ICC), which participating parties agreed and in accordance with Vietnamese laws"*.

[28] On the other hand, in the Buyer's application for issuance of the L/C, it is agreed that: the applicable rule is the most recent version of UCP. Pursuant to the sixth amendment of the Uniform Customs and Practice for Documentary Credits 2007 of the International Chamber of Commerce (UCP 600):

[29] "*Credit means any arrangement, however named or described, that is irrevocable and thereby constitutes a definite undertaking of the issuing bank to honour a complying presentation".* (Article 2).

[30] *"A credit by its nature is a separate transaction from the sale or other contract on which it may be based. Banks are in no way concerned with or bound by such contract, even if any reference whatsoever to it is included in the credit. Consequently, the undertaking of a bank to honour, to negotiate or to fulfil any other obligation under the credit is not subject to claims or defences by the applicant resulting from its relationships with the issuing bank or the beneficiary".* (Article 4).

[31] *"Banks deal with documents but not with goods, services or performances to which the documents may relate".* (Article 5).

[32] *"An issuing bank is irrevocably bound to honour as of the time it issues the credit".* (Article 7).

[33] *"When an issuing bank determines that a presentation is complying, it must honour"*. (Article 15a).

[34] Therefore, pursuant to the Buyer's application for opening the L/C and the content of the issued L/C, L/C No. 1801 is a separate transaction from the Sales Contract dated 7 June 2011; it is issued and governed under UCP 600. According to UCP 600, Joint Stock Commercial Bank E being the issuing bank must make payment when it determines that the presented set of documents are compliant at the Bank.

[35] Regarding the set of documents of the L/C mentioned above: The set of documents includes Certificate of weight and quality issued by an independent assessor (no requirement that the goods must be inspected beforehand at the port of destination by any inspection organizations). In the set of presented documents, there is a Certificate of weight and quality issued by a foreign assessor, which is in compliance with the conditions of the

L/C; concurrently, the Buyer had endorsed the set of documents and committed to making payment in full and on time; the fact that the first-instance court, however, relied on the inspection results of Vinacontrol in Ho Chi Minh City (at the port of destination) to conclude that the set of documents was not compliant is contrary to the terms and conditions set forth in the L/C and the Buyer's commitments.

[36] During the dispute resolution, Bank N asserted that it had negotiated the valid documents and made payment to the Seller on the dates of 25 July 2011, 28 July 2011 and 8 August 2011, and presented the notices of negotiation on import invoices to prove that the payment to the Seller was successfully made. Beside those documents, Bank N, however, could not present any other documents and evidence proving that it had made the payment to the Seller. Therefore, in this case, the first-instance court should have collected the documents and evidence in full to determine whether Bank N had made the payment to the Seller. If it had, how much did it pay to the Seller? In the case that Bank N had made the payment to the Seller under L/C No. 1801, Joint-stock Commercial Bank E resolve pursuant to the request of Bank N. Since those issues had not been resolved, the first-instance court' ruling that the payment method by L/C No. 1801 is an integral part of Sales Contract dated 7 June 2011 and thus, when the contract is cancelled in its entirety, the parties thereto are not obliged to continue performing their obligations under the contract, and L/C No. 1081 is no longer valid for payment and Joint Stock Commercial Bank E has no obligation to make the payment to Bank E under the said L/C, and compelling Joint Stock Commercial Bank E to pay the Buyer the deposit of USD1,313,308.85 do not have sufficient basis and are incorrect with respect to the provisions in UCP 600.

[37] After the first-instance hearing, Joint-stock Commercial Bank E submitted an appeal the aforesaid judgement in its entirety. The appellate court issued the Decision to conduct a hearing and issue summons to the involved parties to appear in the court hearings on the dates of 25 September 2014, 27 October 2014, 31 October 2014 and 16 April 2015, but those hearings were all postponed due to various reasons such as: absence of the parties, absence of the representatives of the People's Procuracy, more time was required for judicial entrustment …

[38] In Decision No. 09/2015/QDPT-KDTM dated 29 May 2015, the Appellate Court of the Supreme People's Court in Ho Chi Minh City ruled to suspend the appellate hearing to carry out the judicial entrustment procedures to summons Company B to participate in the appellate hearing.

[39] In Decision (unnumbered) dated 10 August 2015, the Superior People's Court in Ho Chi Minh City ruled to conduct appellate hearing on 26 August 2015.

[40] On 19 August 2015, Joint-stock Commercial Bank E received the Summons to appear in the aforementioned hearing; on 24 August 2015 Joint-stock Commercial Bank E submitted a petition to postpone the hearing for the reason that the authorized representative of Joint-stock Commercial Bank E being Mr. Hua Anh K was on a business trip. At the hearing of 26 August 2015, the appellate court did not accept the petition to postpone the hearing of Mr. K and reasoned that Joint-stock Commercial Bank E (the appellant) had been duly summonsed for the second time but was absent, thus it rendered a decision to suspend the appellate hearing.

[41] The Superior People's Court in Ho Chi Minh City issuing the aforesaid Decision on suspension of the appellate hearing is not compliant with the law, because Article 13.2 of Resolution No. 06/2012/NQ-HDTP dated 03 December 2012 of the Judicial Council of the Supreme People's Court provides that: *"In case there is a decision on temporary suspension of the appellate hearing of a civil case, the time limit for hearing preparation ends on the date of such decision on temporary suspension. The time limit for appellate hearing preparation re-commences from the date on which the appellate court continues the appellate hearing when the reason for such temporary suspension ceases".* As such, since there was a decision on temporary suspension of the dispute settlement as mentioned above, when the appellate court continued the appellate procedures, the time limit for the appellate hearing re-commenced from the date on which the appellate court issued the Decision to conduct a hearing (i.e. 10 August 2015). Therefore, the appellant (Joint-stock Commercial Bank E) was absent at the appellate hearing of 26 August 2015, which is considered as the appellant being duly summonsed by the court and absent for the first time. Regardless of whether or not there was a proper reason, the court should have postponed the court hearing pursuant to Article 266 of the amended and supplement Civil Procedure Code 2011 and Article 16 of Resolution No. 06/2012/NQ-HDTP dated 3 December 2012 of the Judicial Council of the Supreme People's Court. However, the appellate court asserting that Joint-stock Commercial Bank E was absent without any force majeure reasons when it was summonsed for the second time and thus ruled to suspend the appellate hearing was a serious violation of the civil proceedings, which adversely affected the lawful rights and interests of the involved parties.

In light of the aforementioned reasons, pursuant to Article 337.2, Article 343.3 and Article 345 of the Civil Procedure Code.

RULES

1. To accept Protest Decision No. 11/2016/KN-KDTM dated 7 March 2016 of the Chief Justice of the Supreme People's Court.

2. To set aside Decision on suspension of the appellate hearing No. 29/2015/QDPT-KDTM dated 26 August 2015 of the Superior People's Court in Ho Chi Minh City and First-instance Commercial Judgment No. 356/2014/KDTM-ST dated 7 April 2014 of the People's Court of Ho Chi Minh City.

3. To transfer the case to the People's Court of Ho Chi Minh City to re-conduct first-instance procedures.

CONTENTS OF THE CASE LAW

"[34] Therefore, pursuant to the Buyer's application for opening the L/C and the content of the issued L/C, L/C No. 1801 is a separate transaction from the Sales Contract dated 7 June 2011; it is issued and governed under UCP 600. According to UCP 600, Joint-stock Commercial Bank E being the issuing bank must make payment when it determines that the set of presented documents are compliant at the Bank.

[36]... the first-instance court ruling that the payment method by L/C No. 1801 is an integral part of Sales Contract dated 7 June 2011 and thus, when the contract is cancelled in its entirety, the parties thereto are not obliged to continue performing their obligations under the contract, and L/C No. 1081 is no longer valid for payment and Joint-stock Commercial Bank E has no obligation to make the payment to Bank E under the said L/C, and compelling Joint Stock Commercial Bank E to pay the Buyer the deposit of USD1,313,308.85 does not have sufficient basis and is incorrect with respect to the provisions in UCP 600".

CASE LAW NO. 14/2017/AL
on the recognition of conditions of a contract for gift of land use rights, which are not specified in the contract

This case law was adopted by the Judicial Council of the Supreme People's Court on 14 December 2017 and promulgated under Decision No. 299/QD-CA dated 28 December 2017 by the Chief Justice of the Supreme People's Court.

Source of the case law:

Cassation Decision No. 02/2011/DS-GDT dated 17 January 2011 of the Civil Court of the Supreme People's Court on the civil case *named "the Request to cancel the contract for transfer of land use rights"* in Dien Bien Province by and between the plaintiff being Mr. Quang Van P1 and the defendant being Mr. Quang Van P2 and Ms. Phan Thi V.

Location of contents of the case law:

Paragraphs 10, 11 and 12 of the *"Findings of the Court".*

Overview of the case law:

- ***Background of the case law:***

  The contract for gifts of land use rights do not state any condition of gifts, but in relevant texts and documents there are indications that parties have mutually agreed on conditions of gifts, which are lawful under prevailing laws.

- ***Legal resolution:***

  In this case, the Court must recognize conditions of the contract for gifts of land use rights and regard such contract for gifts of land use rights as a contract for conditional gifts of the property.

Applicable provisions of laws relating to the case law:

Article 125, Article 126 and Article 470 of the 2005 Civil Code (corresponding to Article 120, Article 121 and Article 462 of the 2015 Civil Code).

Key words of the case law:

"The contract for gifts of land use rights", "Conditional civil transactions", "Conditional gifts of property".

CONTENTS OF THE CASE

In the Statement of Claims dated 27 December 2006, on 10 January 2007, and in the process of handling the dispute, Mr. Quang Van P1 and Ms. Quang Thi N as the plaintiff presented as follows:

In 2003, the People's Committee of Dien Bien Province granted to Mr. Quang Van P1 an area of about 72m^2 of the roadside land on the National Highway 279 (subject to Decision No. 1487 dated 25 September 2003). On 24 December 2003, he carried out procedures to transfer the land use rights of the land area to Mr. Quang Van P2 (his son) and Ms. Phan Thi V (his daughter-in-law). On December 6, 2003, again, he made a contract for the transfer of land use rights of the residential land – the said land area, certified by the People's Committee of T Ward, P City, Dien Bien Province, to Mr. Quang Van P2 and Ms. Phan Thi V.

In 2005, there was a dispute over the land area between him and Ms. Quang Thi N (his daughter). Subject to Appellate Civil Judgment No. 08/DSPT dated 24 August 2005, the People's Court of Dien Bien Province compelled Ms. Quang Thi N to return to him the land area.

On 12 June 2006, the People's Committee of P City, Dien Bien Province issued the certificate of land use rights to him.

On 27 October 2006, he made a contract for gifts to Mr. Quang Van P2 (his son) on the condition that Mr. Quang Van P2 had to build a house for Mr. Quang Van P1 to reside.

After he had completed the process of transferring land use rights under the contract for gifts, Mr. Quang Van P2 did not build the house as promised but also requested him to go live in M Town, G District. Because Mr. Quang Van P2 and Ms. Phan Thi V did not fulfill the conditions committed, he submitted a request to cancel the contract for gifts of the land area.

The defendants being Mr. Quang Van P2 and Ms. Phan Thi V presented as follows: Mr. Quang Van P1 (his father) gifted him and his wife the said land area when Mr. Quang Van P1 was still of sound mind and aware. At the present, Mr. Quang Van P1 was not of sound mind, so Ms. Quang Thi N (his older sister) forced Mr. Quang Van P1 to unilaterally cancel the contract for gifts. As his father gifted him the said land area without any condition and commitment, he did not accept the request of the plaintiff.

In First-instance Civil Judgment No. 03/2007/DSST dated 30 June 2007, the People's Court of Dien Bien Phu City, Dien Bien Province ruled as follows:

- To decline the request of Mr. Quang Van P1 to cancel the contract for transfer of the land use rights No. 82 dated 6 October 2006 by and between the transferor being Mr. Quang Van P1 and the transferee being Mr. Quang Van P2 and Ms. Phan Thi V.

- Besides, the first-instance Court in its judgment also ruled on court fees and rights to protest of concerned parties.

In Appellate Civil Judgment No. 14/2007/DSPT dated 28 August 2007, the People's Court of Dien Bien Province ruled as follows:

- To amend First-instance Civil Judgment No. 03/2007/DSST dated 30 June 2007 of the People's Court of Dien Bien Phu City, Dien Bien Province.

- To accept the request for appeal of Mr. Quang Van P1 and to cancel the contract for the transfer of land use rights No. 82 dated 6 October 2006 by and between the transferor being Mr. Quang Van P1 and the transferee being Mr. Quang Van P2 to the land area having the certificate of land use rights No. AD 762/197 at lot No. 2A, Map No. 289 IV-D-d, residential Group 8, T Ward, P City, Dien Bien Province.

- To request the Division of Natural Resources and the Environment of P City, Dien Bien Province to correct and restore the certificate of land use rights No. AD 762/197, lot No. 2A, Map No. 289 IV-D-d, residential Group 8, T Ward, P City, Dien Bien Province with Mr. Quang Van P1 as the land user in the certificate of land use rights.

- To request the Division of Natural Resources and the Environment of P City, Dien Bien Province to revoke the certificate of land use rights with Mr. Quang Van P2 as the land user in the certificate of land use rights, with the No. H 06445/QSDD recorded in the certificate issuing register. The Decision on land allocation No. 822/2006/QD-UBND dated 27 October 2006 of lot No.2A, Map No. 289-IV-D-d, residential Group 8, T Ward, P City, Dien Bien Province.

- In addition, the appellate Court in its judgment also ruled court fees.

Upon the appellate hearing, Mr. Quang Van P2 submitted an appeal proposing cassation procedures against the aforementioned Appellate Civil Judgment.

In Decision No. 579/2010/KN-DS dated 26 August 2010, the Chief Justice of the Supreme People's Court protested against Appellate Civil Judgment No. 14/2007/DSPT dated 28 August 2007 of the People's Court of Dien Bien Province; requested the Civil Court of the Supreme People's Court to handle the case according to the cassation procedures and set aside the aforementioned appellate Civil Judgment and First-instance Civil Judgment No. 03/2007/DSST dated 30 June 2007 of the People's Court of Dien Bien Phu City, Dien Bien Province; transferred the case to the People's Court of Dien Bien Phu City, Dien Bien Province for conducting first-instance hearing in accordance with the prevailing laws with a finding that:

Based on documents contained in the dossier of the case, the land area of about 72m^2, lot 2A, Map No. 289 IV-D-d, residential Group 8, T Ward, P City, Dien Bien Province was granted by the local government authority to Mr. Quang Van P1 for the purpose of housing under the Decision on land grant No.1487 dated 25 September 2003.

On 6 December 2003, Mr. Quang Van P1 made a contract for the transfer of ownership of the said land area to Mr. Quang Van P2 and his wife, signed by Mr. Quang Van P1, Mr. Quang Van P2 and his wife with the witness of the Secretary of the Party Cell and the head of the residential Group and confirmed by the People's Committee of the local ward.

On 24 December 2003, Mr. Quang Van P1 submitted a *"Petition for the land use right transfer"*, with the contents of the transfer of land use rights for Mr. Quang Van P2 and his wife with the signature of Mr. Quang Van P1 and the confirmation of the head of residential Group.

Nevertheless, Mr. Quang Van P1 and Ms. Quang Thi N were in dispute over the said land area. In Appellate Civil Judgment No. 08/DSPT dated 24 August 2005, the People's Court of Dien Bien Province had compelled Ms. Quang Thi N to return the said land area to Mr. Quang Van P1 and Ms. Quang Thi N returned the said land area to Mr. Quang Van P1 according to the *"Minute on the enforcement of the judgment"* dated 22 March 2006.

Therefore, there is sufficient basis to assert that Mr. Quang Van P1 made the contract for the transfer of land use rights to Mr. Quang Van P2 and his wife since 2003, but Ms. Quang Thi N was the one who managed and used the said land area then. Mr. Quang Van P1 was legally recognized as the person who has land use rights with respect to the said land area (subject to the effective Judgment) since 24 August 2005 and up to 22 March 2006, Mr. Quang Van P1, in reality, acquired the said land area. Hence, before then, the contract for gifts of land use rights of Mr. Quang Van P1 to Mr. Quang Van P2 was not legally binding. Moreover, Mr. Quang Van P2 and his wife did not carry out procedures to change the name on the certificate of land use rights and had not acquired the said area land yet.

Upon acquiring the land, Mr. Quang Van P1 authorized Mr. Quang Van P2 to apply for a construction permit, to conduct site clearance, to build a house for Mr. Quang Van P1's shelter, and to take care of Mr. K (Quang Van P1's father) on 25 March 2006. On 12 June 2006, Mr. Quang Van P1 was granted the certificate of land use right.

On 3 June 2006, Mr. Quang Van P1 authorized Mr. Nguyen Viet H to carry out procedures for gifting to Mr. Quang Van P2 and his wife the said land area.

The Contract for the transfer of land use rights No. 82/HD-UBND (undated) that was entered at the People's Committee of T Ward, P City, Dien Bien Province indicated that Mr. Quang Van P1 gifted to Quang Van P2 the said land area. The contract had signatures of Mr. Quang Van P1, Mr. Quang Van P2, and Mr. Nguyen Viet H being the authorized person. The People's Committee of T Ward recorded it at 8 a.m. on 6 October 2006. On the basis of the aforementioned contract, Mr. Quang Van P2 was granted the certificate of land use rights.

In reality, since 17 February 2003, Mr. Quang Van P1 was hospitalized in Hanoi (having a stroke, resulting in his left side and central nervous system being paralyzed, etc.).

Therefore, in 2006, Mr. Quang Van P1 signed many documents to dispose of the land area of $72m^2$ which he was granted the certificate of land use rights on 12 June 2006. Nevertheless, at this time, Mr. Quang Van P1 was hospitalized in Hanoi for the purpose of treatment of paralysis of his left side and central nervous system and Mr. Quang Van P1 did not use the said land area in reality.

The court should have clarified and verified the intention of Mr. Quang Van P1 on the disposal of the said land area of $72m^2$ and found whether Mr. Quang Van P1 intentionally gifted to Mr. Quang Van P2 the said land area or whether Mr. Quang Van P1 only gave Mr. Quang Van P2 the said land area for the purpose of building the house to reside in. Simultaneously, it should have determined when and where the contract was signed by Mr. Quang Van P1, the validity of this contract under the law, and the reason why Mr. Quang Van P1 entered into this agreement but now wanted to cancel it. In the case where Mr. Quang Van P1 only gave the property Mr. Quang Van P2 to build a house for his residence

and Mr. Quang Van P1 still had a need for using the land area, then the contract must be cancelled and Mr. Quang Van P1's land use right must be recognized. However, Mr. Quang Van P1 must pay all reasonable expenses in the procedure to transfer the land use rights from Mr. Quang Van P2 if he requests.

In the event that Mr. Quang Van P1 did not have a need to use and expressed his intention to gift to Mr. Quang Van P2, then Mr. Quang Van P1's request must be dismissed.

The appellate Court and the first-instance Court did not verify and clarify the aforementioned issues, but the first-instance Court dismissed the request of Mr. Quang Van P1 on the basis of the documents signed by Quang Van P1 and the recognition of land use rights for Mr. Quang Van P2 while the appellate Court asserted that Mr. Quang Van P1 was sick and not cognizant of his actions when entering into the contract and the procedures for gifts also not comply with law, thereby setting aside the contract for transfer of the land use rights and recognized the land use rights of Mr. Quang Van P1. Both Courts' decisions did not have sufficient basis.

In addition, the People's Committee is the competent State body for the issuance of the certificate of land use rights, the appellate Court requested the Division of Environment and Natural Resources to revoke the certificate of land use right of Mr. Quang Van P2, which is incorrect.

In the cassation hearing, the representative of the Supreme People's Procuracy asserted that the protest of the Chief Justice of the Supreme People's Court was necessary, because, in 2003, Mr. Quang Van P1 made a contract for the transfer of land use rights to Mr. Quang Van P2 and his wife, and in 2006, he again made a power of attorney to gift the land to Mr. Quang Van P2 and his wife. Although the documents were titled the transfer of land use rights, their contents expressed that Mr. Quang Van P1 gifted Quang Van P2 and his wife the land. Therefore, the Court must clarify whether Mr. Quang Van P1's gift was conditional or not in order to resolve the case.

FINDINGS OF THE COURT

[1] When initiating the lawsuit and during the handling of the dispute, Mr. Quang Van P1 asserted that on 25 September 2003, the People's Committee of Dien Bien Province granted the land area of 72m^2 at lot 2A, Map No. 289 IV-D-d, residential Group 8, P City, Dien Bien Province subject to Decision No. 1487.

[2] On 6 December 2003, Mr. Quang Van P1 made a contract on transfer of ownership of the land area to the couple Mr. Quang Van P2 and Ms. Phan Thi V with the witness of the Secretary of the Party Cell and the head of the residential group and the confirmation of the People's Committee of T Ward.

[3] On 24 December 2003, Mr. Quang Van P1 again submitted a *"Petition for the land use right transfer"* certified by the head of residential Group to transfer land use rights to the couple Mr. Quang Van P2 and Ms. Phan Thi V.

[4] However, the above-mentioned land area was still under the management a and use of Ms. Quang Thi N (the daughter of Mr. Quang Van P1). In 2005, Mr. Quang Van P1 initiated a

lawsuit against Ms. Quang Thi N requesting the return of the said land area. In Appellate Civil Judgment No. 08/DSPT dated 24 August 2005, the People's Court of Dien Bien Province compelled Ms. Quang Thi N to return the said land area to Mr. Quang Van P1.

[5] On 12 June 2006, the People's Committee of P City, Dien Bien Province issued the certificate of land use rights to the said land area of 72m^2 for Mr. Quang Van P1.

[6] On 15 September 2006, Mr. Quang Van P1 submitted a request to confirm his authorization for Mr. Quang Van P2 and Ms. Phan Thi V to have full authority to *"own and use of the land"*.

[7] On 3 October 2006, Mr. Quang Van P1 entered into the contract of authorization for Mr. Nguyen Viet H to carry out necessary procedures to gift Mr. Quang Van P2 the said land area with the certification by the State Notary Public No. 3, Hanoi.

[8] On 6 October 2006, Mr. Quang Van P1 again made a contract for the transfer of land use rights to Mr. Quang Van P2 and Ms. Phan Thi V in which the transfer value section stated *"Father gifts child",* On the same day, the People's Committee of Dien Bien Phu City also confirmed contract No. 82/HD-UBND, so this contract legitimated the gift for land use rights of Mr. Quang Van P1 to the couple Mr. Quang Van P2 and Ms. Phan Thi V.

[9] On 27 October 2006, the People's Committee of P City issued the certificate of land use rights for Mr. Quang Van P2 and Ms. Phan Thi V.

[10] Therefore, if there is basis to determine that local government authorities have granted the land to Mr. Quang Van P1 since 2003 (because Courts at all levels have not yet collected the decision on land grant in 2003), Mr. Quang Van P1 will be entitled to legally use the land area since 2003, thus, Mr. Quang Van P1 has the right to dispose of his property.

[11] However, Mr. Quang Van P1 asserted that his gift to Mr. Quang Van P2 and his wife (Ms. Phan Thi V) was conditional, that Mr. Quang Van P2 and Ms. Phan Thi V must build a house for his residence, care for him and his parents, but Mr. Quang Van P2 and his wife did not fulfil the commitment. Although Mr. Quang Van P2 did not acknowledge that Mr. Quang Van P1 made a conditional gift of land use rights \, in the power of attorney on 25 March 2006, Mr. Quang Van P1 authorized Mr. Quang Van P2 to obtain the construction permit…; to be responsible for building the house on land lot 379B for the purpose of Mr. Quang Van P1's residence and to be responsible for taking care of Mr. K and his wife (Mr. Quang Van P1's parents). Under the Commitment dated 12 October 2006, Mr. Quang Van P2 recorded that, *"... I was given a piece of land... I make this commitment to the local government authority that I will build the house for my father and am not entitled transfer to anyone"*.

[12] Although the contract for gifts of land use rights did not specify any condition, the aforementioned documents indicated that Mr. Quang Van P2 must build the house for Mr. Quan Van P1's residence and must take care of Mr. Quang Van P1 and Mr. Quang Van P1's parents.

[13] Therefore, it is necessary to collect and ascertain whether Mr. Quang Van P2 fully satisfied the above-mentioned conditions or not? During the time Mr. Quang Van P1 was

hospitalized, who took care of him? Currently, Mr. Quang Van P2 and his wife are residing in Hanoi, so who is caring for Mr. K and his wife (Mr. Quang Van P1's parents)? Based on the verification of the satisfaction of the conditions by Mr. Quang Van P2 and his wife, the court will determine whether the contract for gifts between Mr. Quang Van P1 and Mr. Quang Van P2 and his wife have been completed or not, in order to resolve the case in accordance with prevailing laws.

[14] On the other hand, pursuant to Article 44 of the Land Law, the Division of Environment and Natural Resources does not have the authority to revoke the land, and thus, the request of the appellate Court to the Division of Environment and Natural Resources to revoke the certificate of land use rights of Mr. Quang Van P2 was incorrect.

[15] The cassation council of the Civil Court of the Supreme People's Court finds it necessary to set aside the appellate and first-instance Civil Judgments in order to conduct first-instance procedures according to the provisions of law.

[16] Protest Decision of the Chief Judge of the Supreme People's Court has basis.

[17] Pursuant to Article 291.2, Article 296, Article 297.3, Article 299 of the Code of Civil Procedure.

RULES

1. To set aside Appellate Civil Judgment No. 14/2007/DSPT dated 28 August 2007 of the People's Court of Dien Bien Province and First-instance Civil Judgment No. 03/2007/DSST dated 30 June 2007 of the People's Court of Dien Bien Phu City, Dien Bien Province on the *"Request to cancel the contract for transfer of land use rights"* by and between the plaintiff being Mr. Quang Van P1 and the defendant being Quang Van P2 and Phan Thi V.

2. To transfer the case to the first-instance court of the People's Court of Dien Bien Phu City, Dien Bien Province to conduct first-instance procedures in accordance with prevailing laws.

CONTENTS OF THE CASE LAW

"[10] Therefore, if there is basis to determine that local government authorities have granted the land to Mr. Quang Van P1 since 2003 (because Courts at all levels have not yet collected the decision on land grant in 2003), Mr. Quang Van P1 will be entitled to legally use the land area since 2003, thus, Mr. Quang Van P1 has the right to dispose of his property.

[11] However, Mr. Quang Van P1 asserted that his gift to Mr. Quang Van P2 and his wife (Ms. Phan Thi V) was conditional, that Mr. Quang Van P2 and Ms. Phan Thi V must build a house for his residence, care for him and his parents, but Mr. Quang Van P2 and his wife did not fulfil the commitment. Although Mr. Quang Van P2 did not acknowledge that Mr. Quang Van P1 made a conditional gift of land use rights, in the power of attorney on 25 March 2006, Mr. Quang Van P1 authorized Mr. Quang Van P2 to obtain the construction permit...; to be responsible for building the house on land lot 379B for the purpose of Mr. Quang Van P1's residence and to be responsible for taking care of Mr. K and his wife (Mr. Quang Van P1's

parents). Under the Commitment dated 12 October 2006, Mr. Quang Van P2 recorded that, "... I was given a piece of land... I make this commitment to the local government authority that I will build the house for my father and am not entitled transfer to anyone".

[12] Although the contract for gifts of land use rights did not specify any condition, the aforementioned documents indicated that Mr. Quang Van P2 must build the house for Mr. Quan Van P1's residence and must take care of Mr. Quang Van P1 and Mr. Quang Van P1's parents".

