**CASE LAW NO. 25/2018/AL**

*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 firstinstance 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 abovementioned 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 resettlement 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... “*