CASE LAW NO. 15/2017/AL
on recognition of oral agreement between the involved parties with respect to exchange of agricultural land use rights

This case law was adopted by the Judicial Council of the Supreme People's Court on 14 December 2017 and promulgated under Decision No. 299/QD-CA dated 28 December 2017 of the Chief Justice of the Supreme People's Court.

Source of the case law:

Cassation Decision No. 394/2012/DS-GDT dated 23 August 2012 of the Civil Court of the Supreme People's Court on the case concerning *"Dispute on agreement on exchange of land"* in Hanoi between the plaintiff being Ms. Trinh Thi C and the defendant being Mr. Nguyen Minh T. The persons with related rights and obligations consist of Ms. Vu Thi P, Mr. Nguyen Minh Tr, Ms. Bui Thanh H, Ms. Truong Thi X, Mr. Truong Sy K, Ms. Truong Hong T, Ms. Truong Thi H1, Mr. Truong Anh T, Ms. Truong Thuy N, Mr. Truong Quang K and Ms. Truong Thi H2.

Location of contents of the case law:

Paragraphs 1 and 2 of the section *"Findings of the Court"*.

Overview of the case law:

- ***Background of the case law:***

  The involved parties voluntarily made an oral agreement on exchange of agricultural land use rights before 15 October 1993 (being the date on which the Land Law 1993 came into force); registered and declared the exchanged land areas which were recorded in the cadastral book; directly cultivated and used the land in a stable, continuous and long-term manner.

- ***Legal resolution:***

  In this case, the Court must acknowledge the oral agreement of the involved parties on the exchange of the agricultural land use rights in order to determine the parties that are entitled to the exchanged land areas.

Applicable provisions of laws relating to the case law:

- Article 16.2 of the Land Law 1987;

- Article 170.2 of the Civil Code 2005;

Key words of the case law:

"Exchange of the agricultural land use rights", "Exchange of the actual land use rights", "Recognition of the land use rights".

CONTENTS OF THE CASE

Based on the statement of claims dated 2 May 2006 and other testimonies given during the settlement of the case, the plaintiff being Ms. Trinh Thi C presented that:

In 1962, Ms. Trinh Thi C's family received assignment of an area of 517m^2 of the land parcel no. 28 of cadastral map no. 4 section K, being land area of type 5% cultivation. This land lot was next to the house of Mr. Nguyen Minh T. (the defendant). According to the cadastral map of 1987, this land lot was located in the two land parcels no. 158 and 159. In early 1992, Mr. Nguyen Minh T's family proposed that Ms. Trinh Thi C temporarily exchange the land area of type 5% for Mr. Nguyen Minh T's land lot which was divided pursuant to *"allocation 10"* policy with the area of 540m^2 in land field B for convenient cultivation. Both parties orally agreed and did not make written records for the purpose of temporary exchange; the re-exchange would be made upon a notice at least one week prior thereto. Until 1994, due to the need for production, Ms. Trinh Thi C's family requested to exchange the land but Mr. Nguyen Minh T's family did not accept that request. Ms. Trinh Thi C made a complaint to the authorities of commune and district levels but the dispute had not been definitively settled. As a consequence, Ms. Trinh Thi C requested the Court to compel Mr. Nguyen Minh T's family to return the land lot to her family in accordance with the law.

The defendant being Mr. Nguyen Van T presented that:

According to allocation 10 policy, Cooperative D allocated land to families in early 1991. During the implementation of this policy, the Cooperative guided the families to exchange their land areas between themselves. Around February 1992, Mr. Nguyen Van T's family and Ms. Trinh Thi C' orally agreed to exchange their lands as the plaintiff presented. After the exchange, Mr. Nguyen Minh T turned the land into ponds and moved more than 10 graves to the village cemetery. In May 1994, there were policies issued to declare the land for cultivation of each family in accordance with the Land Law 1993 for the purpose of local cadastral and tax books for each family. At that time, Ms. Trinh Thi C had declared the exchanged land in section B, Mr. Nguyen Minh T had declared the exchanged land of Ms. Trinh Thi C together with the land area being used by his family. At the end of 1994, Cooperative D issued papers recognizing land for families of which the land papers recorded that the families of Mr. Nguyen Minh T and Ms. Trinh Thi C had exchanged the land. Mr. Nguyen Minh T's family has directly cultivated the land since 1992 until now. Therefore, Mr. Nguyen Minh T did not accept the plaintiff's request for re-exchange of the land.

The person with related rights and obligations being Ms. Truong Thi H2 presented: The land area in section K was granted to her parents since 1962. After her father passed away, this land was recorded under her older brother Mr. A. In 1990 and 1991, she was given a portion of 100m^2. It was unlawful for Ms. Trinh Thi C to exchange the entire land area with Mr. Nguyen Minh T so that she now requests to exchange back the land area.

In First-instance Judgment No. 17/2008/DSST dated 20 August 2008, the People's Court of Hoang Mai District ruled:

"1. To declare the civil transaction regarding exchange of agricultural land area of type 5% and land area pursuant to allocation 10 policy made between the families of Ms. Trinh Thi C and Mr. Nguyen Minh T in February 1992 invalid.

Compel Mr. Nguyen Minh T's family to return Ms. Trinh Thi C's family the land of type 5% having the area of 517m² of the land parcel no. 28 of cadastral map no. 4 of 1990, section K, currently group 33 L Ward, M District, Hanoi.

Compel Ms. Trinh Thi C's family to return Mr. Nguyen Minh T's family the land pursuant to policy 10 with the area of 540m² being a part of land parcel no. 90 of cadastral map no. 42-A2 (referred to as map no. 2) in cadastral map issued in 1994 in section B, L Ward, M District, Hanoi.

2. Compel Ms. Trinh Thi C to pay the value of land reclamation including pond excavation, foundation, trees planted on the land, expenses for removing graves, amounting to VND112,817,000 (one hundred and twelve million eight hundred and seventeen thousand Dong).

3. Compel Mr. Nguyen Minh Tr, Ms. Bui Thanh H to remove the entire raw Level 4 house on the land area of 75.28m² within the area of 517m² of the land parcel no. 28 of cadastral map no. 4 of 1990 to return the entire land area to Ms. Trinh Thi C's family. Mr. Nguyen Minh Tr and Ms. Bui Thi Thanh are not entitled to any compensation over the area of the removed house".

Mr. Nguyen Minh T appealed against the first-instance judgment in its entirety.

In appellate Judgment No. 111/2008/DSPT dated 27 November 2008, the People's Court of Hanoi ruled to uphold the first-instance judgment in its entirety.

In addition, the appellate court ruled on the court fees.

After the appellate court hearing, Mr. Nguyen Minh T lodged a complaint against the aforementioned appellate civil judgment.

In Decision No. 482/2011/KN-DS dated 2 August 2011, the Chief Justice of the Supreme People's Court protested against the aforesaid appellate civil judgment; requested the Civil Court of the Supreme People's Court to conduct the cassation procedures to set aside the appellate civil judgment and first-instance civil judgment; transfer the case to the People's Court of Hoang Mai District for re-settlement in accordance with the law.

At today's hearing, the representative of the Supreme People's Procuracy agreed with the contents of the protest by the Chief Justice of the Supreme People's Court.

FINDINGS OF THE COURT

[1] After reviewing the case and discussion, the Council of Adjudicators of the Civil Court agreed with the contents of the aforementioned protest that: there is basis to determine that the exchange of the lands between the parties was made on a voluntary basis and arise from their cultivation needs. After the land exchange, the parties registered, declared, and recorded in the cadastral book the exchanged land area. The parties have directly

cultivated and used the land in a stable and continuous manner since 1992 up to now. During the land use, Mr. Nguyen Minh T removed graves on the land and turned a part of the land into fish ponds.

[2] In fact, the land exchange was made around February 1992 but the evidence of the case shows that the parties conducted the registration and declaration procedures of the exchanged land at the local authorities in 1994, other procedures concerning handover of the land papers and declaration for tax calculation were also made as from 1994. In this case, it should have been acknowledged that the exchange of land was real in order to acknowledge that the parties had rights to the exchanged land, so as to be correct and reflect reality. It was incorrect for the first-instance Court and the appellate Court to rely on the testimony of Ms. Trinh Thi C to rule that the parties temporarily exchanged the land, and thus determined that the land exchange was unlawful to cancel the agreement on exchange of land and compel the parties to remove houses and return the land to each other, which caused unnecessary confusion on the land use of the involved parties.

In light of the above reasons:

Pursuant to Article 291.2, Article 297.3 and Article 299 of the Civil Procedure Code;

RULES

Set aside Appellate Civil Judgment No. 111/2008/DSPT dated 27 November 2008 of the People's Court of Hanoi in its entirety and First-instance judgment No. 17/2008/DSST dated 20 August 2008 of the People's Court of Hoang Mai District, Hanoi on the case concerning *"Dispute on agreement on exchange of land use"* between the plaintiff being Ms. Trinh Thi C against the defendant being Mr. Nguyen Minh T.

Transfer the case to the People's Court of Hoang Mai District, Hanoi to conduct the first-instance procedures again in accordance with the law.

CONTENTS OF THE CASE LAW

[1] After reviewing the case and discussion, the Council of Adjudicators of the Civil Court agreed with the contents of the aforementioned protest that: there is basis to determine that the exchange of the lands between the parties was made on a voluntary basis and arise from their cultivation needs. After the land exchange, the parties registered, declared, and recorded in the cadastral book the exchanged land area. The parties have directly cultivated and used the land in a stable and continuous manner since 1992 up to now. During the land use, Mr. Nguyen Minh T removed graves on the land and turned a part of the land into fish ponds.

[2] In fact, the land exchange was made around February 1992 but the evidence of the case shows that the parties conducted the registration and declaration procedures of the exchanged land at the local authorities in 1994, other procedures concerning handover of the land papers and declaration for tax calculation were also made as from 1994. In this case, it should have been acknowledged that the exchange of land was real in order to acknowledge that the parties had rights to the exchanged land, so as to be correct and reflect reality. It was incorrect for the first-instance Court and the appellate Court to rely on the testimony of Ms. Trinh Thi C to rule that the parties temporarily exchanged the land, and thus determined that

the land exchange was unlawful to cancel the agreement on exchange of land and compel the parties to remove houses and return the land to each other, which caused unnecessary confusion on the land use of the involved parties.

CASE LAW NO. 16/2017/AL
regarding recognition of contract for transfer of land use rights being the inheritance transferred by one of the co-heirs

This case law was adopted by the Judicial Council of the Supreme People's Court on 14 December 2017 and promulgated under Decision No. 299/QD-CA dated 28 December 2017 of the Chief Justice of the Supreme People's Court.

Source of the case law:

Cassation Decision No. 573/2013/DS-GDT dated 16 December 2013 of the Civil Court of the Supreme People's Court on the civil case on *"Dispute on inheritance"* in Vinh Phuc Province between the plaintiffs being Ms. Phung Thi H1, Ms. Phung Thi N1, Ms. Phung Thi H2, and Ms. Phung Thi P against the defendant being Mr. Phung Van T. The persons with related rights and obligations were Ms. Phung Thi N2 and Ms. Phung Thi H3.

Location of contents of the case law:

Paragraph 2 of section *"Findings of the Court"*

Overview of the case law:

- ***Background of the case law:***

  The inheritance being immovable property was transferred by one of the co-heirs. The other co-heirs had been aware of the transfer but had no objection thereto. The money received from the transfer was used to provide a living for the co-heirs. The transferee was granted the certificate of land use rights.

- ***Legal resolution:***

  In this case, the Court shall recognize the validity of the contract for transfer of land use rights. The land area is no longer the inheritance for distribution but subject to the right to use of the transferee.

Applicable provisions of laws relating to the case law:

Article 170.2, Article 234, Article 634 and Article 697 of the Civil Code 2005 (corresponding to Article 221.2, Article 223, Article 612, Article 500 of the Civil Code 2014).

Key words of the case law:

"Establishing ownership rights pursuant to agreement", "Estate", "Estate being immovable property", "Co-heirs", "transfer of land use rights".

CONTENTS OF THE CASE

According to the Statement of Claims dated 2 April 2011 and the following testimonies, the plaintiffs being Ms. Phung Thi H1, Ms. Phung Thi N1, Ms. Phung Thi P, Ms. Phung Thi H2 presented:

The plaintiffs' parents being Mr. Phung Van N and Phung Thi G had 06 children, namely: Phung Thi N1, Phung Thi N2, Phung Thi H2, Phung Van T, Phung Thi P and Phung Th H1.

The common property of Mr. Phung Van N and Ms. Phung Thi G was 01 Level 4 house with the additional construction works over the land area of 398m^2 transferred from his father in L Quarter, M District, N City, Vinh Phuc Province. On 7 July 1984, as Mr. Phung Van N passed away (leaving no will upon his death), Ms. Phung Thi G and Mr. Phung Van T managed and used the aforementioned land and house. In 1991, Mr. Phung Thi G transferred a land area of 131m^2 to Mr. Phung Van K, leaving the remaining land area of 267m^2 for which Ms. Phung Thi G was granted the certificate of land use rights in 1999. Ms. Phung Thi G wished to give a part of the land area to build a house to her daughter being Ms. Phung Thi H1, who had married far away from home. As Ms. Phung Thi H1's husband had passed away, Ms. Phung Thi G wanted her daughter to return home and live with her. However, Ms. Phung Thi G could not divide the land area because Mr. Phung Van T was holding the certificate of land use rights of Ms. Phung Thi G. Consequently, Ms. Phung Thi H1 initiated a lawsuit against Mr. Phung Van T to the Court to compel Mr. Phung Van T to return the certificate of land use right to Ms. Phung Thi G. The Court reviewed and ruled to compel Mr. Phung Van T to return the certificate of land use rights to Ms. Phu Thi G. However, Mr. Phung Van T did not return it. In March 2010, Ms. Phung Thi G had made a will with contents as follows: To give Ms. Phung Thi H1 a land area of 90m^2 and all the trees on the land with the dimensions of: the east side facing Ms. Phung Thi G's land area, the west side facing Mr. N's house, the South side facing T road, the North side facing Mr. C's house. When making the will, Ms. Phung Thi G was completely of sound mind and healthy with the presence of the witnesses and the will was certified by the People's Committee of M District. The total land area of 398m^2 belonged to Ms. Phung Thi G because she had the entire right to use land when the Mr. Phung Van N passed away.

On 19 December 2010, Mr. Phung Thi G passed away and the entire assets as mentioned above were then managed and used by Mr. Phung Van T and his wife. Now, the plaintiffs requested the Court to divide the estate pursuant to Ms. Phung Thi G's will, giving Ms. Phung Thi H1 a land area of 90m^2. They proposed that the remaining area of 177m^2 be divided in accordance with the law. The parts of the inheritance belonging to Ms. Phung Thi N1, Ms. Phung Thi P, and Ms. Phung Thi H2 would be assigned to Ms. Phung Thi H1 to use. In addition, the plaintiffs did not propose that the Court resolve the issues related to the trees on the land and the agricultural land area of Ms. Phung Thi G.

The defendant being Mr. Phung Van T through Ms. Phung Thi H3 (his wife), who is also a person with related rights and obligations presented that: she confirmed that the details of the family relationships, the assets of the parents on the land being 398m^2 at L Quarter, M District, N City, and the time of the deaths of their parents as presented by the plaintiffs were correct, but the entire constructions works on the land were built by her husband and her in 1997. In 1991, Ms. Phung Thi G arbitrarily sold the land area of 131m^2 to Mr. Phung Van K without having discussing with Mr. Phung Van T. Mr. Phung Van T did not know how much money Ms. Phung Thi G received and on what she used it. In 1999, Ms. Phung Thi G was granted the certificate of land use rights over the land area of 267.4m^2 and Mr. Phung Van K was also granted the certificate of land use rights over the land area purchased from Ms. Phung Thi G. He and his wife were not aware whether or not Ms. Phung Thi G had made a will when she was alive. Now, the siblings initiated a lawsuit requesting to divide the

estate pursuant to the will and in accordance with the law, with which he disagreed because he was the only male child of his parents and he was using the property as a residence and place to worship the ancestors. Mr. Phung Van T did not request division of the estate. Furthermore, Ms. Phung Thi G still had some agricultural land but Mr. Phung Van T did not request to divide it.

The person with related rights and obligations being Ms. Phung Thi N2 presented that: she confirmed that the details of the family relationships, the assets of the parents on the land being 398m^2 at L Quarter, M District, N City, and the time of the deaths of their parents as presented by the plaintiffs were correct. In 1991, her mother transferred the land area of 131m^2 to Mr. Phung Van K, of which she and her siblings were all aware. However, she was not aware of how much money was received but she knew that her mother had used the money to repay debts and care for the children. As to the remaining land area of 267.4m^2, her mother was granted the certificate of land use rights in the name of Phung Thi G in 1999 and Mr. Phung Van T was managing and using the land. She was not aware whether or not her mother had made any will. Now, Ms. Phung Thi N1, Ms. Phung Thi H1, Ms. Phung Thi H2, and Ms. Phung Thi P initiated a lawsuit requesting to divide the estate, with which she disagreed because her parents had only one male child. Therefore, Mr. Phung Van T had to live there and conduct ancestor worship. If the Court was divided the estate in accordance with the law for her part of the inheritance, she will not receive and will assign her part of the inheritance to Mr. Phung Van T.

With the aforementioned facts of the case,

In First-instance Civil Judgment No. 11/2011/DSST dated 4 October 2011, the People's Court of Vinh Yen City ruled to:

- Accept part of Ms. Phung Thi H1's request to compel Mr. Phung Van T to pay Mr. Phung Thi H1 the total amount of VND340,000,000 (for the land area of 68m^2). To assign Mr. Phung Van T the land area of 68m^2 in cadastral map No. 32, lot No. 81 in L Quarter, M District, N City, Vinh Phuc Province (with four corners).

- Not accept Ms. Phung Thi N1's, Ms. Phung Thi H2's, and Ms. Phung Thi P's request to divide Ms. Phung Thi G's estate in accordance with the law.

In addition, the first-instance court ruled on the court fee and the right to appeal of the parties.

After the first-instance hearing, on 18 January 2011, the plaintiffs being Ms. Phung Thi N1, Ms. Phung Thi H2, Ms. Phung Thi P and Ms. Phung Thi H1 submitted an appeal to object to the first-instance judgment and to request the Court to divide the estate pursuant to the will and in accordance with the law.

In Appellate Civil Judgment No. 06/2012/DSPT dated 23 February 2012 of the People's Court of Vinh Phuc Province, the court ruled to:

- Accept the request by Ms. Phung Thi N1, Ms. Phung Thi H2, Ms. Phung Thi H1, and Ms. Phung Thi P to divide the estate.

- Assign Mr. Phung Van T and his representative being Ms. Phung Thi H3 the land area of 267.4m^2 valued at VND1,337,000,000 in lot No. 81, cadastral map No. 32, in L Quarter, M District, N City.

- Mr. Phung Van T and his representative being Ms. Phung Thi H3 were responsible for paying the value of his part of the inheritance equivalent to VND982,200,000 to Ms. Phung Thi H1.

As from the date on which Ms. Phung Thi H1 submitted a petition for enforcement of the judgment and since Mr. Phung Van T and his representative at law being Ms. Phung Thi H3 failed to pay the aforesaid amount, Mr. Phung Van T and Ms. Phung Thi H3 must also pay the interest based on the basic interest rate specified by the State Bank of Vietnam corresponding to the period of delay for enforcement of judgment.

In addition, the appellate court ruled on the court fee.

After the appellate hearing, Ms. Phung Thi H3 and Mr. Phung Van T submitted a request to reconsider the aforementioned appellate judgment by the People's Court of Vinh Phuc Province.

In Decision No. 131/QD-KNGDT-V5 dated 12 November 2013 of the Chief Prosecutor of the Supreme People's Procuracy as to Appellate Civil Judgment No. 06/2012/DSPT dated 23 February 2012 by the People's Court of Vinh Phuc Province, it was recognized that:

The appellate court did not account the land area which Ms. Phung Thi G had sold to Mr. Phung Van K in the assets to be divided, which had basis. The first-instance court determined that the inheritance being the total land area of 398m^2 (including the land area transferred to Mr. Phung Van K) was to be divided, which was incorrect.

However, the land area of 267m^2 in the name of Ms. Phung Thi G should have been determined as the common property of Mr. Phung Van N and Ms. Phung Thi G that was not yet divided. Ms. Phung Thi G was entitled to dispose only 1/2 of the land area of the total land area of 267m^2 of the common property, being the land area of 133.5m^2 – 90m^2 (as given to Ms. Phung Thi H1) and the remaining 43.5m^2 is to be divided between the 5 heirs.

As to the 1/2 of the land area of the total area of 267m^2 of the common property being the estate of Mr. Phung Van N, the statute of limitation for dividing the estate had run out. As Mr. Phung Van T had been managing the land area, he is entitled to continue doing so. The appellate court determined that the total land area of 267m^2 was Ms. Phung Thi G's estate to be divided pursuant to her will, giving an area of 90m^2 to Ms. Phung Thi H1 and dividing the remaining area of 177.4m^2 into 5 parts of inheritance, which were incorrect.

At the cassation hearing, the representative of the Supreme People's Procuracy upheld the contents of the protest by the Chief Prosecutor and requested that the Council of Adjudicators to accept the protest of the Chief Prosecutor.

FINDINGS OF THE COURT

[1] According to the case documents, the land area of 398m^2 located in L Quarter, M District, N city, Vinh Phuc Province was the common property of Mr. Phung Van N and his wife being Ms. Phung Thi G. Mr. Phung Van N and Ms. Phung Thi G had 6 children being Ms. Phung Thi H1, Ms. Phung Thi N1, Ms. Phung Thi H2, Mr. Phung Van T, Ms. Phung Thi P, and Ms. Phung Thi N2. On 7 July 1984, Mr. Phung Van N passed away without leaving a will. Then the land and the house were under the management and use of Mr. Phung Thi G and Mr. Phung Van T.

[2] In 1991, Ms. Phung Thi G transferred the land area of 131m^2 of the total land area of 398m^2 of the said lot to Mr. Phung Van K, with the remaining land area being 267.4m^2. In 1999, Ms. Phung Thi G was granted the certificate of land use rights over the area of 267.4m^2 wherein she and Mr. Phung Van T and his wife were managing and using the land and the house over it. Ms. Phung Thi G's children were all aware of the fact that Ms. Phung Thi G transferred the land area to Mr. Phung Van K but they had no objection thereto. Ms. Phung Thi G's children said that Mr. Phung Thi G used the money received from such transfer of the land for herself and her children. Mr. Phung Van K was also granted the certificate of land use rights. Therefore, there is basis to find that Ms. Phung Thi G's children consented to the transfer of the land use rights over the aforesaid land area of 131m^2 to Mr. Phung Van K. There is basis for the appellate court to exclude the land area which Ms. Phung Thi G transferred to Mr. Phung Van K from the common property. However, the first-instance court determined that the total land area of 398m^2 (including the land area transferred to Mr. Phung Van K) as the estate to be divided was not correct.

[3] On 19 December 2010, Ms. Phung Thi G passed away. Before her death, she left a will made on 5 March 2009 with contents indicating that Ms. Phung Thi H1 (Ms. Phung Thi G's daughter) was given the land area of 90m^2 within the aforesaid total area of 267m^2. The will was certified by the People's Committee of M District on 7 March 2009. Although the will was made and certified on different dates, the opinions and testimonies of the witnesses in the will confirmed that Mr. Phung Thi G made the will of sound mind. As the contents of the will reflected Ms. Phung Thi G's intention, it was lawful and reasonable for the two Courts to accept the validity of the will.

[4] However, as the land area of 267m^2 in the name of Ms. Phung Thi G was formed during the marriage, it should have been determined to be common property of Mr. Phung Van N and Ms. Phung Thi G not yet divided. Ms. Phung Thi G was only entitled to 1/2 the land area within the total area of 267m^2 as the common property of her and her husband. Therefore, Ms. Phung Thi G's estate being 1/2 of the total property (133.5m^2) of which an area of 90m^2 was given to Ms. Phung Thi H1 (Ms. Phung Thi G's daughter) pursuant the will, and the remaining area of 43.5m^2 was for the 5 remaining parts of inheritance (wherein Ms. N2 assigned her part of inheritance to Mr. Phung Van T; Ms. Phung Thi H2, Ms. Phung Thi N1 and Ms. Phung Thi P assigned their parts of inheritance to Ms. Phung Thi H1). As to the land area equivalent to 1/2 of the total land area of 267m^2 as the common property, the statute of limitation for dividing the estate of Mr. Phung Van N had run out. Mr. Phung Van T, as one of the co-heirs, did not agree to divide the estate. As such, pursuant to regulations in subsection 2.4, section 2, part I of Resolution No. 02/2004/NQ-HDTP dated 10 August 2004 of the Judicial Council of the Supreme People's Court, the conditions for division of estate of

the aforesaid case were not satisfied. Therefore, those who had been managing and using the land area would be entitled to continue doing so.

[5] It was incorrect for the appellate court to determine that the total land area of 267m^2 was the estate of Ms. Phung Thi G to be divided pursuant to the will, giving Ms. Phung Thi H1 a land area of 90m^2 and the remaining land area of 177.4m^2 to be divided into 5 parts of inheritance in accordance with the law.

[6] In addition, Mr. Phung Van T did not submit an appeal but the Court ruled that Mr. Phung Van T shall be obliged to pay the amount of VND200,000 as the appellate court fee. Ms. Phung Thi N1, Ms. Phung Thi H2, and Ms. Phung Thi P voluntarily assigned their parts of inheritance to Ms. Phung Thi H1, which was accepted by the Court. Ms. Phung Thi H1, being of a poor household, was exempt from paying the entire court fees, however, the appellate court did not rule to return the advance first-instance court fee to Mr. Phung Thi N1, Ms. Phung Thi H2, and Ms. Phung Thi P, which was incorrect. Therefore, the protest by the Chief Procurator of the Supreme People's Court had basis for acceptance.

In light of the aforementioned reasons, pursuant to Article 291.2, Article 297.3, and Article 299 of the Civil Procedure Code;

RULES

To set aside Appellate Civil Judgment No. 06/2012/DSPT dated 23 February 2012 of the People's Court of Vinh Phuc Province and First-instance Civil Judgment No. 11/2011/DS-ST dated 4 October 2011 of the People's Court of Vinh Yen City, Vinh Phuc Province in their entirety regarding the case on *"Dispute on inheritance"* between the plaintiffs being Ms. Phung Thi H1, Ms. Phung Thi N1, Ms. Phung Thi H2, Ms. Phung Thi P against the defendant being Mr. Phung Van T and persons with related rights and obligations being Ms. Phung Thi N2 and Ms. Phung Thi N3.

To transfer the case to the People's Court of Vinh Yen City, Vinh Phuc Province for first-instance hearing again in accordance with the law.

CONTENTS OF THE CASE LAW

"In 1991, Ms. Phung Thi G transferred the land area of 131m^2 of the total land area of 398m^2 of the said lot to Mr. Phung Van K, with the remaining land area being 267.4m^2. In 1999, Ms. Phung Thi G was granted the certificate of land use rights over the area of 267.4m^2 wherein she and Mr. Phung Van T and his wife were managing and using the land and the house over it. Ms. Phung Thi G's children were all aware of the fact that Ms. Phung Thi G transferred the land area to Mr. Phung Van K but they had no objection thereto. Ms. Phung Thi G's children said that Mr. Phung Thi G used the money received from such transfer of the land for herself and her children. Mr. Phung Van K was also granted the certificate of land use rights. Therefore, there is basis to find that Ms. Phung Thi G's children consented to the transfer of the land use rights over the aforesaid land area of 131m^2 to Mr. Phung Van K. There is basis for the appellate court to exclude the land area which Ms. Phung Thi G transferred to Mr. Phung Van K from the common property. However, the first-instance court determined that the total land area of 398m^2 (including the land area transferred to Mr. Phung Van K) as the estate to be divided was not correct".

CASE LAW NO. 17/2018/AL
with respect to the "characteristic of thuggery" in the crime of "Murder" having accomplices

This case law was adopted by the Judicial Council of the Supreme People's Court on 17 October 2018 and promulgated under Decision No. 269/QD-CA on 06 November 2018 by the Chief Justice of the Supreme People's Court.

Source of the case law:

Cassation Decision No. 07/2018/HS-GDT on 20 March 2018 by the Judicial Council of the Supreme People's Court on the *"Murder"* case as to the defendant Nguyen Van H, born in 1977; residing at A Street, C Town, P District, Thua Thien Hue Province.

- Victim: Mr. Duong Quang Q.

Location of contents of the case law:

Paragraph 1 of the *"Findings of the Court".*

Overview of the case law:

- ***Background of the case law:***

  For the case with accomplices, only due to minor conflicts, the accomplices organized to attack the victim in order to scare him.

  When committing the crime, the perpetrator used a machete to slash repeatedly the victim's head, face, legs and arms; the fact that the victim did not die is beyond the perpetrator's subjective intent.

  The instigator is not present when the perpetrator commits such crime, does not know that the perpetrator uses the machete to slash the important parts of the victim's body but he intentionally lets the consequences happen.

- ***Legal resolution:***

  In this case, the perpetrator must be prosecuted for the crime of *"Murder"* with the *"characteristic of thuggery"*. The instigator is prosecuted for the crime of *"Murder"* but not applied the *"characteristic of thuggery"*.

Applicable provisions of laws relating to the case law:

- Article 93.1(n) of the Criminal Code 1999 (corresponding to Article 123.1(n) of the Criminal Code 2015);

- Article 93.2 of the Criminal Code 1999 (corresponding to Article 123.2 of the Criminal Code 2015).

Key words of the case law:

"Accomplice"; "Thuggery"; "Vital part of body", "Perpetrator", "Inciter", "crime of Murder".

CONTENTS OF THE CASE

At around 08:00 on 13 January 2015, due to conflicts, there were a scuffle between Mr. Duong Quang Q's sons, i.e. Duong Quang T, Duong Quang R and Duong Quang K against Duong Quang H, Duong Quang L, and Nguyen Van H. Mr. Q's sons used their hands and feets to punch and kick Mr. Duong Quang H, thereby Mr. H was lightly bruised. Witnessing that his father-in-law, i.e Mr. Duong Quang H, was attacked by Mr. Q's sons, Nguyen Van H called via phone to inform Tran Quang V (the son-in-law of Mr. H) of such problem. Being informed that his father-in-law was attacked, V left Ha Tinh [Province] to Thua Thien Hue [Province] and invited Pham Nhat T to attack Mr. Q together. V and T left their house(s) with 02 machetes put into a badminton racket bag. At around 16:00 on 19 January 2015, V drove T to Lang Co Town and invited H to drink together. At the pub, H said to V that *"My father was attacked, which is painful. He has been hurt*". V asked H about Mr. Q's address and identity characteristics of Mr. Q. After being informed by H, V said to T *that "drinking first and then we both will go and fight him,"* H said that "If you attack, only attack to scare". Thereafter, H left first and V and T continued to drink.

At around 17:45, while paying money, Tran Quang V said to Pham Nhat T *"I am going inside to attack him. If other people come out, you must stop them"*. T agreed and got on the motorbike driven by V to go to Mr. Q's house. After driving around Mr. Q's house, he realized that Mr. Q was not at home, V stopped in a vacant place, took a piece of nylon fabric to cover his license plate number and drove T to Lang Co Bridge to wait. At around 18:00, V drove T back to the front of Mr. Q's house and saw that Mr. Q was bending down to open the gate. V stopped the motorbike, opened the badminton racket bag to take out one machete with a serrated blade, and ran to slash repeatedly Mr. Q's head, face, back, legs and arms causing Mr. Q to collapse on the ground. As many people around saw, screamed, and ran toward them, T took the machete to threaten and stop the crowd so that V could be able to run to where the motorbike was and start the ignition to escape. When approaching Phu Gia Pass, V called H via phone to ask about the status of Mr. Q's injuries. H asked V *"Did you slash Mr. Q? Mr. Q was taken to a hospital*". After calling H, V called Duong Quang L to tell him that *"I have just slashed Mr. Q! Where are you? Go home and hide 2 machetes for me!"* After that, L waited for V and T near the street. T gave L the badminton racket bag containing 02 machetes to hide and V continued to drive T to V's house and sat with T to have a beer. After L took the badminton racket bag to his house and gave it to Duong Quang H to hide, H took this bag to the kitchen of Mr. Ho T (Mr. H's father-in-law) to hide. Mr. Duong Quang Q was taken to emergency room for treatment at the Hospital of Da Nang until 03 February 2015, when he was discharged.

In Report on Forensic Medical Examination No. 26-15/TgT dated 28 January 2015, the Forensic Medical Examination Center of Thua Thien Hue Province concluded: Mr. Duong Quang Q suffers from many flesh wounds at the head, left shoulder, left elbow, and left thigh, which leave scars but do not impact on function 3%; the flesh wound of the face has limited impact on function 8%; the fractures of 04 incisors No. R 1.1,1.2, 1.3, and No. 3.3; two premolars No. 1.4and 1.5; molars No. 1.6 and 1.7 are currently being treated, losing

20% of function of his opposing tooth; reconstruction surgery was conducted for the nearly cut-off left hand, currently being treated, so the impact on function cannot yet be evaluated8%; cut-off fingers No. 2 and 3 on the left hand 25%; the overall injury level is 51%; the objects causing such injuries are determined as a sharp and heavy objects.

In First-instance Criminal Judgment No. 20/2016/HSST dated 23 May 2016, the People's Court of Thua Thien Hue Province applied Article 93.1(n); Article 46.1(b) and Article 46.1(p); Article 47; Article 18; Article 52.3 of the Criminal Code 1999 to sentence Nguyen Van H 07 years of imprisonment for the crime of *"Murder".*

In addition, the first-instance court ruled on the crimes and the sentences as to the other defendants, their civil liabilities, how to deal with the material evidence, court fees and the right to appeal under laws.

After the first-instance hearing, Nguyen Van H submitted an appeal for requesting a review of the crime and mitigation of the sentence.

In Appellate Criminal Judgment No. 217/2016/HSPT dated 2 August 2016, the Superior People's Court in Da Nang ruled: To accept the appeal of the defendant Nguyen Van H; To apply Article 104.2; Article 46.1(b) and Article 46.1(p); Article 20; Article 53 of the Criminal Code 1999 to sentence Nguyen Van H 03 years of imprisonment for the crime of *"intentional infliction of injury"*.

In Cassation Protest No. 13/2017/KN-HS dated 03 July 2017, the Chief Justice of the Supreme People's Court appealed against Appellate Criminal Judgment No. 217/2016/HSPT dated 2 August 2016 by the Superior People's Court in Da Nang relating to the crime and the sentence of Nguyen Van H; proposed the Judicial Council of the Supreme People's Court to handle in accordance with the cassation procedures to set aside the appellate criminal judgment aforementioned on the crime and sentence as to Nguyen Van H for appellate re-hearing in accordance with laws.

At the cassation hearing, the representative of the Supreme People's Procuracy agreed with the Cassation Protest of the Chief Justice of the Supreme People's Court.

FINDINGS OF THE COURT

[1] According to the documents and evidence in the case file: After witnessing his father-in-law, namely Mr. Duong Quang H was attacked by Mr. Duong Quang Q's sons, Nguyen Van H was the one who directly called Tran Quang V to inform that H was attacked. While eating and drinking with V and Pham Nhat T during the evening of 19 January 2015, being informed that V and T intended to attack Mr. Q for revenge, H said *"My father was brutally attacked, he is still in pain".* to reinforce V's will and determination to attack Mr. Q. H is also the person who pointed out home and identifying characteristics of Mr. Q to V and T so that V and T could attack Mr. Q. While listening to V and T discuss their plan to attack Mr. Q, H did not intervene but even said that *"If you attack, only attack to scare"*, demonstrating his agreement to attack Mr. Q. Thereafter, H left first. In fact, Tran Quang V used the machete to slash repeatedly Mr. Q's head, face, legs and arms, causing Mr. Q to collapse on the ground. Since everyone intervened and Mr. Q was promptly taken to emergency room, the fact that Mr. Q did not die is beyond V's subjective intent. After slashing Mr. Q, V made 03

consecutive phone calls to ask H about Mr. Q's injuries. Although H did not know in advance that V used the machete to slash repeatedly the vitals parts of Mr. Q's body, which may deprive Mr. Q's life, H agreed with V and T to attack Mr. Q and accept the consequences. Therefore, there is basis for the first-instance court to convict Nguyen Van H for being the accomplice who helped Tran Quang V and Pham Nhat T to commit the crime of *"Murder"*. However, the first-instance court convicted Nguyen Van H under Article 93.1(n) of the Criminal Code 1999 with the *"characteristic of thuggery"*, which is incorrect for the following reasons: In the case, Tran Quang V and Pham Nhat T are the persons who directly attacked Mr. Q; due to the minor conflicts with Mr. Q's sons, V and T used the machete to slash repeatedly the vital parts of Mr. Q's body, only the crimes committed by V and T can be determined with *"characteristic of thuggery"*, Nguyen Van H did not directly take part in attacking Mr. Q but helped V and T to do so therefore the crime committed by H should not be determined with *"characteristic of thuggery"* but falls in the category specified by Article 93.2 of the Criminal Code 1999.

[2] Where the appellate court found that the fact that Tran Quang V used the machete to slash Mr. Duong Quang Q's head and face is an act that goes beyond the intention of Nguyen Van H so H is not criminally liable for the crime of *"Murder"* but is criminal liable for the actual consequences to Mr. Q, as such the appellate court amended the first-instance criminal judgment and transferred H's crime from the crime of *"Murder"* to the crime of *"intentional infliction of injury",* which is a serious violation in the application of laws. At the same time, due to the fact that the appellate court overstated the mitigating factors for criminal liability that the first-instance Court had already considered when it sentenced Nguyen Van H with 03 years of imprisonment, which is an incorrect assessment on the nature and extent of danger to the society of the crime committed by the defendant and thus there was no deterrent effect and general prevention.

For the reasons aforementioned,

RULES

Pursuant to Article 388.3 and Article 391 of the Criminal Procedure Code;

To set aside Appellate Criminal Judgment No. 2107/2016/HSPT dated 2 August 2016 of the Superior People's Court of Da Nang on the crime and sentence as to Nguyen Van H, to transfer the case file to the Superior People's Court of Da Nang for re-conduct appellate procedures in accordance with laws.

CONTENTS OF THE CASE LAW

"[1] According to the documents and evidence in the case file: After witnessing his father-in-law, namely Mr. Duong Quang H was attacked by Mr. Duong Quang Q's sons, Nguyen Van H was the one who directly called Tran Quang V to inform that H was attacked. While eating and drinking with V and Pham Nhat T during the evening of 19 January 2015, being informed that V and T intended to attack Mr. Q for revenge, H said "My father was brutally attacked, he is still in pain" to reinforce V's will and determination to attack Mr. Q. H is also the person who pointed out home and identifying characteristics of Mr. Q to V and T so that V and T could attack Mr. Q. While listening to V and T discuss their plan to attack Mr. Q, H did not intervene but even said that "If you attack, only attack to scare", demonstrating his agreement to attack

Mr. Q. Thereafter, H left first. In fact, Tran Quang V used the machete to slash repeatedly Mr. Q's head, face, legs and arms, causing Mr. Q to collapse on the ground. Since everyone intervened and Mr. Q was promptly taken to emergency room, the fact that Mr. Q did not die is beyond V's subjective intent. After slashing Mr. Q, V made 03 consecutive phone calls to ask H about Mr. Q's injuries. Although H did not know in advance that V used the machete to slash repeatedly the vitals parts of Mr. Q's body, which may deprive Mr. Q's life, H agreed with V and T to attack Mr. Q and accept the consequences. Therefore, there is basis for the first-instance court to convict Nguyen Van H for being the accomplice who helped Tran Quang V and Pham Nhat T to commit the crime of "Murder". However, the first-instance court convicted Nguyen Van H under Article 93.1(n) of the Criminal Code 1999 with the "characteristic of thuggery", which is incorrect for the following reasons: In the case, Tran Quang V and Pham Nhat T are the persons who directly attacked Mr. Q; due to the minor conflicts with Mr. Q's sons, V and T used the machete to slash repeatedly the vital parts of Mr. Q's body, only the crimes committed by V and T can be determined with "characteristic of thuggery", Nguyen Van H did not directly take part in attacking Mr. Q but helped V and T to do so therefore the crime committed by H should not be determined with "characteristic of thuggery" but falls in the category specified by Article 93.2 of the Criminal Code 1999".

CASE LAW NO. 18/2018/AL
on the act of murder of on-duty officer in the crime of "Murder"

This case law was adopted by the Judicial Council of the Supreme People's Court on 17 October 2018 and promulgated under Decision No. 269/QD-CA dated 06 November 2018 by the Chief Justice of the Supreme People's Court.

Source of the case law:

Appellate judgement No. 331/2018/HS-PT dated 28 May 2018 of Superior People's Court of Hanoi on the *"Murder"* case with the defendant being Mr. Phan Thanh H, other name: D; born in 1995, residing at C Commune, D District, Binh Dinh Province; having his address at B Hamlet, C Commune, D District, Binh Dinh Province.

- Victim: Mr. Nguyen Anh D.

Location of contents of the case law:

Paragraphs 1 and 3 of the section *"Findings of the Court"*.

Overview of the case law:

- ***Background of the case law:***

  The defendant was ordered by the traffic police to stop the vehicle to settle the violation but failed to follow such order and drove the vehicle straight through the traffic police officers. When the traffic police officer clung to the rearview mirror of the vehicle, the defendant continued to drive the vehicle with high speed, unexpectedly steered close to the median strip in order to knock the traffic police officer down to the road.

  The traffic police officer fell off the vehicle, hit the hard median strip in the middle of the road, and suffered multiple injuries.

- ***Legal resolution:***

  In this case, the defendant shall be liable for the crime of *"Murder"* with the sentencing framework factor being *"Murder of on-duty officer"*.

Applicable provisions of laws relating to the case law:

Article 93.1(d) of the Criminal Code 1999 (corresponding to Article 123.1(d) of the Criminal Code 2015)

Key words of the case law:

"Murder", "Traffic police" "Murder of on-duty officers".

CONTENTS OF THE CASE

Pursuant to the charges and the first-instance judgement of the People's Court of Ha Tinh Province, the contents of the case are summarized as follow:

1. As to the acts of murder:

Implementing a plan of the Traffic Police Department of Ha Tinh Province (PC67), on 30 June 2017, the patrol squad including officers: Vo Hoang N, Nguyen Anh D, Le Ho Viet A and Duong Hai N (officer Vo Hoang Nam is the head of this squad) conducted patrol duties, handled violations relating to traffic safety from Km468 to Km517 of the 1A National Highway. Officer Duong Hoai N was assigned the duty of using the vehicle speed detector number UX027957 to measure the speed of vehicles at Km11+450 of the road bypassing Ha Tinh City, within H Commune, I District, Ha Tinh Province. Officers Vo Hoang N, Nguyen Anh D and Le Ho Viet A were assigned to stop, examine, patrol and handle violating vehicles at 1A Km488+650 of the 1A National Highway, within K Commune, L District, Ha Tinh Province.

On 30 June 2017, Tu Cong T and Phan Thanh H operated the towing truck BKS: 77C-016.47 towing a semi-trailer BKS: 77R-001.37 driving from South to North. When reaching the area of Quang Binh Province, the vehicle was operated by Phan Thanh H and Tu Cong T was sleeping in the truck cab. At 15:28 on the same day, while Phan Thanh H was operating the vehicle to Km11+450 in the road bypassing Ha Tinh City, Officer Duong Hoai N used the vehicle speedometer and detected that the towing vehicle operated by H violated the speed limit of 66/60km/h, so he reported and sent images of the violation via mobile phone message to the patrol squad who were on duty at Km488+700 of the 1A National Highway to handle.

At 16:05 on the same day, when the towing vehicle BKS: 77C-016.47 operated by Phan Thanh H arrived at Km488+650 of the 1A National Highway, within K Commune, L District, Ha Tinh Province. He was signaled to stop by the patrol of the Traffic Police Department of the Police of Ha Tinh Province. After Phan Thanh H had stopped the vehicle, Officer Nguyen Anh D informed and showed images of the violation to him and asked him to present documents. Nonetheless Phan Thanh H asserted that his vehicle did not violate the speed limit, so he did not present documents and then argued with Officer D and other officers in the patrol squad who were on duty. At the same time, Phan Thanh H took his mobile phone displaying images of his vehicle's speed to compare. The patrol explained but Phan Thanh H still did not accept and continued to argue, then climbed up the vehicle and closed the door (the vehicle was still running). At this time, Officer Le Ho Viet A was standing before the front right side of the vehicle, Officer Nguyen Anh D was standing before the front left side of the vehicle BKS: 77C-016.47 at about 01 meter, gave Phan Thanh H a signal not to drive the vehicle. However, Phan Thanh H failed to comply with such order and unexpectedly drove the vehicle straight through Officer Le Ho Viet A and Officer Nguyen Anh D standing before the front of the vehicle to escape. Seeing that, Officer Le Ho Viet A avoided by jumping to the right roadside, Officer Nguyen Anh D failed to do so, thus, he had to cling to the front left rearview mirror on the hood of the vehicle. Even though Phan Thanh H saw that Officer Nguyen Anh D was clinging to the rearview mirror, he still continued to accelerate the vehicle. When it came to Km488+250 of the 1A National Highway (approximately 400 meters from the starting point), Phan Thanh H's vehicle was moving in the right lane, although there was no obstacle and no car traveling in the same

direction before him, H unexpectedly steered heavily to the left, changed the direction of the front of the vehicle close to the hard median strip in the middle of the road, aiming to knock Officer Nguyen Anh D down to escape. At that time Officer Nguyen Anh D was clinging onto the rearview mirror with both of his hand, his legs did not have any support so when the vehicle was unexpectedly steered, he was thrown off the vehicle and hit the hard median strip, then fell onto the road surface.

After unexpectedly steering and throwing officer Nguyen Anh H onto the road, Phan Thanh H still did not stop, continued to operate the vehicle to escape, failed to comply with the order to stop from the patrol squad. Only at Km488 of the 1A National Highway, when the Traffic Police Force of the Police of Ha Tinh Province used specialized vehicles to block him, Phan Thanh H then stopped the vehicle but still did not comply and continued to argue with the on-duty officers. He then got on the vehicle, closed the door refusing to cooperate, then operated the vehicle to block the road causing traffic jams. The Police Department of L District cooperating with the Traffic Police Department of the Police of Ha Tinh Province compelled Phan Thanh H to operate the vehicle to the roadside and brought him to the Police Office of L District to handle.

Consequence: Officer Nguyen Anh D was seriously injured and was taken to the General Hospital of Hong Linh Commune, then transferred for treatment at the Viet Duc Friendship Hospital, on 10 July 2017 he was transferred for treatment at General Hospital of Ha Tinh province and was discharged from the hospital on 18 July 2017.

The process of Phan Thanh H carrying out such acts was recorded via a mobile phone by Mr. Tran Trung D, residing at 102 M Street, N District, Hanoi, who was a passenger on a taxi BKS: 37A-304.84 of Mai Linh taxi.

- In Report on Forensic Medical Examination No. 87 dated 18 September 2017 of the Forensic Medical Examination Center of Ha Tinh Province as to Mr. Nguyen Anh D's injuries, it was determined that:

+ Traumatic brain injury: left frontal lobe impacted, right vertebral bone being fractured;

+ Top of the head with scar wound size of 2.5cm x 0.2cm; right temporal lobe with scar wound of 1.5cm x 0.2cm;

+ X Ray: Image of 1/3 left fibula being broken having bony callus.

Conclusion: The current injury level of the body caused by this incident is 40%. (BL: 139, 140).

During the investigation process, Phan Thanh H presented that the vehicle operated by H did not violate the speed limit, based on the VTR01 travel monitoring device installed on the towing vehicle BKS: 77C-016.47 reflecting that, on the road bypassing Ha Tinh City, the towing vehicle BKS: 77C-016.47 traveled at a speed less than 60km/h. However, VTR01 travel monitoring device installed on the towing vehicle BKS: 77C-016.47, which meets the national standards QCVN31:2001/GTVT issued in accordance with the Circular No. 08/2011/TT-BGTVT dated 8 March 2011 of the Ministry of Transport, has $\pm$ 5km/h error and updates the vehicle's speed every 10 seconds. Meanwhile, the vehicle speed detector

number UX027957 verified according to the Certificate of Accreditation No. V08.KD.525.16 dated 29 September 2016 of Vietnam Metrology Institute, has technical features of measurement as follow: Range of measurement of 8 – 320 km/h, accuracy level ± 2km/h and direct measurement of the speed of the traveling vehicle.

In this case, Phan Thanh H was responsible to comply the order, present documentations in compliance with the requests of the on-duty officers. If he disagreed with the result of the resolution, then he could submit a complaint. However, due to the fear of being detected that he was using a forged driver's license, Phan Thanh H did not comply and committed a crime.

2. As to the acts of forging documents of agencies and/or organizations:

Around October 2016, Phan Thanh H (having a Class C driver's license) was accepted by Tu Cong T to be an assistant driver of towing vehicles to come with T to deliver goods. During process of being an assistant driver, Tu Cong T saw that H can operate towing vehicles, but Phan Thanh H was not old enough to be licensed with a Class FC driver's license. Around February 2017, Tu Cong T took Phan Thanh H's photo and contacted a stranger in Hai Phong City to forge Class FC driver's license No. 520144004729 having the name of Luu Van C and photo of Phan Thanh H with the price of VND2,500,000 and then handed it to H to use in dealing with and deceiving when being inspected by competent authorities.

On 30 June 2017, when working with the Investigation Police Agency of the Police of L District, Phan Thanh H has presented a forged Class FC driver's license named Luu Van C (born in 1991; residing at O Town, D District, Binh Dinh Province). At the same time, both Phan Thanh H and Tu Cong T stated that H's name is Luu Van C in order to deceive investigation agency. Therefore, the Investigation Police Agency of the Police of L District issued legal procedure decisions against Phan Thanh H with the fake name of Luu Van C.

During the investigation, it was also determined that: At 16:50 on 22 April 2017, at Km1060 + 400 of the 1A National Highway within Quang Ngai Province, Phan Thanh H operated the towing vehicle BKS: 77C-103.69 towing a semi-trailer 77R-014.65 and violated *"Turning without signaling"* and used forged driver's license No. 520144004728 with name Luu Van C to deceive the patrol squad of the Traffic Police Department of the Police of Quang Ngai province.

- *In the Conclusion of the Assessment Report No. 10 dated 05 July 2017, the Criminal Technical Office of the Police of Ha Tinh, it was determined that*: The driver's license No. 520144004729 named Luu Van C, born on 10 June 1991, residing in O Town, D District, Binh Dinh Province issued on 18 November 2015 was a forged driver's license (BL: 91).

The seizure exhibits include:

- 01 (one) FREIGHTLINER branded towing vehicle, BKS:77C-016.47, type number: CL 120064S, red paint, machine number: 0933U0841843, frame number: 6CV36LX06844 and other related documents;

- 01 (one) forged driver's license (plastic card) No. 520144004729, Class FC with name Luu Van C;

- 01 (one) forged driver's license (plastic card) No. 5201600087, Class C with name Phan Thanh H, issued by Department of Transport of Binh Dinh Province;

- 01 (one) identity card No. 215341305 with name Phan Thanh H issued by the Police of Binh Dinh Province;

- 01 (one) ARBUTUS branded mobile phone, gold color, touch screen, IMEI numbers: 355052654004631, 355052654004649, used machine;

- 01 (one) Kingston branded USB, 8GB capacity, on the surface are the letters DT101 G2 storing a Video file: IMG-1245.MOV with the duration of 00 minutes 37 seconds.

- 01 (one) Apacer branded USB, 8GB capacity storing 02 Video files: IMG-0507.MOV with the duration of 02:58 minutes and IMG-0509.MOV with duration 03 minutes 04 seconds.

- 01 (one) Kingston branded USB, 8GB capacity, on the surface are the letters DT101.G2 storing a Video file: IMG-1689.MOV with the duration of 05 minutes 10 seconds.

The Investigation Police Agency of the Police of Ha Tinh Province returned the towing vehicle BKS: 77C-016.47 and other related documents to the owner being the Transport and General Trading Co., Ltd; 03 (three) USBs were being stored with the case file, other exhibits were transferred to the Civil Judgment Enforcement Agency of Ha Tinh Province for management.

With the above-mentioned acts, in the Indictment No. 35/CTr – KSDT, on 13 October 2017, the People's Procuracy of Ha Tinh Province prosecuted Phan Thanh H for the crime of *"Murder"* pursuant to Article 93.1(d) of the Criminal Code and the crime of *"Forging documents of agencies and/or organizations"* pursuant to Article 267.2(b) of the Criminal Code. It also prosecuted Cong T for the crime of *"Forging documents of agencies and/or organizations"* pursuant to Article 267.2(b) of the Criminal Code.

In First-instance Criminal Judgment No. 39/2017/HSST dated 26 December 2017, the People's Court of Ha Tinh Province ruled to:

1. Convict the defendant Phan Thanh H of the crimes of *"Murder"* and *"Forging documents of agencies and/or organizations"* and the defendant Tu Cong T of the crime of *"Forging documents of agencies and/or organizations"*.

- Apply Article 93.1(d); Article 52.3; Article 267.2(b); Article 46.1(b) and (p), and Article 46.2, Article 47 of the Criminal Code 1999.

  To sentence the defendant Phan Thanh H with 08 (eight) years of imprisonment for the crime of *"Murder"* and 02 (two) years of imprisonment for the crime of *"Forging documents of agencies and/or organizations".*

  Apply Article 50.1 of the Criminal Code to combine the penalties of 02 crimes to compel Phan Thanh H to bear the combined penalty of 10 (ten) years of

imprisonment. The imprisonment period shall be calculated from the date of temporary custody and detention (30 June 2017).

- Apply Article 267.2(b) and Article 46.2 of the Criminal Code 1999, sentence the defendant Tu Cong T with 02 (two) years imprisonment. The imprisonment time limit shall be calculated from the date the defendant implements the sentence.

In addition, the first-instance court also determined on handling the exhibits, the court fees and right to appeal.

On 3 January 2018, the defendant Phan Thanh H submitted an appeal requesting to reduce the level of punishment; the defendant Tu Cong T submitted an appeal requesting to reduce the level of punishment and a suspended sentence.

At the hearing, the defendant Phan Thanh H had confessed and admitted to all the acts of murder and acts of forging documents of agencies and/or organizations as stated above. The defendant presented that the first-instance court's sentence was too strict and proposed the Council of Adjudicators to reduce the level of punishment for the defendant.

The defendant Tu Cong T had confessed and admitted to all the acts of forging documents of agencies and/or organizations as stated above; the defendant presented, the defendant did not have prior criminal record and committed a less serious crime, sincerely cooperated, has repented, compensated the damage, the defendants family was facing hardship. He requested that the Council of Adjudicators to allow the defendant to rehabilitate in his locality.

The representative of the Superior People's Procuracy of Hanoi opined on the settlement of the case as follows: There is sufficient evidence to conclude that the defendant Phan Thanh H committed the crimes of *"Murder"* and "*Forging documents of agencies and/or organizations"* as provided in Article 93.1(d); Article 267.2(b) of the Criminal Code.

As to the defendant Tu Cong T: Committed the crime of *"Forging documents of agencies and/or organizations"* as provided in Article 267.2(b) of the Criminal Procedure Code.

After evaluating the nature and the seriousness of the offenses of the defendants; reviewing the personal record; mitigating factors of the defendants, the representative of the Superior People's Procuracy of Hanoi requested the Council of Adjudicators to reject the appeal of the defendant Phan Thanh H, uphold the first-instance court's judgment; accept the appeal of the defendant Tu Cong T, uphold the sentence and grant a suspended sentence, and set a probation period in accordance with the law.

The lawyer protecting the defendant Phan Thanh H opined: Not debating criminal offense and sentencing framework, requested the Council of Adjudicators for application of mitigating factors in accordance with the Article 46.1(b) and (p), and Article 46.2, Article 47 of the Criminal Code 1999 and to reduce the level of punishment for the defendant Phan Thanh H.

In the arguments, the representative of the Superior People's Procuracy of Hanoi, lawyers and the defendant held to their opinions.

FINDINGS OF THE COURT

[1] The testimonies admitting guilt by the defendants Phan Thanh H and Tu Cong T match with the testimony of the crime victim, the testimonies of the witnesses, the expert report and other documents or evidence of the case file. Therefore, there is sufficient basis to conclude: At around 16:05 on 30 June 2017, the defendant Phan Thanh H operated a towing vehicle BKS: 77C-016.47 towing a Semi-trailer BKS: 77R-001.37, while arriving at Km488+650 of the 1A National Highway, within K Commune, L District, Ha Tinh Province, then it was signal to stop by the patrol squad of the Traffic Police Division of the Police Department of Ha Tinh Province for a speed violation (66/60km/h). The defendant Phan Thanh H did not comply since he asserted that his vehicle did not violate speed limit, so he argued and drove the vehicle straight through Mr. Nguyen Anh D and Mr. Le Ho Viet A being on-duty traffic police officers when they were standing in front of the vehicle. Mr. Le Ho Viet A jumped to the roadside and escaped, while Mr. Nguyen Anh D had to cling onto the front left rearview mirror of the vehicle. Phan Thanh H continued to drive the vehicle at high speed, then unexpectedly steered heavily to the left which was close to the median strip in the middle of the road aiming to knock Mr. Nguyen Anh D down to escape. The consequence was that Mr. Nguyen Anh D fell off the vehicle hitting the hard median strip in the middle of the road, then falling off onto the road. Phan Thanh H let the consequences happen and then continued to escape. Mr. Nguyen Anh D had traumatic brain injury, broke his legs, having 40% injury level.

[2] Phan Thanh H and Tu Cong T also committed the following acts: The defendant Tu Cong T acknowledged that the defendant Phan Thanh H did not have Class FC driver's license and was not old enough to be licensed with a Class FC driver's license, but Tu Cong T has hired a man in Hai Phong (T did not know the name and address) to forge Class FC driver's license No. 520144004729 with image of Phan Thanh H, but with name Luu Van C. He handed it to H to use in dealing with and deceiving competent authorities when operating vehicles on the road. With the forged driver's license provided by Tu Cong T, Phan Thanh H used that forged driver's license twice to deceive the Traffic Police Department of Quang Ngai Province and the Police of L Commune, Ha Tinh Province. Tu Cong T was aware of Phan Thanh H's acts of using a forged driver's license to deceive competent authorities as stated above.

[3] Given the above-mentioned criminal actions, the first-instance court convicted the defendant Phan Thanh H for the crime of *"Murder"* and the crime of *"Forging documents of agencies and/or organizations"*, the crimes and sentences are specified in Article 93.1(d) and Article 267.2(b) of the Criminal Code 1999, which there is basis and is correct with law.

[4] The defendant Tu Cong T was convicted with the crime of *"Forging documents of agencies and/or organizations"* with crimes and sentences as provided in Article 267.2(b) of the Criminal Code 1999, which has basis and correct with the law.

[5] Considering the appeals of the defendant Phan Thanh H and Tu Cong T, the Council of Adjudicators, found that: The act of murder committed by the defendant Phan Thanh H was dangerous, directly infringed on human life, negatively impacted the order and safety of public transportation.

[6] The act of forging documents of agencies and/or organizations committed by the defendants Tu Cong T and Phan Thanh H directly violated administrative management order, therefore, it must be strictly punished before the law.

[7] The defendant Phan Thanh H has a good personal record, with no prior criminal record; during the investigation and at the hearing sincerely cooperated, repented; voluntarily compensated the victim to remedy consequences, the victim requested to reduce the level of punishment for the defendant; the defendant was facing hardship, being of a poor household in the locality; the criminal acts committed by the defendant fall into the category of *"incomplete crime"*; in addition, the defendant also has a grandfather who contributed to the revolution and entitled to similar regime as war invalids. As such, the defendant Phan Thanh H is entitled to mitigating factors in accordance with Article 46.1(b) and (p), and Article 46.2; Article 18 of the Criminal Code 1999. Therefore, there is basis to reduce the punishment level for the defendant of the sentence for the crime of *"Murder"*, but the sentence for the crime of *"Forging documents of agencies and/or organizations"* is upheld.

[8] As to the defendant Tu Cong T: Has a good personal record, with no prior criminal record. During the investigation and at the hearing sincerely cooperated, repented; the defendant with the defendant Phan Thanh H's family compensated the victim to remedy consequences; the defendant was facing hardship and is the main laborer in the family; the defendant has a fixed residence. Considering the above, imprisonment is unnecessary, and rehabilitation of the defendant in his locality also satisfies the conditions to educate the defendant and for general prevention. Therefore, there is sufficient basis to accept the appeal of the defendant Tu Cong T.

[9] Other rulings of first-instance judgment not being appealed or protested shall become effective upon the expiration of the time limit for appeals and protests.

[10] The defendants Phan Thanh H and Tu Cong T do not need to bear legal costs for appellate criminal procedure.

In light of the foregoing,

Pursuant to Article 355.1(b); Article 357.1(e) of the Criminal Procedure Code 2015,

RULES

1. To accept a part of the appeal of the defendant Phan Thanh H, amending the first-instance judgment.

   Applying Article 93.1(d); Article 267.2(b); Article 18; Article 52.3 (Murder); Article 46.1(b) and (p), Article 46.2; Article 47; Article 50.1 of the Criminal Code 1999: To sentence the defendant Phan Thanh H with 07 (seven) years of imprisonment for the crime of *"Murder"* and 02 (two) years of imprisonment for the crime of *"Forging documents of agencies and/or organizations"*. The combined penalty of the 02 crimes is 09 (nine) years of imprisonment. The imprisonment period shall be calculated from 30 June 2017.

2. To accept the appeal of the defendant Tu Cong T, amending the first-instance judgment.

Applying Article 267.2(b); Article 46.1(b) and (p), Article 46.2; Article 60 of the Criminal Code 1999: To sentence the defendant Tu Cong T with 02 (two) years of imprisonment with suspended sentence for the crime of *"Forging documents of agencies and/or organizations".* The probation period is 04 (four) years upon the date of pronouncement of the appellate judgment. The defendant Tu Cong T is assigned to the People's Committee of O Town (D District, Binh Dinh Province) for supervision and education during probation.

Where the person with a suspended sentence changes residence, it shall be implemented in accordance with Article 69.1 of the Law on Criminal Judgment Enforcement.

3. Other rulings of first-instance judgment not being appealed or protested shall become effective upon the expiration of the time limit for appeals and protests.

The appellate judgment shall become effective upon the date of pronouncement of the appellate judgment.

CONTENTS OF THE CASE LAW

"[1] The testimonies admitting guilt by the defendants Phan Thanh H and Tu Cong T match with the testimony of the crime victim, the testimonies of the witnesses, the expert report and other documents or evidence of the case file. Therefore, there is sufficient basis to conclude: At around 16:05 on 30 June 2017, the defendant Phan Thanh H operated a towing vehicle BKS: 77C-016.47 towing a Semi-trailer BKS: 77R-001.37, while arriving at Km488+650 of the 1A National Highway, within K Commune, L District, Ha Tinh Province, then it was signal to stop by the patrol squad of the Traffic Police Division of the Police Department of Ha Tinh Province for a speed violation (66/60km/h). The defendant Phan Thanh H did not comply since he asserted that his vehicle did not violate speed limit, so he argued and drove the vehicle straight through Mr. Nguyen Anh D and Mr. Le Ho Viet A being on-duty traffic police officers when they were standing in front of the vehicle. Mr. Le Ho Viet A jumped to the roadside and escaped, while Mr. Nguyen Anh D had to cling onto the front left rearview mirror of the vehicle. Phan Thanh H continued to drive the vehicle at high speed, then unexpectedly steered heavily to the left which was close to the median strip in the middle of the road aiming to knock Mr. Nguyen Anh D down to escape. The consequence was that Mr. Nguyen Anh D fell off the vehicle hitting the hard median strip in the middle of the road, then falling off onto the road. Phan Thanh H let the consequences happen and then continued to escape. Mr. Nguyen Anh D had traumatic brain injury, broke his legs, having 40% injury level.

[3] Given the above-mentioned criminal actions, the first-instance court convicted the defendant Phan Thanh H for the crime of "Murder" and the crime of "Forging documents of agencies and/or organizations", the crimes and sentences are specified in Article 93.1(d) and Article 267.2(b) of the Criminal Code 1999, which there is basis and is correct with law.

CASE LAW NO. 19/2018/AL
on valuation of the assets unlawfully appropriated pertaining to the crime of "Embezzlement"

This case law was adopted by the Judicial Council of the Supreme People's Court on 17 October 2018 and promulgated under Decision No. 269/QD-CA dated 6 November 2018 by the Chief Justice of the Supreme People's Court.

Source of the case law:

Cassation Decision No. 09/2015/HS-GDT dated 23 April 2015 of the Criminal Court of the Supreme People's Court on the *"Embezzlement"* case with respect to the defendant: Vo Thi Anh N, born in 1981 and having resided at No. 17, A Street, B Ward, C City, Binh Dinh Province.

In addition, in the case, Phan Thi Q was convicted of the crime of *"Lack of responsibility causing serious damage"*; Vo Thi Kim T was convicted of the crime of *"Lack of responsibility causing serious damage to the State's property"*.

Location of contents of the case law

Paragraph 3 of the *"Findings of the Court"*.

Overview of the case law:

- ***Background of the case law:***

  The defendant abused gaps in the management of the bank to repeatedly and directly carried out procedures to withdraw and pay out savings deposit monies from the funds of the bank's branch that the defendant managed but in actuality he did not pay out anyone and used such monies for himself.

  During the investigation process, the defendant remedies a part of monies unlawfully appropriated.

- ***Legal resolution:***

  In this case, the defendant must bear criminal liability for the crime of *"Embezzlement".*

  The value of assets unlawfully appropriated by the defendant must be determined as the total amount that the defendant falsely carried out the procedures for withdrawing and paying out the savings deposit monies from the funds of the bank's branch (including the amount remedied by the defendant during the investigation process).

Applicable provisions of laws relating to the case law:

Article 46.1(b), Article 46.1(p), Article 46.2; Article 47; Article 60; Article 278.2(c) of the Criminal Code 1999 (corresponding to Article 51(b), Article 51(s); Article 54; Article 65, Article 353.2(c) of the Criminal Code 2015).

Key words of the case law:

"The crime of embezzlement", "Value of the assets unlawfully appropriated", "To remedy part of the consequences", "Infringements of property ownership".

CONTENTS OF THE CASE

Transaction Office D was the unit attached to the branch of the Bank for Agriculture and Rural Development in C City, established under Decision No. 1667/QD/NHNN-TCCB dated 2 March 2007 by the General Director of the Vietnam Bank for Agriculture and Rural Development, who was responsible for mobilizing savings deposits of the people.

From May 2008 to April 2010, Transaction Office D was a transaction counter jointly working in the same office with the Accounting and Treasury Department of Bank for Agriculture and Rural Development in C City. Transaction Office D had 02 employees as follows:

- Phan Thi Q was the accountant who was responsible for transacting with customers, making documents pertaining to receipt and payment, keeping records of cash journals, accounting the receipts and payments into transaction program on the computer, printing and issuing passbooks and making savings cards.

- Vo Thi Kim T was the treasurer who was responsible for managing the unissued blank passbooks for the benefit of customers; managing receipts and payments.

Vo Thi Anh N was the bank teller of the Accounting and Treasury Department of Bank for Agriculture and Rural Development in C City, who was responsible for managing payments towards non-resident customers, transferring amounts of money, mobilizing capital, accounting the amounts of debt and interest collected in cash.

On 12 April 2010, the Director of the branch of the Bank for Agriculture and Rural Development in C City discovered the violations of the bank teller currently working at the branch and reported to the branch of the State Bank in Binh Dinh Province. On 7 June 2010, the Director of the branch of the Bank for Agriculture and Rural Development in Binh Dinh Province issued the Official Letter No. 486/NHNNBD-HCNS to request the Investigation Agency to clarify that the payment of savings deposit monies at Transaction Office D towards 02 passbooks, namely passbook No. NA 222040 under the name of Dang Thi Bich D and passbook No. NA 1297720 under the name Ngo Thanh V, which caused damage to the Bank with the total amount of VND774,403,300. It was determined in the investigation process as follows:

- As to Phan Thi Q and Vo Thi Kim T, they had directly carried out procedures and paid out monies from the funds of Transaction Office to passbook No. NA 222040

under the name of Dang Thi Bich D with the amount of VND200,100,000 and passbook No. NA 1297720 named as Ngo Thanh V with an amount of VND102,870,600; which amounted to VND302,970,600 (VND200,100,000 plus VND102,870,600 equals VND302,970,600) without checking the identity cards of customers for discrepancies, causing damages to the Bank for the aforementioned amount.

- As to Vo Thi Anh N, she had directly carried out the procedures and paid out monies from the funds of the branch of the Bank managed by Vo Thi Anh N into passbook No. NA 1297720 under the name of Ngo Thanh V with the total amount of VND471,432,700, including:

On 31 July 2009, Vo Thi Anh N paid out the amount of VND23,124,400, which includes the principal of VND20,000,000 and the interest of VND3,124,400.

On 3 November 2009, Vo Thi Anh N paid out the amount of VND448,308,300, which includes the principal of VND375,000,000 and the interest of VND73,308,300.

As to the payment on 3 November 2009, the Investigation Agency identified that Vo Thi Anh N had transferred the amount of VND251,000,000 into the ATM account under the name of Vo Thi T (this card was managed, used and transacted by Vo Thi Anh N many times). After that, Vo Thi Anh N withdrew the amount of VND251,000,000 from the ATM account of Vo Thi T many times for the purpose of unlawfully appropriating such amount.

As to the balance remaining from the payment to the step-up interest passbook No. NA 1297720 under the name of Ngo Thanh V, since Vo Thi Anh N did not conclusively prove the identity of the recipient involved, it caused damages to the Bank in the amount of VND220,432,700. Having considered that during investigation process the defendant Vo Thi Anh N remedied such amount, the People's Procuracy of Binh Dinh Province did not prosecute her for the crime.

In First-instance Criminal Judgment No. 106/2013/HSST dated 14 August 2013, the People's Court of C City, Binh Dinh Province applied Article 278.2(c); Article 46.1(b), Article 46.1(p), Article 46.2; Article 47 of the Criminal Code to sentence Vo Thi Anh N to 03 years of imprisonment for the crime of *"Embezzlement"*.

On 27 August 2013, Vo Thi Anh N submitted an appeal requesting a suspended sentence.

In Appellate Criminal Judgment No. 30/2014/HSPT dated 24 February 2014, the People's Court of Binh Dinh Province applied Article 248.2(b), Article 249.2(dd) of the Criminal Procedure Code to accept the appeal requesting a suspended sentence of the defendant Vo Thi Anh N, and applied Article 278.2(c) and Article 46.1(b), Article 46.1(p), Article 46.2, Article 47 and Article 60 of the Criminal Code to sentence Vo Thi Anh N 03 years of imprisonment for the crime of *"Embezzlement"* but allowing her to serve probation of 05 years.

In Cassation Protest No. 02/2015/KN-HS dated 09 February 2015, the Chief Justice of the Supreme People's Court requested the Cassation Council of the Criminal Court of the Supreme People's Court to set aside Appellate Criminal Judgment No. 30/2014/HSPT dated

24 February 2014 of the People's Court of Binh Dinh Province and First-instance Criminal Judgment No. 106/2013/HSST dated 14 August 2013 of the People's Court of C City, Binh Dinh Province as to Vo Thi Anh N in order to reinvestigate in accordance with the law.

At the cassation hearing, the representative of the Supreme People's Procuracy agreed with the Cassation Protest of the Chief Justice of the Supreme People's Court.

FINDINGS OF THE COURT

[1] Vo Thi Anh N had no task given by the managers of the Bank for Agriculture and Rural Development in C City to make payment of savings deposit money however she abused gaps in the management of the Bank many times to directly carried out procedures to withdraw and pay out savings deposit monies from the funds of the Bank's branch that Vo Thi Anh N managed into the passbook No. NA 1297720 under the name of Ngo Thanh V with the total amount of VND471,432,700. During the investigation process, the Investigation Agency determined that there was no customer named Ngo Thanh V and Vo Thi Anh N herself did not prove conclusively who received the amount.

[2] After carried out procedures to pay to customer Ngo Thanh V, Vo Thi Anh N transferred VND251,000,000 held in the Bank's funds that Vo Thi Anh N managed into the ATM account under the name of Vo Thi T, which was directly opened, managed and used by Vo Thi Anh N; then withdrew such amount many times for the purpose of unlawfully appropriating the monies of the Bank for Agriculture and Rural Development in C City. The first-instance court and the appellate court sentenced Vo Thi Anh N for the crime of *"Embezzlement"* as to the amount of VND251,000,000, which had basis and were correct under the law. However, due to the fact that Vo Thi Anh N unlawfully appropriated from the Bank the amount of VND251,000,000, Vo Thi Anh N's crime falls under Article 278.3(a) of the Criminal Code with respect to *"Unlawfully appropriating property with value in the range of VND200,000,000 to VND500,000,000",* which has a sentencing framework of between 15 to 20 years of imprisonment. The first-instance Court's application of Article 278.2 of the Criminal Code to sentence the defendant Vo Thi Anh N to 03 years of imprisonment was too light and not in accordance with the law. During the appellate hearing, the appellate Court failed to detect the mistake of the first-instance Court, upheld the sentence, and allowed the defendant to serve probation, which were serious mistakes and failed to properly assess the seriousness of the crime committed by the defendant.

[3] As to the remaining amount of VND220,432,700 (VND471,432,700 - VND251,000,000 = VND220,432,700) paid out by Vo Thi Anh N for the step-up interest passbook No. NA 1297720 under the name of Ngo Thanh V, Vo Thi Anh N remedied the consequences, the Bank for Agriculture and Rural Development C City recovered the total amount lost. Given the fact that the People's Procuracy of Binh Dinh Province considered that the defendant remedied the consequences and then decided not to prosecute this crime, the Procuracy omitted to prosecute all crimes committed.

For the reasons mentioned above, pursuant to Article 279.2; Article 285.3, Article 287 of the Criminal Procedure Code,

RULES

1. To set aside Appellate Criminal Judgment No. 30/2014/HSPT dated 24 February 2014 by the People's Court of Binh Dinh Province and First-instance Criminal Judgment No. 106/2013/HSST dated 14 August 2013 of the People's Court of C City, Binh Dinh Province as to Vo Thi Anh N to reinvestigate in accordance with the law.

2. To transfer the case to the Supreme People's Procuracy for settlement according to its authority.

Other decisions of the above-mentioned appellate and first-instance judgments which were not protested according to cassation procedures shall continue to be legally effective.

CONTENTS OF THE CASE LAW

"[3] As to the remaining amount of VND220,432,700 (VND471,432,700 - VND251,000,000 = VND220,432,700) paid out by Vo Thi Anh N for the step-up interest passbook No. NA 1297720 under the name of Ngo Thanh V, Vo Thi Anh N remedied the consequences, the Bank for Agriculture and Rural Development C City recovered the total amount lost. Given the fact that the People's Procuracy of Binh Dinh Province considered that the defendant remedied the consequences and then decided not to prosecute this crime, the Procuracy omitted to prosecute all crimes committed".

CASE LAW NO. 20/2018/AL
on establishment of the labor contract relationship after expiration of the probationary period

This case law was promulgated by the Judicial Council of the Supreme People's Court on 17 October 2018 and promulgated under Decision No. 269/QD-CA dated 6 November 2018 by the Chief Justice of the Supreme People's Court.

Source of the case law:

Cassation Decision No. 01/2017/LD-GDT dated 9 August 2017 of the Judicial Council of the Supreme People's Court with regard to the commercial case concerning *"Dispute on unilateral termination of a labor contract"* in Binh Thuan Province between the Plaintiff being Mr. Tran Cong T and the Defendant being L Company Limited (the legal representative being Mr. H).

Location of contents of the case law:

Paragraphs 2 and 3 of the section "*Findings of the Court*".

Overview of the case law:

- ***Background of the case law:***

  The employer sent an offer letter with the contents on determination of type of labor contract and probation period. The employee probated in accordance with the probationary period in the offer letter.

  After expiration of the probationary period, the employee continued to work and the employer and the employee had no further agreement.

- ***Legal resolution:***

  In this case, the court must determine that the employer and the employee established the labor contract relationship.

Applicable provisions of laws relating to the case law:

Articles 26, 27, 28, 29 of the Labor Code 2012.

Key words of the case law:

"Probation", "Probationary period", "Offer letter", "Not signing the labor contract when the probationary period expires", "Labor contract".

CONTENTS OF THE CASE

Mr. Tran Cong T worked at L Company Limited – Supermarket L – Branch B from 09 September 2013 according to the Offer letter dated 20 August 2013 of L Company Limited. Pursuant to the contents of the offer letter, Mr. T worked as the Head of the Non-Food

Department, type of labor contract: Definite term labor contract (with 12 months or more), probation period: 02 months, the total salary of the probationary period is VND15,300,000, the primary monthly salary is VND12,600,000, the monthly allowance is VND5,400,000.

Mr. T started to work from 9 September 2013. Upon expiration of the probationary period of 02 months (from 9 September 2013 to 9 November 2013), Mr. T still continued working. On 19 December 2013, Mr. T sent a resignation letter the job. On 28 December 2013, the Department of Human Resources of L Company Limited sent an invitation to Mr. T for a meeting in the Company and made a *"Minutes on Agreement regarding the early termination of labor contract prior to expiry of its duration"*. Mr. T wrote his opinions in the meeting with the following contents: He did not agree on resolution on termination of labor contract. On 29 December 2013, L Company Limited issued Decision No. 15/QDKL-2013 on the content of unilateral termination of labor contract to Mr. Tran Cong T for the reasons that: He repeatedly failed to perform his tasks under the labor contract, the time for termination of labor contract is from 28 December 2013. On 6 January 2014, Mr. T received the Decision on termination of labor contract as above-mentioned.

On 24 February 2014, Mr. Tran Cong T submitted a Statement of Claims on the unilateral termination of labor contract for the following requests:

1. To set aside Decision No. 15/QDKL-2013 dated 29 December 2013 of L Company Limited on unilateral termination of labor contract with him.

2. To request L Company Limited to compensate the following payments:

    - To compensate for the violation of not sending a 45 day-advance notice in the compensation amount of VND27,000,000.

    - To compensate for 02 months' salary for unlawful termination of labor contract in the amount of VND36,000,000. The Company has compensated VND19,466,000, and the Company must pay the remaining amount of VND16,534,000.

    - To pay the overtime salary during 45 days in the amount of VND48,150,000.

    - To pay salary for 11 days worked without taking annual leave in the amount of VND6,600,000.

    - To pay salary for 11 days worked without taking the compensatory leave, the compensation amount is VND6,600,000.

    - To pay the unpaid amount of the salary of November and December, at the monthly salary level of VND18,000,000/ month, the amount to be paid is VND5,400,000.

    - To pay the social insurance, health insurance, unemployment insurance in the total amount of VND24,696,000.

    - Compensation amount of VND18,000,000 each month for the unlawful unilateral termination of labor contract pursuant to Article 42 of the Labor Code, calculated

from January 2014 up to the date of hearing. Being temporarily calculated for 7 months, the compensation amount is VND126,000,000.

- Compensation amount for mental loss caused by the unlawful unilateral termination of labor contract.

The authorized legal representative of L Company Limited asserted that: The reason that L Company Limited terminated the labor contract with Mr. T was Mr. T failed to perform the work under the contract, particularly: After the probationary period of 2 months, pursuant to the Plan and Assessment of Achievement dated 10 November 2013, realizing that Mr. T has not satisfied the job requirements in the position of the Head of the Non-Food Department, the Director of Supermarket L – Branch B decided to extend the probationary period by 1 month to help Mr. T complete his tasks and to have more time for assessment of Mr. T's ability. The extension of the probationary period was due to the reason that: Supermarket L – Branch B was officially opened on 5 December 2013. However, through the extended one-month probationary period, on 12 December 2013, the Head of the Department of Sale Supervision of Supermarket L – Branch B assessed that Mr. T did not meet the requirements and requested for replacement of Mr. T.

On 24 December 2013, in the Meeting Minutes No. 10 on assessment of the performance of Mr. T in the non-food business, the Director of Supermarket L – Branch B *"requested the Board of Director to replace Mr. T by an experienced manager for management of the non-food business"*.

On 28 December 2013, the Company invited Mr. T to attend the meeting to discuss termination of labor contract. In the Meeting Minutes on early termination of labor contract, the Company assessed Mr. T as follows: Considering the performance of Mr. T in the period from 9 September 2013 to 19 December 2013 (including the 02-month probationary period), the Company assessed that Mr. T is not suitable for his current position (attached with the assessment table of the Director of Supermarket L – Branch B), the Company agreed on the termination of labor contract and shall pay for working days, leave if any, and compensate for 1 month salary for the period of advance notice. Mr. T did not agree with such assessment of the Company.

On the same date of 28 December 2013, L Company Limited made a meeting minutes on termination of labor contract prior to expiry of its duration with Mr. T. The Company noticed that Mr. T shall terminate his job in the Company from 28 December 2013; the Company shall make payments to all salary payments, the annual leave payments and make one month's salary payment replacing the time limit of advance notice. Mr. T did not agree on termination of labor contract before expiry of its duration.

The Company asserted that the decision on termination of labor contract with respect to Mr. T is compliant with the Labor Code. The Company made payment to Mr. T 01 month of salary for the time period of advance notice for terminating the labor contract. For the request for compensation of Mr. T, the Company agreed to pay Mr. T the social insurance, health insurance, unemployment insurance that the must contribute within the 02 months (after the expiration of probationary period), an amount of VND5,292,000 and 11 days that

Mr. T had not taken his leave being VND6,600,000. The Company did not agree on other requests for compensation of Mr. T.

In First-instance Labor Judgment No. 01/2014/LD-ST dated 12 August 2014, the People's Court of Binh Thuan Province ruled that:

To reject the requests for claims of the plaintiff – Mr. Tran Cong T as to the request for cancellation of Decision No. 15/QDKL-2013 dated 29 December 2013 of the General Director of L Company Limited on unilateral termination of labor contract with Mr. T.

To reject the request for claims of the plaintiff – Mr. Tran Cong T as to the request of L Company Limited for compensation and payments of the salary amounts; the social insurance, health insurance during the period of time that Mr. T was not allowed to work at Supermarket L - Branch B.

Recognizing the voluntariness of L Company Limited on: L Company Limited shall pay and assist Mr. T the social insurance, health insurance, unemployment insurance within the 02 months (November and December), in the amount of VND5,292,000, the amount for 11 working days that Mr. T worked without taking compensatory leave is VND6,600,000. The total of the 02 above amounts that L Company Limited is required to pay to Mr. T is VND11,892,000.

In addition, the first-instance court determined the court fees and the right to appeal of the concerned party.

On 26 August 2014, Mr. Tran Cong T submitted an appeal of the first-instance judgment in its entirety.

In Appellate Labor Judgment No. 01/2015/LD-PT dated 13 April 2015, the Appellate Court of the Supreme People's Court in Ho Chi Minh City ruled as follow:

Not accepting the appeal, upholding the ruling of the first-instance judgment.

In addition, the appellate court determined the court fees.

On 7 April 2016, Mr. Tran Cong T submitted a request for review of the appellate judgment in accordance to the cassation procedures.

In Decision No. 04/2016/KN-LD dated 26 December 2016, the Chief Justice of the Supreme People's Court protested against Appellate Labor Judgment No. 01/2015/LD-PT dated 13 April 2015 of the Appellate Court of the Supreme People's Court in Ho Chi Minh City and requested the Judicial Council of the Supreme People's Court to review the case under the cassation procedures to set aside Appellate Labor Judgment No. 01/2015/LD-PT dated 13 April 2015 of the Appellate Court of the Supreme People's Court in Ho Chi Minh City and First-instance Labor Judgment No. 01/2014/LD-ST dated 12 August 2014 of the People's Court of Binh Thuan Province.

In the cassation hearing, the representative the Supreme People's Procuracy requested the Judicial Council of the Supreme People's Court to accept the protest of the Chief Justice of the Supreme People's Court

FINDINGS OF THE COURT

On the jurisdiction to resolve the case:

[1] Pursuant to Articles 34, 35, and 36 of the Civil Procedure Code, the People's Court of Phan Thiet City, Binh Thuan Province has jurisdiction to hear the dispute over unilateral termination of labor contract between the plaintiff being Mr. Tran Cong T and the defendant being L Company Limited under the first-instance procedures. Therefore, the People's Court of Binh Thuan Province accepting jurisdiction to resolve the case under the first-instance procedures is not correct with provisions of the laws.

On determination of labor relationship:

[2] Mr. Tran Cong T worked in L Company Limited in accordance with the Offer Letter dated 20 August 2013 with the following content: "Type of contract: Definite term contract (12 months or more). Probationary period: 2 months. Upon expiration of the probationary period (from 9 September 2013 to 9 November 2013), Mr. T did not receive any probationary result, Mr. T did not meet the above job requirements, therefore, the Company decided to extend 1 more month to facilitate Mr. T in completing his tasks and to have more time for assessment of Mr. T's capacity. However, there is no document evidencing that Mr. T and L Company had an agreement on extension of probationary period.

[3] Article 27.1 of the Labor Code provided that the probationary *period "shall not exceed 60 days for working in a position requiring college level or higher specialized, technical expertise".* In the Self-Declaration dated 14 June 2014, the representative of L Company Limited presented the following: "The Company understands that after expiration of 60 days of the probationary period, the employee shall officially work according to the definite term labor contract of 12 months. Therefore, the representative of L Company Limited acknowledged that after expiration of the probationary period, Mr. T became an official employee under a definite term labor contract of 12 months. In fact, L Company Limited negotiated with Mr. T on termination of labor contract on 28 December 2013. After a negotiation without result, on 29 December 2013, the General Director of L Company Limited issued Decision No. 15/QDKL-2013 on unilateral termination of labor contract with Mr. T. Therefore, there is sufficient basis to determine the relation between Mr. T and L Company Limited after expiration of the probationary period is a labor relationship.

On the legality of the termination of labor contract:

[4] L Company Limited unilaterally terminated the labor contract with Mr. Tran Cong T dated 29 December 2013; the reason for termination of labor contract is *"Repeatedly failing to perform the work in accordance with the labor contract"*, as provided under Article 38.1(a) of the Labor Code 2012. At the time L Company Limited unilaterally terminated the labor contract with Mr. T, the labor laws do not have regulations to be applied as a legal basis for assessment of the completeness of working performance of the employees.

[5] Before the Labor Code 2012 took effect, the legal basis to assess whether an employee repeatedly failed to perform the work in accordance with the terms of labor contract was provided under Article 12.1 of Decree No. 44/2003/ND-CP dated 9 May 2003 of the Government on detailed regulations and implementation a number of Articles of the Labor Code as follows:

"1. The employee repeatedly failed to perform the work in accordance with the labor contract meaning they failed to fulfill the labor norms or given tasks due to subjective reasons and are recorded or warned in writing at least twice in a month, but later still failed to overcome their shortcomings.

The extent of failure to fulfill the work shall be recorded in the labor contract, the collective labor agreement or the internal labor regulations of the unit".

Decree No. 44/2003/ND-CP dated 9 May 2003 of the Government was no longer effective from 1 July 2013. However, Article 12.1 as above stated is not contrary with the fundamental principles of the Labor Code, therefore, Article 12.1 should be applied as basis for resolution of the case.

[6] L Company Limited presented the Job Description, Warning Notice on Violation dated 6 December 2013 and Warning Notice on Violation dated 16 December 2013, the Achievement Assessment and Plan dated 12 December 2013 and based on these documents to conclude that Mr. T did not complete his work pursuant to the labor contract. Mr. T asserted that he was not given the job description and did not receive the 02 warning notices of the company. L Company Limited could not provide evidence to prove that Mr. T was provided with the job description and warning notices. Therefore, the evidence provided by L Company Limited is not sufficient basis to determine Mr. Tran Cong T repeatedly failed to perform the work pursuant to the labor contract as provided under Article 12.1 of Decree 44/2003/ND-CP dated 9 May 2003 of the Government.

[7] After expiration of the probationary period, L Company Limited did not sign the labor contract with Mr. Tran Cong T, the Company does not have collective labor agreement and labor regulation. Therefore, there is no basis to determine the failure to perform the work of the employee. The first-instance court and the appellate court concluding that Mr. Tran Cong T repeatedly failed to perform the job pursuant to the labor contract and rejecting the requests of Mr. T have no basis.

In light of the aforementioned reasons:

RULES

Pursuant to Article 343.3, Article 345.1, and Article 345.2 of the Civil Procedure Code;

To accept the Protest against cassation No. 04/2914/KN-LD dated 26 December 2016 of the Chief Justice of the Supreme People's Court; to set aside in its entirety Appellate Labor Judgment No. 01/2015/LD-PT dated 13 April 2015 of the Appellate Court of the Supreme People's Court in Ho Chi Minh City and First-instance Labor Judgment No. 01/2014/LD-ST dated 12 August 2014 of the People's Court of Binh Thuan Province on the dispute on

unilateral termination of labor contract between Mr. Tran Cong T and the defendant being L Company Limited.

To transfer the case to the People's Court of Phan Thiet city, Binh Thuan Province to re-conduct first-instance procedures in accordance with the laws.

CONTENTS OF THE CASE

[2] Mr. Tran Cong T worked in L Company Limited in accordance with the Offer Letter dated 20 August 2013 with the following content: "Type of contract: Definite term contract (12 months or more). Probationary period: 2 months. Upon expiration of the probationary period (from 9 September 2013 to 9 November 2013), Mr. T did not receive any probationary result, Mr. T did not meet the above job requirements, therefore, the Company decided to extend 1 more month to facilitate Mr. T in completing his tasks and to have more time for assessment of Mr. T's capacity. However, there is no document evidencing that Mr. T and L Company had an agreement on extension of probationary period.

[3] Article 27.1 of the Labor Code provided that the probationary period "shall not exceed 60 days for working in a position requiring college level or higher specialized, technical expertise". In the Self-Declaration dated 14 June 2014, the representative of L Company Limited presented the following: "The Company understands that after expiration of 60 days of the probationary period, the employee shall officially work according to the definite term labor contract of 12 months. Therefore, the representative of L Company Limited acknowledged that after expiration of the probationary period, Mr. T became an official employee under a definite term labor contract of 12 months. In fact, L Company Limited negotiated with Mr. T on termination of labor contract on 28 December 2013. After a negotiation without result, on 29 December 2013, the General Director of L Company Limited issued Decision No. 15/QDKL-2013 on unilateral termination of labor contract with Mr. T. Therefore, there is sufficient basis to determine the relation between Mr. T and L Company Limited after expiration of the probationary period is a labor relationship.

CASE LAW NO. 21/2018/AL
on fault and damage in the event of unilateral termination of the lease contract

This case law was adopted by the Judicial Council of the Supreme People's Court on 17 October 2018 and promulgated under Decision No. 269/QD-CA dated 6 November 2018 by the Chief Justice of the Supreme People's Court.

Source of the case law:

Cassation Decision No. 08/2016/KDTM-GDT dated 20 May 2016 of the Judicial Council of the Supreme People's Court with regard to the commercial case concerning *"Dispute on the asset lease contract"* in Quang Ninh Province between Company D Ltd as the plaintiff and Joint Stock Company C.

Location of contents of the case law:

Paragraph 1 of the section *"Findings of the Court"*

Overview of the case law:

- ***Background of the case law:***

  An asset lease contract has a term of lease and no agreement on termination conditions. The lessee terminates the contract prior to its expiry without the lessor's consent.

  The period from the date the lessee gives its written notice until the termination of contract is too short, which results in the lessor not being able to have another contract to immediately replace for the remaining period of the lease contract.

  The lessor requests the lessee to pay the rental for the asset for the remaining period of the contract.

- ***Legal resolution of the case law:***

  In this case, the fault must be determined to be attributable to the lessee and the lessee must be liable for the damage caused to the lessor. The actual damages to be considered are the amount of the vehicle rental for the remaining period of the contract.

Applicable provisions of laws relating to the case law:

- Article 426 of the Civil Code 2005 (corresponding to Article 428 of the Civil Code 2015);

- Articles 269, 302, 303 of the Commercial Law 2005.

Key words of the case law:

"Lease contract", "Conditions for termination of a contract", "Terminate a contract prior to its expiry", "Compensation for damages", "Actual damages", "Fault".

CONTENTS OF THE CASE

In the Statement of Claims dated 18 March 2007 and further testimonies, the representative of Company D Ltd presented as follows:

On 10 April 2006, Company D Ltd (hereinafter referred to as Company D) signed Economic Contract No. 1141/HD-CNQN (on leasing tugboats) with Joint Stock Company C. According to the contract, Company D leased to Joint Stock Company C 02 steel hull tugboats of the 135 CV capacity pulling + pushing type and Maritime registration No. NB2010 and NB2172; concurrently, Company D accepted to provide the maneuvering service (by way of pushing or pulling) for the ships of Joint Stock Company C into or out of the port of loading at Port No. 10-10 and Khe Day Quang Ninh Port; the unit price (including VAT) was VND50,000,000/month for one tugboat; the total cost of fuel for the tugboat payable by Joint Stock Company C to Company D is calculated at the rate of 17 liters of diesel oil/01 hour of machine operation/01 machine having capacity of 135 CV plus 0.23 liters of lubricating oil /01 hour/01 tugboat, (the fuel cost would be calculated by both parties at the time of payment and charges of the 02 terminals, if any). Company D was responsible for assigning personnel on the vessel including 01 captain, 01 chief engineer, and 01 pilot; and paying for the salaries of all workers on the vessel, etc. The contract is effective from the signing date to the end of 31 December 2006.

On 17 August 2006, Joint Stock Company C sent Official Letter No. 2349 INDEVCO to request Company D to terminate and liquidate Contract No. 1141/HD-CNQN dated 10 April 2006 prior to its expiry as of 20 August 2006.

On 18 August 2006, Company D sent Official Letter No. 59.CVCty responding to Official Letter 2349 INDEVCO of Joint Stock Company C with the content as follows: Company D invited Joint Stock Company C to pay off the rental as to 02 tugboats for the second quarter of 2006 (in accordance with the Minutes of payment reconciliation and settlement dated 13 July 2006) and in the event that Joint Stock Company C had no further need to lease 02 tugboats as of 20 August 2006, Company D invited Joint Stock Company C to make payment as to 02 tugboats for the remaining period of the contract from 1 August 2006 to 31 December 2006.

On 4 September 2006, Joint Stock Company C and Company D established a minute of settlement of the rental of the tugboats; accordingly, both parties jointly determined the total amount paid payable Joint Stock Company C to Company D till 21 August 2006 as VND511,539,505.

On 16 January 2007, Joint Stock Company C paid Company D the amount of VND511,539,505.

On 18 March 2007, after many unsuccessful negotiations, Company D initiated the lawsuit requesting Joint Stock Company C to pay Company D the amount of VND403,000,000 and

interest due to late payment calculated from 21 August 2006 to 31 December 2006 according to the law. At the first-instance hearing, the plaintiff's representative withdrew its claim for payment of interest due to late payment.

The representative of Joint Stock Company C presented that:

The signing and performance of Contract No. 1141/HD-CNQN dated 10 April 2006 with Company D are as the plaintiff presented. On 17 August 2006, due to the fact that there was no further need to use the 02 tugboats, Joint Stock Company C sent the Official Letter to Company D requesting to terminate the Contract prior to its expiry. Joint Stock Company C paid Company D the amount of VND511,539,505. Joint Stock Company C does not agree to pay Company D the amount of VND403,000,000 because it was incorrect with the actual situation and requested Company D to recalculate such amount. Joint Stock Company C only accepted to pay 50% of the total amount declared, but it must be correct and appropriate.

In First-instance Commercial Judgment No. 01/2012/KDTM-ST dated 18 January 2012, the People's Court of Quang Ninh Province ruled:

Not to accept the claim of Company D Ltd against Joint Stock Company C (now being I Group Corporation Joint Stock Company) for payment of the remaining value of Contract No. 1141HD-CNQN dated 10 April 2006 amounted to VND303,000,000 and the interest due to late payment of VND157,260,000.

In addition, the first-instance court also ruled on the court fees and the right to appeal of the concerned parties in accordance with the law.

On 10 February 2012, Company D Ltd submitted an appeal against the first-instance judgment (the postmark of the sending post office was 25 February 2012).

In Decision to not accept late appeal No. 87/2012/KDTMPT-QD dated 17 May 2012, the appellate court of the Supreme People's Court in Hanoi ruled not to accept the appeal of Company D Ltd because the time limit for appeal as specified in Article 245 of the Civil Procedure Code had expired.

On 7 June 2012, Company D Ltd submitted a petition for conduct cassation procedure with respect to the Appellate Judgment mentioned above.

In Protest Decision No. 29/2015/KN-KDTM dated 04 May 2015, the Chief Justice of the Supreme People's Court proposed that the Judicial Council of the Supreme People's Court to conduct the cassation procedure in the direction of setting aside the Decision to not accept the late Appeal No. 87/2012/KDTMPT-QD dated 17 May 2012 by the appellate court of the Supreme People's Court in Hanoi and First-instance Commercial Judgment No.01/2012/KDTM-ST dated 18 January 2012 of the People's Court of Quang Ninh Province; to transfer the case to the People's Court of Quang Ninh Province for re-settlement in accordance with the law.

At the cassation hearing, the representative of the Supreme People's Procuracy agreed with the protest decision of the Chief Justice of the Supreme People's Court.

FINDINGS OF THE COURT

[1] On 10 April 2006, Company D leased Joint Stock Company C 02 steel hull tugboats and provided the maneuvering service for the ships into or out of Port No. 10-10 and Khe Day Quang Ninh Port, being effective from the signing date to 31 December 2006 under Economic Contract No. 1141/HD-CNQN. There was no agreement on conditions for termination of Contract. However, on 17 August 2006, Joint Stock Company C sent Official Letter No. 2349 INDEVCO to inform Company D of termination of the Contract as of 20 August 2006 for the reason of *"no further need to lease the 02 tugboats"*. The period from the date when Joint Stock Company C sent its written notice until the termination of the Contract was too short, which caused damage to Company D due to the fact that Company D was not able to have another contract to immediately replace after such termination. The fault was attributable to Joint Stock Company C, hence Joint Stock Company C must be liable for the damage caused to Company D. The actual damages to be considered were the amount of the vehicle rental for the remaining period of the Contract.

[2] Before the lawsuit, Company D s Official Letter No. 75CVCtyDG (with no day and month specified but dated 2006) requesting Joint Stock Company C to pay the rental of 02 tugboats from 21 August 2006 until 31 December 2006 with the total amount of VND250,000,000. In Official Letter No. 2774 INDEVCO dated 17 October 2006, Joint Stock Company C only agreed to pay for the salaries of workers operating the tugboats. Disagreeing with it, on 18 March 2007, Company D Ltd initiated the lawsuit requesting Joint Stock Company C to pay the amount of VND403,000,000 (as the amount for leasing 02 tugboats for the remaining period of the contract). Thus, this could be considered as the actual damages that the plaintiff claimed.

[3] When the first-instance court accepted the case for first-instance re-hearing, Company D requested the remaining value of the contract from 21 August 2006 to 31 December 2008, which amounted to VND403,000,000 and interest. Since Company C paid the amount of VND100,000,000, there remained the outstanding amount of VND303,000,000 and interest due to late payment. The first-instance court opined that the claim had no basis and rejected such claim because it was for the amount of the remaining value of the contract that had not been performed yet. On the other hand, the first-instance court determined that due to the fact that Company D had the right to claim damages but Company D did not request such amount, the court did not consider the claim of Company D, which was not correct and negatively impacted the lawful rights and interests of Company D.

[4] According to the minutes of the first-instance hearing dated 18 January 2012, because the representative of Company D was present at the hearing, he/she must acknowledge the content and decision of the court. On 10 February 2012, Company D submitted its appeal (the postmark of the sending post office was 25 February 2012, the receiving postmark was 27 February 2012), which was determined as a late appeal under Article 245 of the Civil Procedure Code. However, Company D stated that the reason for the late appeal was that the representative of the Company did not hear clearly when the presiding judge announced the Judgment, which was not based on the provisions in Section 5, Part I of Resolution No. 05/2006/NQ-HDTP dated 4 August 2006 of the Judicial Council of the

Supreme People's Court. Therefore, the appellate court did not accept the late appeal, which was correct.

[5] Regardless of the fact that the Decision to not accept the late appeal No. 87/2012/KDTMPT-QD dated 17 May 2012 of the appellate court of the Supreme People's Court in Hanoi has sufficient basis, since the first-instance judgment is effective in accordance with the decision, it was necessary to set aside the Decision to not accept late appeal No. 87/2012/KDTMPT-QD dated 17 May 2012 by the appellate court of the Supreme People's Court in Hanoi and First-instance Commercial Judgment No. 01/2012/KDTM-ST dated 18 January 2012 of the People's Court of Quang Ninh Province; to transfer the case to the People's Court of Quang Ninh Province for re-settlement in accordance with the law.

For the above reasons, pursuant to Article 297.3, Article 299.1 and Article 299.2 of the Civil Procedure Code (amended and supplemented under Law No. 65/2011/QH12 dated 29 March 2011),

RULES

1. To set aside the Decision to not accept the late appeal No. 87/2012/KDTMPT-QD dated 17 May 2012 by the appellate court of the Supreme People's Court in Hanoi and First-instance Commercial Judgment No. 01/2012/KDTM-ST dated 18 January 2012 of the People's Court of Quang Ninh Province with regard to hearing the Commercial case concerning the dispute on the asset lease Contract between the plaintiff as Company D Ltd and the defendant as Joint Stock Company C.

2. To transfer the case to the People's Court of Quang Ninh Province for re-settlement in accordance with the law.

CONTENTS OF THE CASE LAW

"*[1] On 10 April 2006, Company D leased Joint Stock Company C 02 steel hull tugboats and provided the maneuvering service for the ships into or out of Port No. 10-10 and Khe Day Quang Ninh Port, being effective from the signing date to 31 December 2006 under Economic Contract No. 1141/HD-CNQN. There was no agreement on conditions for termination of Contract. However, on 17 August 2006, Joint Stock Company C sent Official Letter No. 2349 INDEVCO to inform Company D of termination of the Contract as of 20 August 2006 for the reason of "no further need to lease the 02 tugboats". The period from the date when Joint Stock Company C sent its written notice until the termination of the Contract was too short, which caused damage to Company D due to the fact that Company D was not able to have another contract to immediately replace after such termination. The fault was attributable to Joint Stock Company C, hence Joint Stock Company C must be liable for the damage caused to Company D. The actual damages to be considered were the amount of the vehicle rental for the remaining period of the Contract*".

CASE LAW NO. 22/2018/AL
regarding not breaching the obligation on information disclosure in life insurance policy

This case law was adopted by the Judicial Council on 17 October 2018 and promulgated under Decision No. 269/QD-CA dated 6 November 2018 of the Chief Justice of the Supreme People's Court.

Source of the case law:

Appellate Civil Judgment No. 313/2016/DS-PT dated 16 March 2016 of the People's Court of Ho Chi Minh City regarding dispute on life insurance policies between the plaintiff being Mr. Dang Van L (whose authorized representative was Mr. Tran Xuan H) against the defendant being Life insurance company limited C (whose authorized representative was Mr. Hoang P and persons representing lawful rights and interests were Mr. Dinh Quang T and Mr. Dinh Ngoc T).

Location of contents of the case law:

Paragraphs 4, 8, 9, 10 and 11 of section *"Findings of the Court".*

Overview of the case law:

- ***Background of the case law:***

  Life insurance policy, insurance rules, and request for insurance have unclear terms on declaration of medical conditions of the insured persons. The declared information is not the basis for the parties to determine the formation of life insurance policies.

- ***Legal resolution:***

  In this case, it must be determined that insurance buyers do not breach the obligation on information disclosure when signing insurance policies and insurance applications.

Applicable provisions of laws relating to the case law:

- Article 407.2 of the Civil Code 2005 (corresponding to Article 405.2 of the Civil Code 2015)

- Article 409.4 of the Civil Code 2005 (corresponding to Article 404.3 of the Civil Code 2015)

- Article 21 of the Law on Insurance Business 2000 amended and supplemented in 2010.

Key words of the case law:

"Insurance policy", "Insurance rules", "Application for insurance", "Breach of obligation on information disclosure", "Unclear request for declaration information", "Medical conditions".

CONTENTS OF THE CASE

- According to the Statements of Claims dated 10 November 2010 and on 8 December 2010, Mr. Dang Van L being the plaintiff requested that:

  The People's Court of District 1 compel Life Insurance Company Limited C (hereinafter referred to as *"Company C")* to pay him an amount of VND405,000,000 and the interest amount arising up to the time when the judgment becomes effective, which was the amount that Company C must compensate in respect of the two insurance policies purchased by his wife with codes as follow:

  (1) Policy No. S11000009505 purchased on 14 October 2008 with the compensation amount of VND250,000,000.

  (2) Policy No. S11000040924 purchased on 25 March 2009 with the compensation amount of VND190,000,000.

  The company had paid him an advance of VND50,000,000.

- According to the amended and supplemented Statement of Claims dated 30 May 2011, Mr. Dang Van L requested that:

  Compel Company C to pay him the amount of VND470,000,000 and the interest amount arising up to the time when the judgment becomes effective. The interest amount was provisionally calculated to be VND43,000,000.

  (1) Policy No. S11000009505 purchased on 14 October 2008 with the compensation amount of VND287,000,000.

  (2) Policy No. S11000040924 purchased on 25 March 2009 with the compensation amount of 190,000,000.

- According to the amended Statement of Claims dated 22 June 2011, Mr. Dang Van L made the following amendments to the Statement of Claims as below:

  To compel Company C to pay him the total amount of VND203,772,500 for the 02 insurance Contracts No. S11000009505 and S11000040924 and to continue performing Policy No. S11000009505 purchased on 14 October 2008. To return the two original Contracts No. S11000009505 and S11000040924, specifically:

  As to Thinh Tri Thanh Tai Bao Gia Contract, up to this time the Company must pay the insurance compensation in case of death (Article 4.1.2) being 50% of the insurance compensation equivalent to VND35,000,000.

Right to annual cash support (Article 4.4) being 10% of the insurance compensation amount, equivalent to 7,000,000.

Also, to continue performing Policy No. S11000009505 and make payment of the benefits when due as recorded in the contract.

- Refundable life insurance policies.

  Right to insurance compensation in case of death (Article 4.1): VND190,000,000 (Company C already paid an amount of VND50,000,000).

  The interest amount provisionally calculated up to this time was the overdue interest from the company's late payment, which amounted to VND21,772,500.

- According to the supplemented Statement of Claims dated 18 April 2015, Mr. Dang Van L requested:

  To compel Company C to pay him the amount of VND405,000,000 and the interest amount arising up to the time when the judgment becomes effective.

  To compel Company C to return him the original insurance Contracts No. S11000009505 and S11000040924 which had been taken from his family.

- According to the Answer No. 008/2011/CV dated 28 January 2011, the defendant being Company C presented that:

  Its client being Ms. Truong Thi H, before entering into the two insurance policies, had a history of stomach pain and high cholesterol but failed to disclose the same in the questionnaire in the application for insurance. If Company C had been aware of Ms. Truong Thi H's history of stomach pain and high cholesterol, it would have refused to enter into the insurance policies with her. As a consequence, Company C's refusal to make payment of the insurance compensation and decision to cancel the two insurance policies entered into with Ms. H had basis(pursuant to Article 11.2 of the Rules and terms of the contract) and were in compliance with the law (in accordance with Article 19 of the Law on Insurance Business).

  Company C requested People's Court of District 1 to reject the claims of Mr. L.

- According to the reply document No. 024/2011/CV dated 16 May 2011, the defendant being Company C presented that:

  1. As to the claim for Company C to pay the amount of VND405,000,000 and the interest amount arising from both Contracts No. S11000009505 and S11000040924, Company C maintained its position. Company C had already fulfilled all of its payment obligations as specified in the two aforesaid contracts. Accordingly, Mr. Dang Van L's claims has no basis pursuant to the provisions in the Rules and terms of the insurance policies and regulations of the law. As a result, Company C proposed that the court reject Mr. L's claim.

2. As to the claim for Company C to return the two original insurance Contracts No. S11000009505 and S11000040924, Company C agreed to return Mr. L the 02 original insurance policies.

- According to the testimony dated 14 April 2011: on 9 May 2011, Mr. Luong Thi T being the person with related rights and obligations presented that:

  She was the biological mother of Ms. Truong Thi H who passed away on 9 January 2010. She requested Company C to pay her and her family the insurance compensation. She agreed to assign her son-in-law being Mr. Dang Van L the insurance compensation to which she was entitled, for Mr. L have sole discretion and ease in settling the dispute with Company C.

- According to the testimony dated 14 April 2011, Ms. Dang Kieu L being the person with related rights and obligations presented that:

  She was the biological daughter of Ms. Truong Thi H who passed away on 9 January 2010. She was entitled to part of the insurance compensation that the insurance company had to pay Ms. H and her in accordance with the law. Therefore, she requested Company C to pay her the amount of insurance compensation to which she was entitled as inheritance that the company pay insurance compensation in case of her mother's death. She agreed to gift her father being Mr. Dang Van L the insurance compensation and her part of the inheritance from her mother and Mr. L was is authorized to handle the dispute against Company C to claim the insurance compensation for her mother being Ms. H.

- According to the testimony dated 9 May 2011, Mr. Dang Van L being the lawful representative of Mr. Dang Linh N presented that:

  The Court was requested to promptly conduct a hearing to secure justice and honor for his family as well as many other Vietnamese people who bought life insurance from Company C as well as other life insurance companies.

- The representative of the People's Procuracy of District 1 expressed his comments as to the compliance of the civil procedural laws by the participants in the civil proceedings as follow:

  The judge had complied with the regulations of the Civil Procedure Code.

  The nature of the dispute, the case still being within the statute of limitation, and the evidence being fully collected were correctly determined.

  Service of the documents of the proceedings to the Procuracy and other participants in the proceedings was conducted in accordance with Article 147 of the Civil Procedure Code.

  The legal status of the involved parties was correctly determined, the decision to conduct a hearing was issued and the submission of the case file to the Procuracy for examination was made in a timely manner in accordance with the law.

The time limit for hearing preparation was prolonged, which violated Article 179 of the Civil Procedure Code.

At the hearing, the Council of Adjudicators conducted the procedures in timely manner. The venue and participants were recorded in the decision to conduct a hearing; the rules for hearing complied with the law. During the hearing, the judge ensured that the involved parties would have the opportunity to present their cases.

As to the compliance of the law of the participants in the proceedings: As from the acceptance of jurisdiction over the case as well as in today's hearing, the plaintiff, defendant and persons with related rights and obligations had complied with civil procedural laws.

In the first-instance judgment, it was ruled that:

- In application of:

  + Article 25.3, Article 33.1(a), Article 35.1(a), and Article 245 of the Civil Procedure Code 2004 as amended and supplemented in 2011;

  + Article 21 and Article 29 of the Law on Insurance Business being effective as from 1 April 2001;

  + Article 305 and Article 407 of the Civil Code being effective as from 1 January 2006;

  + Ordinance on court costs and fees being effective as from 1 July 2009

  + Joint Circular No. 01/TTLT dated 19 June 1997 of the Ministry of Justice - Ministry of Finance - Supreme People's Court - Supreme People's Procuracy;

  + Decision No. 2868/QD-NHNN dated 29 November 2010 of the State Bank of Vietnam.

- To rule:

1. To accept the plaintiff's claims.

   - Compel Life Insurance Company Limited C to pay Mr. Dang Van L the insurance compensation amount of VND300,875,342 (three hundred million eight hundred seventy five thousand three hundred forty two Dong)

   - Life Insurance Company Limited C must return to Mr. Dang Van L the Thinh Tri Thanh Tai Bao Gia insurance policy dated 14 October 2008 and refundable life insurance policy dated 25 March 2009.

   - Insurance Policy No. S11000009505 dated 14 October 2008 (Thinh Tri Thanh Tai Bao Gia) will continue to be performed and the maturiy benefits

can be resolved when Dang Linh N reaches the age of 22 and is still alive on the maturity date.

Enforce immediately the judgment becoming effective with the supervision of the competent civil judgment enforcement agency.

As from the date on which Mr. Dang Van L applies to enforce the judgment, if Life Insurance Company Limited C fails to pay the aforementioned amount of money, then it shall also have to Mr. L an interest amount based on the basic interest rate announces by the State Bank corresponding to the period of time of delay of enforcement of the judgment.

2. In terms of court fees: Life Insurance Company Limited C shall bear the court fees for the first-instance procedures being VND15,043,767.

As the plaintiff was not obliged to pay the court fees of the first-instance procedures, it would be refunded the court fees of VND11,925,000 consisting of VND10,100,000 in Money Receipt No. 05237 dated 5 January 2011, VND200,000 in Money Receipt No. 05621 dated 26 April 2011 and VND1,625,000 in money receipt No. 05737 dated 5 January 2011 of the Civil Judgment Enforcement Agency of District 1, Ho Chi Minh City.

3. With regard to the right to appeal

- Mr. Tran Xuan H – authorized representative of Mr. L, Ms. T and Ms. Kieu L, was present at the hearing but absent when the judgment was announced. Therefore, Mr. L, Ms. T and Ms. Kieu L have the right to appeal within 15 days from the date on which they are duly served the judgment.

- Life Insurance Company Limited C has the right to appeal within 15 days from the announcement date of the judgment.

In case the judgment was to be enforced in accordance with Article 2 of the Law on Civil Judgment Enforcement, the judgment creditor and judgment debtor have the right to agree on the enforcement and right to apply for enforcement, voluntary enforcement, or compulsory enforcement in accordance with Articles 6, 7 and 9 of the Law on Civil Judgment Enforcement. The statute of limitation for civil judgment enforcement is subject to Article 30 of the Law on Civil Judgment Enforcement.

On 9 September 2015, the defendant - Life Insurance Company Limited C (hereinafter referred to as *"Company C")* submitted an appeal against the first-instance judgment in its entirety.

At the appellate hearing:

The plaintiff did not withdraw the Statement of Claims and the appellants did not withdraw the appeal. The involved parties did not reach any mutual agreement on settlement of the case.

The appellant being Company C, who is represented by Mr. Hoang P as the authorized representative and lawyer protecting the lawful rights and interests, presented that:

When entering into the insurance policies with Company C, Ms. Hmade untruthful declarations. In her application for insurance, Ms. H had declared untruthfully on the two following points:

1. Consultation minutes No. 42/BV-99 by B Hospital dated 3 September 2009 indicated that Ms. H had a 2-year history of stomach pain. Company C asserted that this content had been declared by Ms. H and noted by the doctor in the aforesaid consultation minutes. Therefore, it could be determined that Ms. H had stomach pain since 3 September 2017, which was before Ms. H signed the insurance policy. Company C asserted that the phrase stomach disorders included all diseases related to the stomach, including stomach pain. At question No. 54 of Application for insurance dated 25 March 2009: *"Gastrointestinal tract, gastrointestinal bleeding, hepatitis, colitis, dyspnea, difficulty in swallowing, or disorders in the stomach, intestine or gallbladder?"*, Ms. H checked the No box (meaning that Ms. H had no stomac disorder), which was an untruthful declaration.

2. At the appellate hearing, Company C provided a copy of the photo of biochemical blood test dated 22 September 2008 collected by Company C from the records of periodic health examination for employees of Preschool C where Ms. H had previously worked. Company C asserted that on 22 September 2008, Ms. H did a blood test but she did not declare the same in item 61 of the application for insurance, which was Ms. H intentionally making an untruthful declaration.

From the two aforesaid points, it could be determined that Ms. H had declared untruthful information and breached the obligation on information disclosure. Consequently, pursuant to Article 11.2 of the Rules on terms of insurance policy, Company C cancelled the 02 aforementioned insurance policies and the two contracts were invalid.

In addition, on 15 September 2010, Mr. L received the amount of VND50,000,000 and signed a Payment invoice and confirmation of the fulfillment of insurance responsibility. With this confirmation, Mr. L agreed to terminate the Insurance Policy No. S11000009505 và Insurance Policy No. S11000040924, and acknowledged that Company C had made full payment of the insurance compensation and had no further responsibility to resolve the right to insurance compensation under the two insurance policies.

Therefore, Company C had no obligation to pay the insurance compensation to Mr. L, and so it proposed that the appellate court to amend the first-instance judgment in the direction of not accepting the plaintiff's claims.

The plaintiff being Mr. Dang Van L through Mr. Tran Xuan H presented that:

According to the common understanding, *"stomach pain"* and *"stomach disorder"* are two different concepts, and there are no documents and evidence showing that stomach pain is stomach disorder. Each year Ms. H had periodic health examinations organized by her employer where she worked. However, it is common that most organizations and workplaces do the same for their employees. When participating in the health examination,

the examined persons do not know or are not required to know which measures or methods that the examination and treatment organization might apply. Besides, the periodic health examination did not indicate that Ms. H had any diseases had any relationship to Company C's refusal to sign the insurance policies. Therefore, Company C asserting that Ms. H provided untruthful information as the reasonf for its refusal to pay Ms. H the insurance compensation has no basis. The appellate court should uphold the first-instance judgment.

The persons with related rights and obligations being Ms. Luong Thi T, Ms. Dang Kieu L, Dang Linh N (with Mr. Dang Van L as the lawful representative of his son who is still a minor) by their authroized representative Mr. Tran Xuan H presented that:

The persons with related rights and obligations shared the same opinions as the plaintiff and the Council of Adjudicators should uphold the first-instance judgment.

The representative of the People's Procuracy of Ho Chi Minh City participating in the hearing opined as follows:

In terms of formality: the appeal of the involved party was made within the time limit specified by law and thus valid, the court should accept the appeal. The Council of Adjudicators and peoples participating in court proceedings had complied with the law during the dispute resolution process during the appellate stage.

In terms of contents: based on the contents of the appeal that Company C and the lawyer protecting the lawful rights and interests of Company C presented, there is insufficient basis to determine that Ms. H made untruthful declarations and breached the obligation on information disclosure. Therefore, there is insufficient basis to accept the appeal by Company C. The Council of Adjudicators should upload the first-instance judgment.

FINDINGS OF THE COURT

[1] After reviewing the materials in the case file, which have been verified at the hearing and based on the outcome of the argument sessions at the hearing, the Council of Adjudicators ruled that:

[2] In terms of procedures: the appeal by Company C was submitted within the time limit specified by law. Company C implemented the appellate procedures in accordance with the law, and thus there is basis to accept its appeal.

[3] In terms of contents: In consideration of the defendant's appeal which requested rejection of the plaintiff's Statement of Claims, the Council of Adjudicators found that:

[4] In question No. 54 of Application for insurance dated 25 March 2009: *"Gastrointestinal tract, gastrointestinal bleeding, hepatitis, colitis, dyspnea, difficulty in swallowing, or disorders in the stomach, intestine or gallbladder"*, Ms. H checked the No box. At consultation minutes No. 42/BV-99 by B Hospital dated 3 September 2009, Ms. H disclosed that she had had a history of stomach pain for 2 years. Pursuant to the consultation minutes, Ms. H had stomach pain from 3 September 2007 which was prior to the point of time when she signed the insurance policies. Company C asserts that the phrase stomach disorder includes all

diseases related to the stomach including stomach pain. However, at the appellate hearing, the defendant failed to provide any evidence to prove and did not provide any scientific explanation to determine that stomach pain is stomach disorder.

[5] According to Article 407.2 of the Civil Code 2005: *"In cases where a template contract contains unclear provisions, the party presenting the template contract shall bear any adverse consequences of the interpretation of such provisions".*

[6] According to Article 409.4 of the Civil Code 2005: *"When a contract contains a provision or language that is difficult to understand, such provision or language must be interpreted according to customs at the place where the contract is entered into".*

[7] Article 21 of the Law on Insurance Business: *"Where an insurance contract contains unclear provisions, such provisions shall be interpreted in favor of the insurance buyer".*

[8] Pursuant to the aforesaid regulations of the laws, in case the parties have different interpretations or there exist provisions that are unclear or difficult to understand in the contract, such provisions shall be interpreted in favor of Ms. H. Therefore, there is insufficient basis to determine that stomach pain was included in stomach disorder as presented by Company C.

[9] Considering that the application for insurance contained no question about stomach pain, these is no basis for Company C to assert that Ms. H had stomach pain without declaring the same as intentionally making an untruthful declaration and breaching the obligation on information disclosure.

[10] In question No. 61 of Application for insurance dated 25 March 2009: *"Within the past 5 years, have you done diagnostic examinations such as X-rays, ultrasound, electrocardiography, blood tests, biopsy? Or do you have any sickness or illness which was examined and treated at hospitals, which is not listed above?"*, Ms. H checked the No box. At the appellate hearing, Company C provided the biochemical blood test dated 22 September 2008 wherein the patient's name was Ms. Truong Thi H. Company C confirmed that this document had been collected from the periodic health examination records for employees of Preschool C where Ms. H worked. Company C asserted that on 22 September 2008, Ms. H did a blood test but did not declare the same in question No. 61 of the Application for insurance, which was Ms. H intentionally making an untruthful declaration. Considering that periodic health examinations are regularly and periodically conducted by organizations and agencies, when participating periodic health examinations, the examined persons do not know or are not required to know which measures or methods that the examination and treatment organization might apply. Besides, the periodic health examination did not indicate that Ms. H had any diseases had any relationship to Company C's refusal to sign the insurance policies. Therefore, there is insufficient basis to determine that Ms. H felt abnormal, conducted a blood test, and then purchased the insurance from Company C.

[11] As such, there is insufficient basis to determine that Ms. H had been dishonest in entering into the insurance policies. Equally, there is no basis to determine that Ms. H's checking the No boxes in questions No. 54 and 61 of the Application for insurance would

have any direct impact upon Company C's consideration to enter into the insurance policies with Ms. C.

[12] In addition, the rules and terms of refundable life insurance product and Thinh Tri Thanh Tai Bao Gia insurance product of Company C provided that:

[13] *"Article 11.2. In case the insurance buyer or the insured person deliberately conceals or declares untruthful information, which seriously impact the decision and evaluation to provide the insurance, the company is entitled to cancel the contract which is considered to be invalid from the outset".* With regard to the terms *"seriously impact"* in the aforesaid clause, in today's hearing, Company C was not able to provide any clear explanation as to the nature of impact to be considered serious as well as the defendant's presentations on whether the insurance would be sold when deciding to pay insurance compensation in case the insurance buyers had a history of stomach pain and high cholesterol. In the Answer No. 008 dated 28 January 2011, Company C asserted that *"If it been aware that Ms. Truong Thi H had stomach pains and high cholesterol, then Company C would have refused to enter into the insurance policies*". At the first-instance and appellate hearings, Company C's representative and lawyer protecting its lawful rights and interests asserted that if Company C had known of Ms. H's stomach pain and high cholesterol, it would have considered whether or not it would enter into the policies. This showed that Company C did not have specific criteria to resolve the aforesaid case. Therefore, the terms *"seriously impact"* should be understood as illnesses that lead to refusal and being unable to purchase the insurance policy instead of accepting Company C's interpretation that it may or may not sell the insurance as presented by Company C. As this clause was unclear, pursuant to Article 407.2 of the Civil Code which specify *"In cases where a template contract contains unclear provisions, the party presenting the template contract shall bear any adverse consequences of the interpretation of such provisions"* and Article 21 of the Law on Insurance Business which specify: *"Where an insurance contract contains unclear provisions, such provisions shall be interpreted in favor of the insurance buyer",* it should be understood and interpreted in favor of Ms. H.

[14] In fact, Ms. Nguyen Thi Diem P being a witness in this case presented that: She had purchased the periodic preference insurance product from Company C based on life insurance policy No. S11000297923. At the time when she entered into the insurance policy, she had informed Company C that she had been using stomach pain medication, she sometimes had stomach pain in the past 3 years, and she had health examination with Triglyceride 2.2 mmol/l. According to the result of verification by the People's Court of District 1 at the People's Hospital of District 1 on 28 July 2015, Triglyceride 2.2 mmol/l is higher than normal.

[15] In consideration of Ms. Nguyen Thi Diem P's case in purchasing life insurance from Company C, she declared that she had stomach pain and cholesterol that is higher than normal, however, Company C still sold insurance to Mr. P at standard premiums. This showed that stomach pain and indications of high cholesterol were considered as not a serious impact; thus, Company C sold the insurance at standard premiums similar to other cases. Consequently, insurance buyers not declaring stomach pain and high cholesterol would also not seriously impact Company C's decision in evaluating whether or not to accept entering into the insurance policy. Accordingly, the insurance buyer did not breach

Article 11.2 of the Rules and terms of the products issued by Company C as determined by the first-instance court, which has basis.

[16] Company C asserted that it had fulfilled all obligations as specified in the two insurance policies. As to this dispute, Company C and Mr. L had settled, which was evidenced in the Payment invoice and confirmation of the fulfillment of insurance responsibility dated 15 September 2010. In section 3 of the aforesaid payment invoice, Mr. L confirmed that Company C had made full payment and thus is no longer responsible for resolving the right to insurance compensation in these two insurance policies. In section 4, Mr. L committed that. from now on, he would not take any actions against Company C and Company C is not required to perform any responsibilities and obligations in respect of policies No. S11000009505 and S11000040924. In considering Mr. L's signing on Payment invoice and confirmation of the fulfillment of insurance responsibility dated 15 September 2010, it did not deprive Mr. L's right to initiate a lawsuit if Mr. L believes that this agreement would adversely affect his lawful rights and interests.

[17] From the aforesaid findings, there is basis to determine that the first-instance court's acceptance of the plaintiff's claims had basis and correct in accordance with law. Therefore, there is no basis to accept Company C's appeal, and the first-instance judgment is upheld.

[18] As the involved parties submitted no appeal and the People's Procuracy submitted no protest against the first-instance judgment, it shall become effective.

[19] In terms of appellate civil court fees, Company C must pay the appellate civil court fee in the amount of VND200,000 as the first-instance judgment was upheld.

In light of the aforementioned reasons,

Pursuant to Article 132.1 and Article 275.1 of the Civil Procedure Code;

Pursuant to Article 30.1 of the Ordinance on court costs and fees 2009

RULES

1. To not accept the appeal of the defendant being Life Insurance Company Limited C.

2. To uphold First-instance Judgment No. 1211.2015/TLST-Ds dated 26 August 2015 of People's Court of District 1, Ho Chi Minh City.

    (1) To accept the plaintiff's claims

    - Compel Life Insurance Company Limited C must pay Mr. Dang Van L the insurance compensation amount of VND300,875,342 (three hundred million eight hundred seventy five thousand three hundred and forty two Dong)/

    - Life insurance Company Limited C must return to Mr. Dang Van L the two insurance policies, namely Thinh Tri Thanh Tai Bai Gia insurance policy dated 14 October 2008 and refundable life insurance policy dated 25 March 2009.

- Insurance Policy No. S11000009505 dated 14 October 2008 (Thinh Tri Thanh Tai Bao Gia) will continue to be performed and the maturiy benefits can be resolved when Dang Linh N reaches the age of 22 and is still alive on the maturity date.

(2) Enforce immediately the judgment becoming effective with the supervision of the competent civil judgment enforcement agency.

(3) As from the date on which Mr. Dang Van L applies to enforce the judgment, if Life Insurance Company Limited C fails to pay the aforementioned amount of money, then it shall also have to Mr. L an interest amount based on the basic interest rate announces by the State Bank corresponding to the period of time of delay of enforcement of the judgment.

3. First-instance civil court fees: Life Insurance Company Limited C shall bear the first-instance civil court fee in the amount of VND15,043,767. Mr. Dang Van L shall not be obliged to pay the same and he will be refunded the advance court fee of VND11,925,000 consisting of VND10,100,000 pursuant to Money Receipt No. 05237 dated 5 January 2011, VND200,000 pursuant to Money Receipt No. 05621 dated 26 April 2011 and VND1,625,000 pursuant to Money Receipt No. 05737 dated 5 January 2011 of the Civil Judgement Enforcement Agency of District 1, Ho Chi Minh City.

4. Appellate civil court fees: Life Insurance Company Limited C shall bear appellate civil court fees in the amount of VND200,00 (two hundred thousand Dong) which shall be deducted from the advance court fee that Life Insurance Company Limited C had paid as recorded in the Money Receipt No. AE/2014/0005146 dated 10 September 2015 of the Civil Judgement Enforcement Agency of Ho Chi Minh City. Life Insurance Company Limited C had fully paid the appellate advance court fees.

In case the judgment was to be enforced in accordance with Article 2 of the Law on Civil Judgment Enforcement, the judgment creditor and judgment debtor have the right to agree on the enforcement and right to apply for enforcement, voluntary enforcement, or compulsory enforcement in accordance with Articles 6, 7 and 9 of the Law on Civil Judgment Enforcement. The statute of limitation for civil judgment enforcement is subject to Article 30 of the Law on Civil Judgment Enforcement.

The appellate judgment becomes effective as from the date thereof.

CONTENTS OF THE CASE LAW

"[4] In question No. 54 of Application for insurance dated 25 March 2009: "Gastrointestinal tract, gastrointestinal bleeding, hepatitis, colitis, dyspnea, difficulty in swallowing, or disorders in the stomach, intestine or gallbladder", Ms. H checked the No box. At consultation minutes No. 42/BV-99 by B Hospital dated 3 September 2009, Ms. H disclosed that she had had a history of stomach pain for 2 years. Pursuant to the consultation minutes, Ms. H had stomach pain from 3 September 2007 which was prior to the point of time when she signed the insurance policies. Company C asserts that the phrase stomach disorder includes all diseases related to the stomach including stomach pain. However, at the appellate hearing,

the defendant failed to provide any evidence to prove and did not provide any scientific explanation to determine that stomach pain is stomach disorder.

[8] Pursuant to the aforesaid regulations of the laws, in case the parties have different interpretations or there exist provisions that are unclear or difficult to understand in the contract, such provisions shall be interpreted in favor of Ms. H. Therefore, there is insufficient basis to determine that stomach pain was included in stomach disorder as presented by Company C.

[9] Considering that the application for insurance contained no question about stomach pain, these is no basis for Company C to assert that Ms. H had stomach pain without declaring the same as intentionally making an untruthful declaration and breaching the obligation on information disclosure.

[10] In question No. 61 of Application for insurance dated 25 March 2009: "Within the past 5 years, have you done diagnostic examinations such as X-rays, ultrasound, electrocardiography, blood tests, biopsy? Or do you have any sickness or illness which was examined and treated at hospitals, which is not listed above?", Ms. H checked the No box. At the appellate hearing, Company C provided the biochemical blood test dated 22 September 2008 wherein the patient's name was Ms. Truong Thi H. Company C confirmed that this document had been collected from the periodic health examination records for employees of Preschool C where Ms. H worked. Company C asserted that on 22 September 2008, Ms. H did a blood test but did not declare the same in question No. 61 of the Application for insurance, which was Ms. H intentionally making an untruthful declaration. Considering that periodic health examinations are regularly and periodically conducted by organizations and agencies, when participating periodic health examinations, the examined persons do not know or are not required to know which measures or methods that the examination and treatment organization might apply. Besides, the periodic health examination did not indicate that Ms. H had any diseases had any relationship to Company C's refusal to sign the insurance policies. Therefore, there is insufficient basis to determine that Ms. H felt abnormal, conducted a blood test, and then purchased the insurance from Company C.

[11] As such, there is insufficient basis to determine that Ms. H had been dishonest in entering into the insurance policies. Equally, there is no basis to determine that Ms. H's checking the No boxes in questions No. 54 and 61 of the Application for insurance would have any direct impact upon Company C's consideration to enter into the insurance policies with Ms. C".

CASE LAW NO. 23/2018/AL
regarding validity of the life insurance agreement when the insurance buyer failed to pay premium due to the fault of the insurance enterprise

This case law is adopted by the Judicial Council of the Supreme People's Court on 17 October 2018 and promulgated under Decision No. 269/QD-CA dated 6 November 2018 of the Chief Justice of the Supreme People's Court.

Source of the case law:

Appellate Civil Judgment No. 538/2009/DS-PT dated 31 March 2009 by the People's Court of Ho Chi Minh City on the case *"Dispute on insurance agreement"* between the plaintiff being Ms. Pham Thi T against the defendant being P Life Insurance Company Limited; person with related rights and obligations is Ms. Vu Thi Minh N.

Location of contents of the case law:

Paragraphs 4, 7, and 8 of section *"Findings of the Court"*.

Overview of the case law:

- ***Background of the case law:***

  Application dossier for life insurance indicated that the insurance buyer wished to pay the premium at the insurance buyer's home address. Up to the deadline for paying premium and during the extension of the deadline for paying the premium, the employees of the insurance enterprise failed to go collect the premium from the insurance buyer.

- ***Legal resolution:***

  In this case, it must be determined that the insurance buyer was not at fault for not paying the premium on time. The life insurance agreement does not lose its effectiveness due to the insurance buyer's failure to pay premium in a timely manner.

Applicable provisions of laws relating to the case law:

Article 23 of the Law on Insurance Business 2000, amended and supplemented in 2010.

Key words of the case law:

"Life insurance agreement", "validity of life insurance agreement", "deadline for premium payment", "extension of deadline for paying premium".

CONTENTS OF THE CASE

The plaintiff being Ms. Pham Thi T presented that: Her husband being Mr. Tran Huu L applied to buy insurance from P Life Insurance Company Limited. Her husband was involved in an accident and passed away. According to the agreement, Ms. L is the

beneficiary. Thus, she requested the defendant to pay her the insurance money amounting to VND300 million and the interest amount of VND126 million based on the basic interest rate calculated since August 2005, and the total amount was VND426 million.

The defendant being P Life Insurance Company Limited was represented by the authorized representative being Mr. Nguyen Quoc T presented that: Mr. L had to pay premium for the second time on 24 June 2005, which he later received a two-month extension of time to pay the premium, but he still did not make payment. Mr. L died on 27 August 2005, which is 3 days after the insurance agreement had lost effectiveness. For this reason, the defendant refused to pay the money pursuant to the plaintiff.

The person with related rights and obligations being Ms. Vu Thi Minh N presented that: She was the defendant's agent who sold the insurance policy to Mr. L. She and Mr. L agreed that she would directly go to his house to collect the premium when the premium became due for collection. However, she could not collect the premium when the deadline for the last date for collecting premium came because she had to attend political training course in the province. The failure to pay the premium was due to objective reasons, so she requested the defendant to pay the insurance money to the plaintiff.

In First-instance Civil Judgment No. 38/2008/DS-ST dated 21 August 2008 of the People's Court of District 1, Ho Chi Minh City, it was ruled that:

1. Not accepting Ms. Pham Thi T's claim for insurance money and late payment interest being an amount of VND426,000,000 from P Life Insurance Company Limited;

2. In terms of court fees: Ms. Pham Thi T shall bear the civil court fees being VND7,890,000 which was deducted from the submitted advance court fee being VND6,000,000 under Money Receipt No. 2185 dated 9 June 2006 of the Civil Judgment Enforcement [Agency] of Ho Chi Minh City.

The first-instance judgment also declared the right to appeal of the involved parties.

On 1 September 2008, Ms. Pham Thi T submitted an appeal.

At the appellate hearing:

The plaintiff did not withdraw her lawsuit and request for appeal.

The involved parties failed to reach an agreement as to the dispute settlement.

Ms. T presented her appeal and requested the Council of Adjudicators to accept her claim to compel P Life Insurance Company Limited to pay the amount of VND426,000,000 being the insurance money and the overdue interest due to late payment of the insurance money, for the reason that the employee of the company failed to collect the premium and not her failure to pay the premium. The lawyer representing Ms. T's lawful rights and interest requested the Council of Adjudicators to accept her claim.

Mr. Nguyen Quoc T representing P Life Insurance Company Limited, together with the lawyer representing the lawful rights and interest, requested the Council of Adjudicators to uphold the first-instance judgment.

FINDINGS OF THE COURT

[1] After studying the materials of the case and verification of the evidence at the hearing and based on the arguments at the hearing, the Council of Adjudicators opined that:

[2] As a matter of procedure: Ms. Pham Thi T submitted the appeal within the statutory time limit.

[3] As to the merits:

[4] Pursuant to the application dossier for life insurance (records 15-17), the address for P Life Insurance Company Limited to collect the premium was at Mr. L's house No. 231 Hamlet 3, B Commune, G Town, Ben Tre Province. This was in accordance with the testimony of Ms. N being the agent selling insurance and collecting insurance premium for P Life Insurance Company Limited.

[5] Considering Ms. T's request for appeal, Mr. L's failure to pay the premium in a timely manner was due to the fact that the company failed to send someone to collect the premium, which was evidenced as mentioned above.

[6] According to the confirmation document of the Public Security of B Commune, Mr. L passed away on 27 August 2005 due to a slip and fall accident causing traumatic brain injury.

[7] Considering that Mr. L signed an insurance agreement by way of an application dossier for life insurance with the insurance level of VND300,000,000, Mr. L's failure to pay the premium for the second time as analyzed above was not his fault. Therefore, Ms. T's request for appeal to compel P Life Insurance Company Limited to pay the insurance money for Mr. T's death due to accident has basis for the court to accept.

[8] Considering the request by P Life Insurance Company Limited's representative to note that Mr. L failed to pay the premium for the second time with the deadline being 24 August 2005 while Mr. L died on 27 August 2005, and thus, the insurance agreement therefore is no longer effective has no basis. As analyzed above, the reason for Mr. L's failure to pay the premium was that the company's employee did not go to collect the premium. This is clearly evidenced at page 5, which set out the information that the clients need to know and clearly stated that home collection consisted of quarterly collection, 6-month collection, yearly collection, or for the case of more than two agreements providing for the same collection address which was the case of Mr. L who bought 3 insurance agreements from P Life Insurance Company Limited for Mr. L, Ms. T and Ms. H. As a result, the Council of Adjudicators did not accept the request of P Life Insurance Company Limited's representative as well as request by the lawyer representing the lawful rights and interest of P Life insurance company Limited.

[9] Considering Ms. T's claim for P Life Insurance Company Limited to pay the overdue interest for late payment from 27 August 2005 to the date of the first-instance hearing, there is no basis. Since the insurance certificate issued by P Life Insurance Company Limited to Mr. L did not include any provision on interest. Therefore, the Council of Adjudicators did not accept this claim of Ms. T.

[10] Therefore, the Council of Adjudicators accepted part of Ms. T's appeal and amended the first-instance judgment to compel P Life Insurance Company Limited to pay the beneficiary being Ms. T the insurance money being VND300,000,000 following Mr. L's death due to accident.

[11] Ms. T and P Life Insurance Company Limited shall bear the court fees for the first-instance procedures in accordance with Article 7.2 of Decree 70/CP. Specifically, Ms. T shall bear the court fees of VND6,040,000 over the rejected claim for overdue interest. P Life Insurance Company Limited shall bear the court fees of VND12,000,000 over the insurance money that it had to pay Ms. T.

[12] Ms. T shall not be obliged to pay the court fees for appellate procedures in accordance with Article 132.2 of the Civil Procedure Code because the first-instance judgment was amended.

In light of the aforementioned reasons

RULES

To apply Article 275.2 of the Civil Procedure Code.

To rule:

- To accept part of the request for appeal of Ms. Pham Thi T.

- To amend First-instance Judgment No. 38/2008/DS-ST dated 21 August 2008 of the People's Court of District 1, Ho Chi Minh City.

1. Accept part of Ms. T's claims.

- To compel P Life Insurance Company Limited to pay the insurance money of VND300,000,000 to Ms. Pham Thi T immediately after the judgment takes effect.

- As from the date on which the plaintiff submitted an application for judgment enforcement, if the defendant fails to comply with the aforementioned decisions, the defendant shall pay the overdue interest arising based on the basic interest rate provided by the State Bank during the relevant period of time of such failure.

2. As to the court fees for first-instance procedures: Ms. Pham Thi T shall bear the amount of VND6,040,000 (six million forty thousand Dong), which is to be deducted an amount of VND6,000,000 (six million dong) under Money Receipt No. 002185 dated 9 June 2006 of the Civil Judgment Enforcement Agency of Ho Chi Minh City. Ms. T shall therefore pay the remaining amount of VND40,000.

P Life Insurance Company Limited shall pay the court fee of VND12,000,000 (twelve million Dong)

3. Ms. T shall not be obliged to pay the court fee for appellate procedures and is to be repaid an amount of VND50,000 (fifty thousand Dong), which was the advance court fee under Money Receipt No. 004852 dated 9 September 2008 of the Civil Judgment Enforcement Agency of District 1, Ho Chi Minh City.

The appellate judgment comes into effect as from the date of promulgation.

CONTENTS OF THE CASE LAW

"[4] Pursuant to the application dossier for life insurance (records 15-17), the address for P Life Insurance Company Limited to collect the premium was at Mr. L's house No. 231 Hamlet 3, B Commune, G Town, Ben Tre Province. This was in accordance with the testimony of Ms. N being the agent selling insurance and collecting insurance premium for P Life Insurance Company Limited.

[7] Considering that Mr. L signed an insurance agreement by way of an application dossier for life insurance with the insurance level of VND300,000,000, Mr. L's failure to pay the premium for the second time as analyzed above was not his fault. Therefore, Ms. T's request for appeal to compel P Life Insurance Company Limited to pay the insurance money for Mr. T's death due to accident has basis for the court to accept.

[8] Considering the request by P Life Insurance Company Limited's representative to note that Mr. L failed to pay the premium for the second time with the deadline being 24 August 2005 while Mr. L died on 27 August 2005, and thus, the insurance agreement therefore is no longer effective has no basis. As analyzed above, the reason for Mr. L's failure to pay the premium was that the company's employee did not go to collect the premium. This is clearly evidenced at page 5, which set out the information that the clients need to know and clearly stated that home collection consisted of quarterly collection, 6-month collection, yearly collection, or for the case of more than two agreements providing for the same collection address which was the case of Mr. L who bought 3 insurance agreements from P Life Insurance Company Limited for Mr. L, Ms. T and Ms. H. As a result, the Council of Adjudicators did not accept the request of P Life Insurance Company Limited's representative as well as request by the lawyer representing the lawful rights and interest of P Life insurance company Limited".

CASE LAW NO. 24/2018/AL
regarding inheritance converted into assets under the lawful ownership and use of individuals

This case law was adopted by the Judicial Council of the Supreme People's Court on 17 October 2018 and promulgated under Decision No. 269/QD-CA dated 6 November 2018 of the Chief Justice of the Supreme People's Court.

Source of the case law:

Cassation Decision No. 27/2015/DS-GDT dated 16 October 2015 of the Judicial Council of the Supreme People's Court on the civil case on *"Dispute on inheritance being land use rights"* in Hanoi between the plaintiffs being Ms. Pham Thi H, Ms. Pham Thi H1, Ms. Pham Thi H2 against the defendant being Mr. Pham Van H3. The persons with related rights and obligations consisted of 12 people.

Location of contents of the case law:

Paragraph 4 of the section *"Findings of the Court".*

Overview of the case law:

- ***Background of the case law:***

  Houses and land are common property of the spouses, where one spouse dies first. The other spouse and other heirs of the deceased have agreed on the division of the houses and land. The division agreement is not in violation of any rights and interests of any heirs.

  The division of houses and land has been carried out in reality and recorded in the land documents and records.

- ***Legal resolution:***

  In this case, it must be determined that the houses and land have been converted into assets under the lawful ownership and use of individuals. These individuals are only entitled to initiate a lawsuit to claim the houses and land that have been divided and under the unlawful possession and use by other persons who are not entitled to inheritance being houses and land.

Applicable provisions of laws relating to the case law:

Articles 219, 223 and 226 of the Civil Code 2005 (corresponding to Articles 213, 218 and 220 of the Civil Code 2015).

Key words of the case law:

"Inheritance", "Common property of spouses", "Actual division of houses and land".

CONTENTS OF THE CASE

In the *"Statement of Claim for land"* dated 30 June 2004 and other applications and testimonies during the proceedings, the plaintiff being Ms. Pham Thi H, Ms. Pham Thi H1 and Ms. Pham Thi H2 presented that:

Their parents being Mr. Pham Van H (passed away in 1978) and Ms. Ngo Thi V (passed away on 21 August 1994) had seven children being Mr. Pham Van H3, Mr. Pham Van D (passed away in 1998), Mr. Pham Van T, Mr. Pham Van Q (passed away in 2000), Ms. Pham Thi H, Ms. Pham Thi H1, and Ms. Pham Thi H2. When they were alive, Mr. Pham Van H and Ms. Ngo Thi V had a house and kitchen on the land area of 464m^2 in Q District, Ha Tay Province (former name; currently part of Hanoi).

In 1991, Ms. V divided the aforementioned land area between her seven children: each of the four sons was granted a part of the inheritance and the remaining part of the inheritance (width of 3 meters located next to the street, area of 44.4m^2) was for the three daughters (who are the plaintiffs). Right after being given the land, Mr. D sold it to resettle in Song Be Province (former name). Mr. T and Mr. Q used the land to build houses to live. The land given to the plaintiffs was located next to the land area that Mr. V had given to Mr. H3 (width of 4 meters next to the street). Mr. H3 already had houses and land in another place, so he did not use the land that he received. At that time, the plaintiffs were in the South so Mr. H3 watched over his own and the plaintiffs' land received from Mr. V, of which the total area was 110m^2 (width of 7 meters). Many years later, Mr. H3 still acknowledged that he was watching over the land area given to the plaintiffs.

In 2002, at the time the plaintiffs returned to conduct reburial rites for their mother, Mr. H3 still agreed that whenever the plaintiffs were ready, they may take back the land to build their houses. However, in 2004, when the three sisters wished to build houses on the land, Mr. H3 refused to recognize that the land had been given to the plaintiffs and he had divided such land area among his children being Mr. Pham Van L and Ms. Pham Thi T. As such, he did not return the land to his sisters.

The plaintiffs requested the court to compel Mr. H3 to return the land area belonging to them, which was agreed by their mother and the siblings in 1991; in the past, they requested the court to settle the case such that the sisters shall be entitled to the inheritance in accordance with the law by way of the land area of 44.4m^2. When the People's Court of Hanoi accepted to settle the case under first-instance procedures in 2010, the plaintiffs requested the court to divide the estate of their parents being the land area of 115m^2 (the actual area was110m^2) which was under the management of Mr. H3.

The defendant being Mr. Pham Van H3 and by the testimony of his authorized representative being Ms. Pham Thi T presented that:

At first, Mr. H3 made statements that his parents had assets consisting of houses and land as presented by the plaintiffs. In 1972, he started a family and his parents permitted him to live on this land area of 162m^2. After that, the defendant changed his testimony and asserted that the land area of 162m^2 were land that he and his wife being Ms. Nguyen Thi N reclaimed from garbage dump and water spinach field, on which they built a house and used up to now. This land does not belong to Mr. V and Ms. H.

In 1983, Mr. H3's family moved to another place to live, but he still managed the entire land and houses of his parents and his family because at that time Ms. V and his younger sisters went to the South to participate in the New Economic program. In 1987, he declared the land lot No. 210 with the area of 162m^2 and was granted certificate of land use rights over the same. In 1988, Ms. V came back to her hometown and divided the land and houses among her four sons only and not her daughters as presented by the plaintiffs. Mr. H3 agreed with the plaintiffs' presentations as to the location and areas of land divided among Mr. D, Mr. T, and Mr. Q and his receipt of the land for use. When Ms. V divided the land, Mr. H3 agreed to give a land area of 52m^2 from his given land area of 162m^2 to Mr. Q so his remaining land area was only 110m^2. In 2004, he made a written document giving his children being Mr. L and Ms. T the land areas of 65m^2 and 45m^2 respectively and applied for 2 separate certificates of land use rights over them, which were not yet granted when Ms. H, Ms. H1 and Ms. H2 raised this dispute. Mr. H3 contended that Ms. V did not divide the land with respect to Ms. H, Ms. H1 and Ms. H2 in 1991 as presented by the plaintiffs. The statute of limitation for initiating a lawsuit on inheritance had expired. The land area of 110m^2 belonged to him and he disagreed with the plaintiffs' claims.

The persons with related rights and obligations presented:

Ms. Pham Thi T and Mr. Pham Van L had the same presentations as Mr. H3. Ms. T5 confirmed that in 2003 she built a house over the land area being claimed by the plaintiffs.

Mr. Pham Van T presented that: the origin of the land and house was as presented by the plaintiffs. Mr. T confirmed that in 1991, Ms. V organized a family meeting and reached consensus (verbally) to divide the land for her children, in which her three daughters were given a part and this part was under the management of Mr. H3 along with the part that Mr. H3 was given. He confirmed that he had received his given land area and transferred it to another person afterwards. He requested the court to compel Mr. H3 to return the land in dispute to his three younger sisters.

Ms. Nguyen Thi T and her children with Mr. Pham Van D; Ms. Phung Thi H4 and her children with Mr. Pham Van Q, confirmed that Ms. V had divided the land to her children but Ms. T and Ms. H4 were daughters-in-law and did not participate so they did not know the details of the division. Ms. T confirmed that Mr. D's given land was sold by him for money to go to the South. Ms. H4 confirmed that her family has been using Mr. Q's given land for their residence up to now. As Mr. D and Mr. Q had been given land, Ms. T and Ms. H4 and their children had no requests in this case.

After People's Court of Hanoi accepted to settle the case under first-instance procedures in 2010, Mr. T and the heirs of Mr. D and Mr. Q had no requests in relation to the land area of 110m^2 that the plaintiffs were requesting to divide the estate as well as agreed to give Mr. T's, Mr. D's, and Mr. Q's parts of the inheritance in land area of 110m^2 in dispute to the three plaintiffs and Mr. H3.

The case had been undergone first-instance and appellate procedures as follow:

- First-instance Civil Judgment No. 07/2005/DSST dated 7 July 2005 of the People's Court of Quoc Oai District, Ha Tay Province (former name)

- Appellate Civil Judgment No. 126/2005/DSPT dated 30 November 2005 of the People's Court of Ha Tay Province (former name)

- Cassation Decision No. 106/2007/DS-GDT dated 23 April 2007 of the Civil Court (former name) of the Supreme People's Court accepting Protest No. 23/2007/KN-DS dated 2 March 2007 by the Chief Justice of the Supreme People's Court and setting aside the first-instance and appellate judgments and transferring the case to the People's Court of Quoc Oai District to re-conduct first-instance procedures.

- First-instance Civil Judgment No. 01/2009/DSST dated 7 April 2009 of the People's Court of Quoc Oai District;

- Appellate Civil Judgment No. 87/2009/DSPT dated 2 April 2009 of the People's Court of Hanoi setting aside the first-instance judgment for resettling. The People's Court of Hanoi issued Decision to transfer the case the People's Court of Hanoi to re-conduct first-instance procedures.

- People's Court of Hanoi issued Decision No. 41/2010/QDST-DS dated 20 July 2010 suspending settlement of the case;

- In Decision No. 183/2010/QD-PT dated 19 November 2010, the Appellate Court of the Supreme People's Court in Hanoi (former name) set aside the aforesaid first-instance judgment and transferred the case to the People's Court of Hanoi to re-conduct first-instance procedures.

- In First-instance Civil Judgment No. 24/2013/DSST dated 30 and 31 May 2013 of the People's Court of Hanoi, it was ruled:

    1. To accept Ms. Pham Thi H's, Ms. Pham Thi H1's, and Ms. Pham Thi H2's request to divide the estate was accepted;

    2. To determine that the land use rights over the land lot No. 252 in cadastral map No. 2 with the area of 110m^2 in Q District, Hanoi belonged to Ms. Ngo Thi V and Mr. Pham Van H with value of VND1,321,200,000.

    - To divide the common property of Ms. V and Mr. H, where each spouse had asset value of VND660,600,000.

    - Mr. H's part of the asset was the land use rights over the land area of 55m2 being valued at VND660,600,000. The statute of limitation for dividing the estate had expired.

    - Ms. V's part of the asset was the land use rights over the land area of 55m2 being valued at VND660,600,000.

    - Each of Mr. H3, Ms. H, Ms. H2 and Ms. H1 was entitled a part being valued at VND120,120,000.

    - Mr. H3 was entitled to own the assets being valued at VND240,240,000.

- Each of Ms. H, Ms. H2 and Ms. H1 was entitled to the assets being valued at VND120,120,000.

- Ms. H, Ms. H1 and Ms. H2 were entitled to use the Level 4 house over the land lot No. 252 in cadastral map No. 2, Q District, Hanoi with the land area of 44.4m2 being valued at VND532,800,000, with a map enclosed.

- Mr. Pham Van H3 was entitled to use a land area of 10.7m2; Mr. H3, Ms. T and Mr. H would continue to manage the land area of 55m2 being the asset of Mr. H as recorded in the land lot No. 252 of cadastral map No. 2, Q District (with a map enclosed) because the statute of limitation had expired until the competent authorities decide otherwise. Mr. H3, Ms. T and Mr. H were entitled to the amount of VND300,000,000 being equivalent to a two-floor house and one attic over the land area of 65.7m2 in land lot No. 2, Q District, Hanoi (with a map enclosed). Mr. H3 would receive the amount of VND172,440,000; Ms. T and Mr. H would receive VND20,000,000 as the repair costs to be paid by Ms. H, Ms. H1 and Ms. H2.

- Ms. H, Ms. H1 and Ms. H2 shall pay Mr. H3 the amount of VND172,440,000 and pay Ms. T and Mr. H the amount of VND20,000,000 as the repair costs.

- To invalidate the certificate of land use rights over the land area of 162m2 in land lot No. 210 of cadastral map No. 2 in the name of Mr. Pham Van H3 issued by People's Committee of Quoc Oai District on 10 September 1987.

- To recognize the consent of Mr. Pham Van T, Ms. Nguyen Thi T and their children being Pham Thi Thu T2, Pham Thi Thu T3, Pham Thi Thanh T4; Ms. Phung Thi H4, her children being Pham Thi H5, Pham Duc H, Pham Duc M all waived their right to receive the inheritance and had no requests in relation to the land area of 110m2 of Ms. V and Mr. H in land lot No. 252, cadastral map No. 2, Q District, Hanoi.

- To recognize the consent of Mr. Pham Van H3, Ms. Pham Thi H, Ms. Pham Thi H2, Ms. Pham Thi H1, Mr. Pham Van T, Ms. Nguyen Thi T and their children being Pham Thi Thu T2, Pham Thi Thu T3, Pham Thi Thanh T4; Ms. Phung Thi H4, her children being Pham Thi H5, Pham Duc H, Pham Duc M:

  + No request for the court to settle the assets attached to the land of Ms. V and Mr. H, which are four thatched cottages.

  + No request for the court to settle the funeral expenses.

  + No requests in relation to land lot No. 253 in the name of Pham Van Q; land lot No. 261 in the name of Pham Van T (land area of 189m^2 including land lot No. 261b); land lot No. 260 with the area of 94m^2 in the name of Nguyen Thi P.

  + No request for the court to settle the transfer of the land use rights by Mr. T and Mr. D to other people.

+ No request for the court to settle the amount of VND8,733,000.

The judgment also dealt with court fees, right to appeal and interest amount on late enforcement of the judgment.

On 14 June 2013, Ms. T, Mr. H and Mr. L submitted an appeal.

- In appellate Civil Judgment No. 53/2014/DSPT dated 4 April 2014, the Appellate Court of the Supreme People's Court in Hanoi upheld the first-instance judgment.

On 19 August 2014, Mr. Pham Van H3 presented an application for cassation.

- In Protest No. 152/2015/KN-DS dated 28 May 2015, the Chief Justice of the Supreme People's Court protested against Appellate Civil Judgment No. 53/2014/DSPT dated 4 April 2014 of the Appellate Court of the Supreme People's Court in Hanoi and requested the Judicial Council of the Supreme People's Court to conduct cassation procedures to set aside Appellate Civil Judgment No. 53/2014/DSPT dated 4 April 2014 of the Appellate Court of the Supreme People's Court in Hanoi and First-instance Civil Judgment No. 24/2013/DSST dated 30 and 31 May 2013 of the People's Court of Hanoi, transfer the case to People's Court of Hanoi to re-conduct first-instance procedures.

At the cassation hearing, the representative of the Supreme People's Procuracy agreed with the protest by the Chief Justice of the Supreme People's Court.

FINDINGS OF THE COURT

[1] Mr. Pham Van H (passed away in 1978) and his wife being Ms. Ngo Thi V had 7 children being Mr. Pham Van H3, Mr. Pham Van D (passed away in 1998), Mr. Pham Van T, Mr. Pham Van Q (passed away in 2000), Ms. Pham Thi H, Ms. Pham Thi H1 and Ms. Pham Thi H2. When alive, Mr. Pham Van H and his wife had thatched cottages on the land area of 464m^2 in H Street, Q District, Ha Tay Province (currently Hanoi). The land had been given to them in the land reform period.

[2] After Mr. H passed away, Mr. H3 and his wife being Ms. N watched over the land and houses. Ms. V and other children went to the South to participate in the New Economic program. In 1983, Mr. H3 and his wife moved to another place to live but continued managing the land and houses. The People's Committee of Q District confirmed that the cadastral books stored at the People's Committee showed that the land of Mr. H and Ms. V was divided into two lots in which one was coded 210 with the area of 162m^2 in the name of Mr. H3 and the other was coded 213 with the area of 300m^2 in the name of Mr. T. After that, Ms. V returned to the land and house and stayed there until she passed away in 1994. After her return, Ms. V organized a family meeting to divide the land area into four separate parts for her children, who had no objections and agreed to carry out the said division. Therefore, Mr. T's and Mr. H3's agreement with Ms. V in the division of the land area of 464m^2 indicated that Mr. T's and Mr. H3's names were just recorded on the cadastral documents, and the land and houses belonged to Ms. V and Mr. H, but not yet divided. Mr. H3 failed to provide evidence to prove that the land area of 162m^2 was of his separate asset.

[3] The land areas given to Mr. D (94m^2), Mr. Q (78m^2), and Mr. T (189m^2) had been received by them, who then were granted certificates of land use rights or transferred their land to other people who had carried out registration procedures for amendment, up to now no one has brought any dispute on these land areas. The remaining land area of 110m^2 (width of 7 meters next to the street) had been managed by Mr. H3. In 2004, it was not until when he divided the said land area among his children that Ms. H, Ms. H1 and Ms. H2 raised a dispute to claim the land area of 44.4m^2. In fact, at the time that Ms. V divided the land, her children were grown up and some of them had their own families who had the need for land to build houses. Mr. H3 already had had land and houses while Ms. H, Ms. H1 and Ms. H2 were in Binh Phuoc so that these four people had no need to build houses at that time. Mr. T acknowledged that Ms. V divided the land and her children all agreed and Mr. T confirmed that Mr. H3 managed the land area that Ms. V had divided among Mr. H3, Ms. H, Ms. H1 and Ms. H2. Mr. T recommended that the court rule that Ms. H, Ms. H1 and Ms. H2 shall be entitled to their assets. Mr. D's and Mr. Q's wives being Ms. T and Ms. H4 respectively and their children, despite being unaware of the division, agreed that Ms. V had divided the land among her children and they had no further requests, the land area of 110m^2 was therefore for Mr. H3, Ms. H, Ms. H1 and Ms. H2. As such, there is sufficient basis to determine that Ms. V had divided the land among Ms. H, Ms. H1 and Ms. H2 and this part of the land was managed by Mr. H3.

[4] Based on the aforementioned evidence, there is sufficient basis to determine that Ms. V and Mr. H's heirs agreed on the division of the common property the land and houses of Ms. V and Mr. H in 1991 and there is sufficient basis to determine that Ms. H, Ms. H1 and Ms. H2 were entitled to the land area of 44.4m^2 within the land area of 110m^2. The division had been in fact carried out and registered in the cadastral documents. The division agreement does not violate any heir's rights and interests, and no one is disputing it so that there is basis to determine the houses and land are no longer the estate of Ms. V and Mr. H but the assets of individuals. Therefore, Ms. H, Ms. H1 and Ms. H2 are only entitled to initiate a lawsuit to claim the land area of 44.4m^2 which they lawfully own due to the division in 1991; there is no basis to accept the request for dividing the estate of Mr. H and Ms. V because the inheritance from the parents no longer existed.

[5] According to the first Statement of Claim and testimony before the first-instance court accepted to settle the case in 2010, the plaintiffs had claimed only the land area of 44.4m^2. After the acceptance of the case for first-instance procedures, the plaintiffs changed their testimonies and requested division of the estate of the land area of 110m^2 being the assets of their parents that Mr. H3 managed, which had no basis. The first-instance court failed to clarify the involved parties' testimonies on the changes to their claims and ruled to accept the request for division of the estate of the land area of 110m^2 and the appellate court upheld the first-instance court's decisions in the first-instance judgment, which had no basis.

In light of the aforesaid reasons, pursuant to Article 291.3, Article 297.3 and Article 299.2 of the Civil Procedure Code (amended and supplemented in 2011);

RULES

1. To set aside Appellate Civil Judgment No. 53/2014/DSPT dated 4 April 2014 of the Appellate Court of the Supreme People's Court in Hanoi and First-instance Civil Judgment No. 24/2013/DS-PT dated 31 May 2013 of the People's Court of Hanoi regarding the case on *"Dispute on inheritance being land use rights"* between the plaintiffs being Ms. Pham Thi H, Ms. Pham Thi H2, Ms. Pham Thi H1 against the defendant being Mr. Pham Van H3.

2. To transfer the case to People's Court of Hanoi to conduct first-instance procedures in accordance with the law.

CONTENTS OF THE CASE LAW

"[4].. there is sufficient basis to determine that Ms. V and Mr. H's heirs agreed on the division of the common property the land and houses of Ms. V and Mr. H in 1991 and there is sufficient basis to determine that Ms. H, Ms. H1 and Ms. H2 were entitled to the land area of 44.4m^2 within the land area of 110m^2. The division had been in fact carried out and registered in the cadastral documents. The division agreement does not violate any heir's rights and interests, and no one is disputing it so that there is basis to determine the houses and land are no longer the estate of Ms. V and Mr. H but the assets of individuals. Therefore, Ms. H, Ms. H1 and Ms. H2 are only entitled to initiate a lawsuit to claim the land area of 44.4m^2 which they lawfully own due to the division in 1991; there is no basis to accept the request for dividing the estate of Mr. H and Ms. V because the inheritance from the parents no longer existed".

CASE LAW NO. 25/2018/AL
in respect of relief from deposit penalty due to objective causes

This case law was adopted by the Judicial Council of the Supreme People's Court on 17 October 2018 and promulgated under Decision No. 269/QD-CA dated 6 November 2018 by the Chief Justice of the Supreme People's Court.

Source of the case law:

Cassation Decision No. 79/2012/DS-GĐT dated 23 February 2012 of the Civil Court of the Supreme People's Court on civil case *"Dispute over deposit agreement"* in Ho Chi Minh City between the plaintiff being Mr. Phan Thanh L and the defendant being Ms. Truong Hong Ngoc H; the person with related rights and obligations being Mr. Lai Quang T.

Location of contents of the case:

Paragraphs 1, 3, and 4 of the *"Findings of the Court"* part.

Overview of the case law:

- ***Background of the case law:***

  The deposit agreement securing the signing of a house purchase contract had an agreement that within a certain period of time, the depositee shall complete the procedures for issuance of a certificate of building ownership; otherwise, she shall be subject to a deposit penalty.

  Upon the expiration of the agreed time limit, the depositee has not been granted with a certificate of building ownership due to the competent state agency.

- ***Legal resolution:***

  In this case, it is necessary to determine that the depositee could not fulfill its commitments due to objective cause and the depositee is not subject to deposit penalty.

Applicable provisions of laws relating to the case law:

Article 358 of the Civil Code 2005 (corresponding to Article 328 of the Civil Code 2015).

Key words of the case law:

"Deposit agreement", "House purchase contract", "Deposit penalty", "Objective causes".

CONTENTS OF THE CASE

Pursuant to the Statement of Claims dated 20 July 2009, the plaintiff Mr. Phan Thanh L presented as follows:

On 12 May 2009, Ms. Truong Hong Ngoc H agreed to sell to Mr. Phan Thanh L the house No. 1222C (new house number: 25/2) Street No. 32, T ward, H district, Ho Chi Minh City, which she had bought in auction under the name of Ms. H from the Civil Judgment Enforcement Agency of Ho Chi Minh City under Decision No. 786/QD-THÁ dated 2 March 2009. After reaching agreement, Mr. L deposited with Ms. H the amount of VND2,000,000,000. Under Article 5 of the deposit agreement, the parties agreed that from the date of signing the contract, Ms. H shall complete the procedures to be granted with the certificate of building ownership of the above-mentioned house, afterwards, the party shall sign a purchase contract with notarization; if there is any violation of the above-mentioned time limit, Ms. H shall pay a penalty equal to the deposit of VND2,000,000,000. On the expiry date of 12 June 2009, Ms. H had not performed as agreed, therefore, the contract could not be implemented. On 1 July 2009, Ms. H sent a letter requesting Mr. L to extend the term for an additional 60 days. On 7 July 2009, Mr. L sent a letter to reject Ms. H's request for extension and requested Ms. H to pay the deposit together with the agreed deposit penalty. After 5 months of such breach, Ms. H still failed to comply with the commitment, Mr. L initiated a lawsuit requesting Ms. H to pay the deposit and deposit penalty of VND4,000,000,000 in total.

The defendant being Ms. Truong Hong Ngoc H presented:

Ms. H acknowledged that there was a deposit agreement to sell the house to Mr. L as Mr. L had presented. After receiving the deposit, Ms. H tried to complete the procedures grant of a certificate of home ownership within 30 days as agreed, however, she still failed to achieve such certificate due to objective obstacles. She acknowledged her breach of the commitment to Mr. L and agreed to return the deposit and pay the interest thereof in accordance with the law but she did not agree to the deposit penalty.

Persons with related rights and obligations being Mr. Lai Quang T presented:

Mr. T has lived with Ms. H since 1997 without marriage registration. The house is the common property of Mr. T and Ms. H; he acknowledged that he, together with Ms. H, received the deposit of Mr. L. He agreed to return the deposit and pay the interest thereof to Mr. L in accordance with the law but he did not agree to the deposit penalty as requested by Mr. L.

In First-instance Civil Judgment No. 344/2009/DS-ST dated 11 November 2009, the People's Court of Phu Nhuan District, Ho Chi Minh City ruled to:

Accept the request of Mr. Phan Thanh L whose representative is Mr. Duong Nguyen Y L.

Compel Ms. Truong Hong Ngoc H to pay Phan Thanh L VND4,000,000,000 immediately after the judgment becomes effective.

In addition, the first-instance court also determined the court fees and right to appeal.

On 18 November 2009, Ms. Truong Hong Ngoc H submitted an appeal against the first-instance judgment.

On 19 November 2009, Mr. Lai Quang T submitted an appeal against the first-instance judgment.

In Appellate Civil Judgment No. 522/2010/DS-PT dated 6 May 2010, the People's Court of Ho Chi Minh City ruled to:

Uphold First-instance Civil Judgment No. 344/DS-ST dated 11 November 2009 of the People's Court of Phu Nhuan District, Ho Chi Minh City.

Accept the request of Mr. Phan Thanh L.

Compel Ms. Truong Hong Ngoc H to pay Mr. Phan Thanh L the deposit of VND2,000,000,000 and the deposit penalty of VND2,000,000,000, a total VND4,000,000,000, immediately after the judgment comes into effect.

Uphold the Decision on the application of provisional measures No. 495/2010/QD-BPKCTT dated 4 May 2010 by the People's Court of Ho Chi Minh City on the prohibition on the transfer of property rights to the house No. 25/2 Street No. 43, T Ward, H District, Ho Chi Minh City.

In addition, the appellate court also determined the court fees.

On 23 June 2010, Ms. Truong Hong Ngoc H submitted a complaint with contents disagreeing to compensating the deposit penalty, because the failure to perform the agreement in due time resulted from objective factors, in particular, the delay of the Civil Judgment Enforcement Agency in transfer of the ownership of the house to Ms. H, consequently, she could not transfer the ownership of the house to Mr. L.

In Decision No. 688/2011/KN-DS dated November 18, 2011, the Chief Justice of the Supreme People's Court protested the above-mentioned appellate judgment under cassation procedures proposing the Civil Court of the Supreme People's Court to review and set aside the above-mentioned appellate judgment and First-instance Civil Judgment No. 344/2009/DS-ST dated 11 November 2009 of the People's Court of Phu Nhuan District, Ho Chi Minh City, and to transfer the case to the People's Court of Phu Nhuan District, Ho Chi Minh City, Ho Chi Minh City for re-settlement in accordance with law.

At the court hearing, the representative of the Supreme People's Procuracy agreed with the protest of the Chief Justice of the Supreme People's Court, requested the Council of Adjudicators to set aside Appellate Civil Judgment No. 522/2010/DS-PT dated 6 May 2010 by the People's Court of Ho Chi Minh City and First-instance Civil Judgment No. 344/2009/DS-ST dated 11 November 2009 of the People's Court of Phu Nhuan District, Ho Chi Minh City, and to transfer the case to the People's Court of Phu Nhuan District, Ho Chi Minh City for re-settlement in accordance with law.

FINDINGS OF THE COURT

[1] On 12 May 2009, Ms. Truong Hong Ngoc H agreed to sell Mr. Phan Thanh L the house No. 1222C (new house number: 25/2) Street No. 43, T Ward, H District, Ho Chi Minh City, which Ms. H bought by auction in her name from the Civil Judgment Enforcement Agency of Ho Chi Minh City under Decision No. 786/QD-THÁ dated 2 March 2009. After the

agreement, Mr. L deposited with Ms. H the amount of VND2,000,000,000. Under Article 5 of the deposit agreement, it is agreed that within 30 days from the date of signing the contract, Ms. H shall complete the procedures to be granted with the certificate of building ownership, afterwards, the parties shall sign a purchase contract with notarization; if there is any violation of the above-mentioned time limit, Ms. H shall pay a penalty equal to the deposit of VND2,000,000,000. Upon the expiry date of the above time limit, Ms. H failed to comply with the commitment, so Mr. L initiated a lawsuit requesting Ms. H to return the deposit of VND2,000,000,000 and pay a deposit penalty of VND2,000,000,000.

[2] Ms. Truong Hong Ngoc H did not agree to the deposit penalty; she only agreed to pay the deposit along with the interest based on the interest rate set by banks, and asserted that her failure to comply was due to the delays of the Civil Judgment Enforcement Agency in transfer of ownership.

[3] Considering Mr. Phan Thanh L's request for deposit penalty, given that at the time Mr. L deposited VND2,000,000,000 with Ms. Truong Hong Ngoc H, Ms. H had received the house but has yet to carry out the procedures to be granted the certificate of building ownership since all the documents related to the house were in the control of the Civil Judgment Enforcement Agency of Ho Chi Minh City. Therefore, the Court should have determined whether Ms. H’s failure to obtain the title to the house within 30 days under the original agreement was due to the subjective fault of Ms. H not contacting the Civil Judgment Enforcement Agency to carry out procedures to transfer the building ownership or due to the objective fault being the Civil Judgment Enforcement Agency’s delay in transfer of the building ownership to Ms. H.

[4] After the appellate hearing, along with the complaint, Ms. H also submitted to the Supreme People's Court Letter No. 4362/THA dated 5 June 2009 of the Civil Judgment Enforcement Agency of Ho Chi Minh City. The contents of the letter clarify that the successful bidder being Ms. H had not completed the registration procedures for transfer of the house ownership due to the complaint of Mr. Nguyen Tan L1 requesting Ms. Tram Thi Kim P to pay 38 taels of SJC gold being the amount owed when Mr. L1 bought the above-mentioned house. Therefore, when re-settling the case, to the Court must verify and collect the original of Letter No. 4362/THA dated 5 June 2009 of the Civil Judgment Enforcement Agency of Ho Chi Minh City and its procedures of the transfer of house ownership to the successful bidder. If there is basis to determine that the Civil Judgment Enforcement Agency delayed in transferring the ownership right to Ms. H, Ms. H's failure to comply with the agreement with Mr. L shall be due to the objective causes, and Ms. H shall not be subject to the deposit penalty. If there is basis that Ms. H delayed in completing the procedures for the transfer of house ownership, Ms. H shall fully be held responsible for such breach and be subject to the deposit penalty.

[5] The first-instance court and the appellate court have yet to verify and clarify the above grants, but already accepted Mr. Phan Thanh L's request to compel Ms. Truong Hong Ngoc H to pay the deposit penalty of VND2,000,000,000, which there was not sufficient basis.

In light of the aforesaid statements, pursuant to Article 291.2 and Article 297.3 of the Civil Procedure Code;

RULES

To set aside Appellate Civil Judgment No. 522/2010/DS-PT dated 6 May 2010 by the People's Court of Ho Chi Minh City and First-instance Civil Judgment No. 344/2009/DS-ST dated 11 November 2009 of the People's Court of Phu Nhuan District, Ho Chi Minh City, of the case *"Dispute over deposit agreement"* between the plaintiff being Mr. Phan Thanh L and the defendant being Ms. Truong Hong Ngoc H; the person with related rights and obligations being Mr. Lai Quang T.

To transfer the case to the People's Court of Phu Nhuan District, Ho Chi Minh City for re-settlement in accordance with the law.

CONTENTS OF THE CASE LAW

"[1]... Under Article 5 of the deposit agreement, it is agreed that within 30 days from the date of signing the contract, Ms. H shall complete the procedures to be granted with the certificate of building ownership, afterwards, the parties shall sign a purchase contract with notarization; if there is any violation of the above-mentioned time limit, Ms. H shall pay a penalty equal to the deposit of VND2,000,000,000. Upon the expiry date of the above time limit, Ms. H failed to comply with the commitment, so Mr. L initiated a lawsuit requesting Ms. H to return the deposit of VND2,000,000,000 and pay a deposit penalty of VND2,000,000,000. [3]... at the time Mr. L deposited VND2,000,000,000 with Ms. Truong Hong Ngoc H, Ms. H had received the house but has yet to carry out the procedures to be granted the certificate of building ownership since all the documents related to the house were in the control of the Civil Judgment Enforcement Agency of Ho Chi Minh City...

[4]... If there is basis to determine that the Civil Judgment Enforcement Agency delayed in transferring the ownership right to Ms. H, Ms. H's failure to comply with the agreement with Mr. L shall be due to the objective causes, and Ms. H shall not be subject to the deposit penalty... "

CASE LAW NO. 26/2018/AL
regarding determination of the commencement of the statute of limitation and statute of limitation for requesting for division of the estate being real estates

This case law was adopted by the Judicial Council of the Supreme People's Court on 17 October 2018 and promulgated under Decision No. 269/QD-CA dated 6 November 2018 of the Chief Justice of the Supreme People's Court.

Source of the case law:

Cassation Decision No. 06/2017/DS-GDT dated 27 March 2017 of the Judicial Council of the Supreme People's Court regarding the case on *"Dispute on inheritance and division of common property"* in Hanoi between the plaintiffs being Mr. Can Xuan V, Ms. Can Thi N1, Ms. Can Thi T1, Ms. Can Thi H, Mr. Can Xuan T, Ms. Can Thi N2, Ms. Can Thi M1 whose representative was Ms. Can Thi N2 against the defendants being Ms. Nguyen Thi L, Mr. Can Anh C whose authorized representative was Ms. Le Hong L. Persons with related rights and obligations consisted of 7 people.

Location of contents of the case law:

Paragraphs 5, 6 and 7 of section *"Findings of the Court".*

Overview of the case law:

- ***Background of the case law:***

  The owner of the estate being real estates had passed away before 30 August 1990 being the issuance date of the Ordinance on Inheritance. At the time of the first-instance hearing, the Civil Code 2015 was effective.

- ***Legal resolution:***

  In this case, the commencement of the statute of limitations for requesting for division of the estate must be determined as the issuance date of Ordinance on Inheritance, i.e. 30 August 1990. The determination of the statute of limitation for requesting for division of the estate is subject to the regulations of the Civil Code 2015.

Applicable provisions of laws relating to the case law:

- Article 623.1 of the Civil Code 2015;

- Article 36.4 of the Ordinance on Inheritance dated 30 August 1990.

Key words of the case law:

"Divide estate", "Statute of limitation for request for division of estate", "Commencement of the statute of limitation".

CONTENTS OF THE CASE

According to the Statement of Claims dated 2 November 2010 and during the proceedings, the plaintiff's representative being Ms. Can Thi N2 presented that: Mr. Can Van K and Ms. Hoang Thi T had 8 children, namely: Can Xuan V, Can Thi N1, Can Thi N2, Can Thi M1, Can Thi T1, Can Thi H, Can Xuan T, Can Van S (passed away in 2008) whose wife was Nguyen Thi M and whose children were Can Thuy L and Can Hoang K.

In 1972, Ms. T passed away. In 1973, Mr. K married Ms. Nguyen Thi L and they had 4 children, namely: Can Thi C, Can Thi M2, Can Anh C and Can Thi T2.

While alive, Mr. K and Ms. T had a land area of 612m^2, on which there were 2 three-room houses located in T Hamlet, P Commune, Th Town, Hanoi, under a certificate of land use rights granted in 2012 in the name of Mr. Can Van K. After Ms. T passed away, the aforementioned land and house were under the management of Mr. K and Ms. L. In 2002, Mr. K passed away and those assets were managed by Ms. L and Mr. Can Anh C.

Mr. K and Ms. T passed away without leaving any will. Then the co-heirs being Mr. K's and Ms. T's children submitted a request to divide the common property of Ms. T and the estate of Mr. K in accordance with the law. Ms. N1, Ms. N2, Ms. M1, Ms. T1, Ms. H, Mr. T, Ms. C and Ms. Nguyen Thi M (Mr. S's wife) requested that their part of inheritance be transferred to Mr. V to use as a place for ancestor worship.

The defendants being Ms. Nguyen Thi L and Mr. Can Anh C presented that: the plaintiffs' presentations as to the consanguinity and the estate are correct. Ms. L acknowledged that before getting married to Mr. K, Mr. K had assets being the 3-room Level 4 house and 3 kitchens on the land area of 612m^2. During the use and management of these assets, she and Mr. K improved and rebuilt some ancillary construction works and walls. In 2002, the State authority granted the certificate on land use rights in the name of Mr. Can Van K. At that time, the household of Mr. K consisted of: Mr. K, Ms. L, Mr. T, Ms. M2, Ms. T2 and Mr. C. With respect to the claims of the plaintiffs, Ms. L and Mr. C requested that the dispute be settled in accordance with regulations of the law.

Persons with related rights and obligations:

Ms. Can Thi C, Ms. Can Thi T2, Ms. Can Thi M2, Ms. Nguyen Thi M, Ms. Le Thi H acknowledged the consanguinity as presented by the plaintiffs and the defendants and proposed resolving the dispute in accordance with the law. If the plaintiffs' request was accepted, Ms. Nguyen Thi C's and Ms. C's parts of the inheritance would be transferred to Mr. V; Ms. M2's part of the inheritance would be given to Mr. C. Ms. T2 wished to receive her part of the inheritance.

In First-instance Judgment No. 30/2012/DS-ST dated 20 July 2012, the People's Court of Hanoi ruled:

To accept the requests of Mr. Can Xuan V, Ms. Can Thi N1, Ms. Can Thi T1, Ms. Can Thi H, Mr. Can Xuan T, Ms. Can Thi N2, Ms. Can Thi M1.

Specifically, determining that the common property consisting of a Level 4 house, worship house, kitchen, brick courtyard, walls, cement shed, bath house, stainless steel water tank, and walls on the land area of 612m² in T Hamlet, P Commune, Th Town, Hanoi had the value of VND1,565,504,366, in which the total value of the property of Mr. K and Ms. T was VND1,536,331,972, the value of the property of Mr. K and Ms. L was VND21,338,977. The value of the property developed by Mr. C and Ms. H VND7,833,417.

Ms. T passed away in 1972, the common property of Ms. T was divided among her children being Mr. V, Ms. N2, Ms. T1, Ms. H, Mr. T, Ms. N1, Ms. M1 and Mr. S; each of them was entitled to VND96,020,748. As Mr. S had passed away, his wife being Ms. Nguyen Thi M and his 2 children being L and K would be entitled to his part of the inheritance.

Mr. K passed away in 2002. The first class in the line of succession of Mr. K are Mr. V, Ms. N2, Ms. T, Ms. H, Mr. T, Ms. N1, Ms. M1 and Mr. S (who had already passed away so that his part of the inheritance would be given to his wife, Ms. Nguyen Thi M, and his two children, L and K), Ms. L, Mr. C, Ms. C, Ms. M2 and Ms. T2; each of them was entitled to VND30,365,575.

To accept the consent of Ms. N2, Ms. N1, Ms. T1, Ms. H, Mr. T, Ms. C, Ms. M1 and Ms. Nguyen Thi M being Mr. S's wife for transfer of their parts of the inheritance to Mr. V.

To accept Ms. M2's consent to give her part of the inheritance to Mr. C.

Division of particular assets:

Assign Mr. Can Xuan V the ownership of 03-room house with the area of 31.4m² = VND4,435,233, brick courtyard = VND1,456,475, walls surrounding the area of 27.63m² = VND810,000, walls surrounding the bath house which are no longer usable, brick walls VND242,804, the flower wall in front of the worship house that is not usable, the well is no longer usable, the Level 4 house (worship house) and front porch = VND5,678,736, kitchen = VND3,696,503, bath house VND4,114,332; stainless steel water tank x 2m3 = VND2,000,000, 02 water tanks that are not usable, roof over the brick courtyard = VND1,719,085, livestock shelter that is not usable, gate that is not usable, trees: 01 sugar-apple tree, 01 mango tree, 01 grapefruit tree = VND470,000 attached to the land use right over the area of 367.1m² = VND1,041,456,159. Mr. V is also entitled to receive the difference in the value of the assets from Ms. L, amounting to VND99,032,460. The part of assets that Mr. V is entitled to receive is VND1,041,456,000 (diagram attached).

Assign Ms. Nguyen Thi L, Mr. Can Anh C and his wife, Ms. Can Thi M2, Ms. Can Thi T2 to own 01 bedroom of 13.3m² = VND1,896,739, walls = VND1,934,843, brick walls = VND666,841, brick courtyard = VND400,000, cement shed = VND1,462,287, trees = VND4,470,000 attached to the land use rights of an area of 244.9m² = VND612,250,000, the total value = VND623,080,710 in which the value of the assets belonging to them is VND524,048,196. Ms. L and Mr. C were obliged to pay Ms. T2 an amount of VND30,365,575 and to Mr. V the difference in value of the assets being VND99,032,503. Furthermore, Ms. L must build herself a door and a path on her land.

As the truss between the bedroom of Mr. V and the bedroom of Ms. L and her children was a common truss, whoever dismantled the house first must leave that truss to the other one.

In addition, the first-instance court ruled on the court fee.

On 13 August 2012, Ms. L and Mr. C submitted an appeal.

In Appellate Civil Judgment No. 106/2013/DS-PT dated 17 June 2013, the appellate court of Supreme People's Court in Hanoi ruled:

To accept the appeal of the defendants and to amend the first-instance judgment.

Accept part of the requests by Mr. Can Xuan V, Ms. Can Thi N1, Ms. Can Thi T1, Ms. Can Thi H, Mr. Can Xuan T, Ms. Can Thi N2 and Ms. Can Thi M1.

Specifically: To determine that the common property consisting of a Level 4 house, worship house, kitchen, brick courtyard, walls, cement shed, bath house, stainless steel water tanks, walls on the land area of 612m² in T Hamlet, P Commune, TH Town, Hanoi had value of VND1,565,504,366, in which Mr. K's and Ms. T's property had value of VND1,536,331,872, the property developed by Mr. K and Ms. L had value of VND21,338,977, the property developed by the couple Mr. C and Ms. H had value of VND7,883,417.

Ms. T passed away in 1972, the statute of limitation for initiating a lawsuit on inheritance had expired. The co-heirs could not reach a mutual agreement as to whether Ms. T's estate was common property which had not been divided, they did not accept the plaintiffs' request for dividing the estate of Ms. T as dividing the common property of Ms. T's 8 children. Since the statute of limitation for requesting for the division of estate had expired, the co-heirs managing the estate being Ms. Nguyen Thi L and Mr. Can Anh C are entitled to continue managing and owning the assets.

Mr. K passed away in 2002, the first class in the line of succession consisted of 13 people, namely: Ms. L, Mr. V, Ms. N2, Ms. T1, Ms. H, Mr. T, Ms. N1, Ms. M1, Mr. S (who had already passed away so that his part of the inheritance would be given to his wife, Ms. Nguyen Thi M, and his two children, L and K), Mr. C, Ms. C, and Ms. M2; each of them was entitled to an equal part of the inheritance equivalent to VND30,365,575.

To accept the consent of Ms. N2, Ms. N1, Ms. T1, Ms. H, Mr. T, Ms. C, Ms. M1 and Ms. Nguyen Thi M (Mr. S's wife) to transfer assets to Mr. V.

To accept the consent of Ms. M2 to give assets to Mr. C.

Particular assets are divided as follows:

Assign Mr. Can Xuan V the land area having the worship house split by a straight line crossing the land lot, this line coincided with the outer edge of the main house (diagram attached). The total land area that Mr. V was given (with the worship house) was 218.2m² (in which the land area of 100m² was residential land and 118.2m² was garden land, with land use term of 50 years), valued at VND545,500,000 and other assets attached to the land include: the worship house and the area of the front porch valued at: VND5,300,888 + VND377,848 = VND5,678,736; kitchen valued at VND3,696,503; bath house valued at VND4,114,332; stainless steel tank with volume 2m3 valued at VND2,000,000; 02 water tanks that are not

usable. The total value of the assets attached to the land was VND15,489,571. The total value of the assets attached to the land given to Mr. V was VND560,989,571.

Mr. Can Xuan V shall not be obliged to pay the difference in value of the assets being VND287,699,396 to Ms. L and Mr. C.

Assign the entire land area of 393.8m² (in which the land area of 200m² was residential land with long-term land use term and the land area of 193.8m² was garden land with land use term of 50 years), and the entire remaining assets attached to the land to Ms. Nguyen Thi L and Mr. Can Anh C to own and use. Ms. L and Mr. C shall pay Ms. Can Thi T2 the value of her part of the inheritance being VND30,365,575. Ms. Nguyen Thi L and Mr. Can Anh C had to open a new path to the common lane of the village.

In addition, the court ruled on the court fee.

After the appellate hearing, on 5 April 2014, Ms. Can Thi N2 representing the plaintiffs requested that cassation procedures be conducted as to the aforementioned appellate civil judgment.

In [Protest] Decision No. 73/2016/KN-DS dated 15 June 2016, the Chief Justice of the Supreme People's Court protested against Appellate Civil Judgment No. 106/2013/DS-PT dated 17 June 2013 of the Appellate Court of the Supreme People's Court in Hanoi; requested the Judicial Council of the Supreme People's Court to conduct the cassation procedures to set aside the aforesaid appellate civil judgment in its entirety and set aside First-instance Judgment No. 30/2012/DS-ST dated 20 July 2012 of the People's Court of Hanoi; transfer the case to the People's Court of Hanoi to conduct the first-instance procedures in accordance with the law.

At the cassation hearing, the representative of the Supreme People's Procuracy agreed with the Protest by the Chief Justice of the Supreme People's Court.

FINDINGS OF THE COURT

[1] Mr. Can Van K and Ms. Hoang Thi T had 8 children, namely: Can Xuan V, Can Thi N1, Can Thi T1, Can Thi H, Can Xuan T, Can Thi N2, Can Thi M1 and Can Van S (passed away in 2008, Mr. S's wife is Ms. Nguyen Thi M and children are Can Thuy L and Can Hoang K).

[2] Mr. K and Ms. T had assets consisting of a Level 4 house, kitchen, bath house and other works and trees on the land area of 612m², lot No. 120, cadastral map No. 11, T Hamlet, P Commune, Th Town, Hanoi. Ms. T passed away in 1972. In 1973, Mr. K married Ms. Nguyen Thi L and they had 4 children, namely: Can Thi C, Can Thi M2, Can Thi T2 and Can Anh C. In 2002, the aforesaid land area was registered in the certificate of land use rights in the name of Mr. Can Van K. Mr. K passed away at the end of 2002 and his assets were then managed and used by Ms. L and Mr. Can Anh C. The plaintiffs being Mr. K's and Ms. T's children requested division of the common property of their mother being Ms. T and division of Mr. K's estate in accordance with the law. As such, the first class in the line of succession of Ms. T consisted of 9 people including 8 children of Mr. K. In 2002, Mr. K passed away, the part of the inheritance which Mr. K was entitled from Ms. T was transferred to Ms. L and the children of Mr. K and Ms. L.

[3] At the time the plaintiffs initiated the lawsuit (November 2010), Mr. K and Mr. Can Van S had died, the heirs of Mr. K and Mr. S were entitled to the parts of the inheritance to which Mr. K and Mr. S were entitled. The first-instance court determined that at the time of the initiation of the lawsuit (November 2010), the statute of limitation for division of the estate of Ms. T had expired, however, the first-instance court determined that Ms. T's estate was the common property that was not yet divided and ruled to divide it among the 8 children of Ms. T, which was incorrect pursuant to point a, subsection 2.4 of section 2, part I of Resolution No. 02/2004/NQ-HDTP dated 10 August 2004 of the Judicial Council of the Supreme People's Court because Ms. L and Mr. C (Mr. K's son) had not accepted that the assets in dispute were Ms. T's estate that was not yet divided.

[4] It was correct when the appellate court determined that the statute of limitation for initiating a lawsuit on inheritance from Ms. T and rejected the plaintiffs' requests for division of Ms. T's estate (pursuant to regulations provided for in point a, subsection 2.4, section 2, part I of Resolution No. 02/2004/NQ-HDTP dated 10 August 2004 of the Judicial Council of the Supreme People's Court), it was however wrong when the appellate court ruled that the co-heirs currently managing the estate being Ms. L and Mr. C can continue managing, using and owning it.

[5] However, pursuant to Article 623.1 of the Civil Code 2015 (effective as from 1 January 2017), the statute of limitation for heir(s) to request division of the estate is 30 years as from the commencement of inheritance with respect to immovable property.

[6] According to Article 688.1(d) of the Civil Code 2015, with respect to civil transactions established before the effective date of this Civil Code, the statute of limitation shall be subject to regulations of this Code.

[7] Therefore, as from the effective date of the Civil Code 2015, courts apply Article 623 of the Civil Code 2015 to determine the statute of limitation with respect to cases of commencement of inheritance before 1 January 2017. Pursuant to Article 36.4 of the Ordinance on Inheritance dated 30 August 1990 and the Civil Code 2015, in this case, the statute of limitation for initiating a lawsuit for division of the estate of Ms. T to the co-heirs had not expired.

[8] On the other hand, as per the wish of the plaintiffs as shown in the testimonies dated 22 December of Ms. Can Thi N2 (record 63), Ms. Can Thi N1 (record 69), Ms. Can Thi T1 (record 75), Ms. Can Thi H (record 78), and Ms. Can Thi M1 (record 61), they all requested the court to divide their parents' estate in accordance with the law, because they were women who were married, and therefore, they are willing to assign their parts of the inheritance to which they are entitled from their parents to Mr. V to use a place for ancestor worship. Mr. Can Xuan T, in his testimony dated 22 October 2010 (record 73), requested the court to divide his parents' estate in accordance with the law so that he and his siblings would use their inheritance for ancestor worship. Ms. Nguyen Thi M (record 65) requested that she and her children would assign to Mr. V for ancestor worship the part of the inheritance to which her husband and their father was entitled. However, during the dispute settlement process, the first-instance and appellate courts accepted the consent of the plaintiffs in assigning the property to Mr. V was incorrect with the intentions to the involved parties.

In light of the aforementioned reasons,

RULES

Pursuant to Article 337.2, Article 343.3, Article 345 of the Civil Procedure Code 2015;

To accept Protest No. 73/2016/KN-DS dated 15 June 2016 of the Chief Justice of the Supreme People's Court against Appellate Civil Judgment No. 106/2013/DS-PT dated 17 June 2013 of the Appellate Court of the Supreme People's Court in Hanoi.

To set aside the aforesaid appellate civil judgment and First-instance Judgment No. 30/2012/DS-ST dated 20 July 2012 of the People's Court of Hanoi in their entirety regarding the case on dispute on division of estate and division of common property between the plaintiffs being Mr. Can Xuan V, Ms. Can Thi N1, Ms. Can Thi T1, Ms. Can Thi H, Mr. Can Xuan T, Ms. Can Thi N2, Ms. Can Thi M1 against the defendants being Ms. Nguyen Thi L and Mr. Can Anh C and persons with related rights and obligations (7 people).

To transfer the case to the People's Court of Hanoi to for first-instance hearing in accordance with the law.

CONTENTS OF THE CASE LAW

"[5] However, pursuant to Article 623.1 of the Civil Code 2015 (effective as from 1 January 2017), the statute of limitation for heir(s) to request division of the estate is 30 years as from the commencement of inheritance with respect to immovable property.

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CASE LAWS OF VIET NAM

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