

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

### **On Exemption from Deposit Penalty Due to Objective Reasons**

*Approved by the Judicial Council of the Supreme People's Court on October 17<sup>th</sup>, 2018, and published under Decision No. 269/QĐ-CA on November 6<sup>th</sup>, 2018, by the Chief Justice of the Supreme People's Court.*

#### **Source of the Case Law:**

The Cassation Decision No. 79/2012/ĐS-GĐT dated February 23<sup>rd</sup>, 2012, of the Civil Court of the Supreme People's Court regarding the civil case of "Dispute over Deposit Contract" in Hồ Chí Minh City between the plaintiff, Mr. Phan Thanh L, and the defendant, Ms. Trương Hồng Ngọc H; with Mr. Lại Quang T as an interested party.

#### **Location of the Case Law's Content:**

Paragraphs 1,3 and 4 of the "Court's Opinion" section.

#### **Summary of the Case Law:**

##### ***- Case Background:***

A deposit contract was established to guarantee the completion of a house sale contract, requiring the deposit recipient to obtain the house ownership certificate within a specified time frame. Failure to do so would result in a penalty equal to the deposit amount. However, the deposit recipient was unable to secure the certificate due to circumstances attributable to the relevant government authority.

##### ***- Legal Resolution:***

In this case, the court must determine that the deposit recipient's inability to fulfill the contractual obligation was due to factors beyond their control. As a result, the deposit recipient is exempt from the stipulated penalty.

### **Relevant Legal Provisions:**

Article 358 of the 2005 Civil Code (corresponding to Article 328 of the 2015 Civil Code).

### **Keywords:**

"Deposit Contract"; "House Sale Contract"; "Deposit Penalty"; "Contract Signing"; "Objective Reasons".

### **CASE DETAILS**

According to the petition dated July 20<sup>th</sup>, 2009, the plaintiff, Mr. Phan Thanh L, presented:

On May 12<sup>th</sup>, 2009, Ms. Trương Hồng Ngọc H agreed to sell Mr. Phan Thanh L the house located at 1222C (new number 25/2) Street 43, Ward T, District H, Hồ Chí Minh City, which Ms. H had purchased at an auction from the Hồ Chí Minh City Civil Judgment Enforcement Agency pursuant to Asset Transfer Decision No. 786/QĐ-THÁ dated March 2<sup>nd</sup>, 2009. Following the agreement, Mr. L deposited VND 2,000,000,000 with Ms. H. According to Article 5 of the deposit contract, both parties agreed that from the date of signing the contract, Ms. H must complete the procedures to obtain the ownership certificate for the aforementioned house, after which a notarized sale contract would be signed; if the deadline was violated, Ms. H would incur a penalty equivalent to the deposit amount of VND 2,000,000,000. By the deadline of June 12<sup>th</sup>, 2009, Ms. H had not fulfilled the agreement, hence the parties could not proceed with the contract. On July 1<sup>st</sup>, 2009, Ms. H sent a letter requesting Mr. L to extend the deadline by 60 days. On July 7<sup>th</sup>, 2009, Mr. L responded with a refusal to extend and requested Ms. H to return the deposit along with the penalty as agreed. After a five-month contract breach, Ms. H still had not honored the commitment, leading Mr. L to file a lawsuit demanding Ms. H to return the deposit and pay the penalty, totaling VND 4,000,000,000.

The defendant, Ms. Trương Hồng Ngọc H, stated:

Ms. H acknowledged the deposit agreement to sell the aforementioned house to Mr. L as he had presented. After receiving the deposit, Ms. H endeavored to complete the procedures to obtain the house ownership certificate within the 30-day agreed period but could not due to objective obstacles. She admitted to breaching the commitment to Mr. L and agreed to return the deposit along with interest as per regulations, but refused to pay the deposit penalty.

The interested party, Mr. Lại Quang T, stated:

Mr. T has been cohabitating with Ms. H since 1997 without marriage registration. The aforementioned house is their joint property, and he acknowledged jointly receiving Mr. L's deposit with Ms. H. He agreed to return the deposit and interest to Mr. L as per the law but refused to pay the deposit penalty as demanded by Mr. L.

In the First-instance Civil Judgment No. 344/2009/DS-ST dated November 11<sup>th</sup>, 2009, the People's Court of Phú Nhuận District, Hồ Chí Minh City, decided:

- To accept Mr. Phan Thanh L's lawsuit, represented by Mr. Dương Nguyễn Y L.

- To order Ms. Trương Hồng Ngọc H to pay Mr. Phan Thanh L VND 4,000,000,000 immediately after the judgment becomes legally effective.

- Additionally, the first-instance court decided on court fees and the right to appeal.

On November 18<sup>th</sup>, 2009, Ms. Trương Hồng Ngọc H appealed, disagreeing with the first-instance judgment.

On November 19<sup>th</sup>, 2009, Mr. Lại Quang T appealed, disagreeing with the

first-instance judgment.

In the Appellate Civil Judgment No. 522/2010/DS-PT dated May 6<sup>th</sup>, 2010, the Hồ Chí Minh City People's Court decided:

- To uphold the First-instance Civil Judgment No. 344/DS-ST dated November 11<sup>th</sup>, 2009, of the People's Court of Phú Nhuận District, Hồ Chí Minh City.

- To accept Mr. Phan Thanh L's claim.

- To order Ms. Trương Hồng Ngọc H to pay Mr. Phan Thanh L VND 2,000,000,000 as the deposit and VND 2,000,000,000 as the deposit penalty, totaling VND 4,000,000,000 immediately after the judgment becomes legally effective.

- To maintain the Decision on the Application of Provisional Emergency Measures No. 495/2010/QĐ-BPKCTT dated May 4<sup>th</sup>, 2010, of the Hồ Chí Minh City People's Court, prohibiting the transfer of property rights concerning the house and land at 25/2 Street 43, Ward T, District H, Hồ Chí Minh City.

- Additionally, the appellate court decided on court fees.

On June 23<sup>rd</sup>, 2010, Ms. Trương Hồng Ngọc H filed a complaint, arguing that she should not be liable for the deposit penalty, as the failure to perform the agreement on time was due to objective reasons, specifically the delay by the enforcement agency in transferring the house ownership to her, preventing her from transferring it to Mr. L.

In Decision No. 688/2011/KN-DS dated November 18<sup>th</sup>, 2011, the Chief Justice of the Supreme People's Court appealed the aforementioned Appellate Judgment according to cassation procedures, requesting the Civil Court of the Supreme People's Court to review and vacate the above Appellate Civil Judgment and the First-instance Civil Judgment No. 344/2009/DS-ST dated November 11<sup>th</sup>, 2009, of the People's Court of Phú Nhuận District, Hồ Chí

Minh City, and to remand the case file to the People's Court of Phú Nhuận District, Hồ Chí Minh City for a first-instance retrial in accordance with the law.

At the cassation session, the representative of the Supreme People's Procuracy concurred with the appeal by the Chief Justice of the Supreme People's Court, recommending the Trial Panel to vacate the Appellate Civil Judgment No. 522/2010/DS-PT dated May 6<sup>th</sup>, 2010, of the Hồ Chí Minh City People's Court and the First-instance Civil Judgment No. 344/2009/DS-ST dated November 11<sup>th</sup>, 2009, of the People's Court of Phú Nhuận District, Hồ Chí Minh City, and to remand the case file to the People's Court of Phú Nhuận District, Hồ Chí Minh City for a first-instance retrial in accordance with the law.

#### **COURT'S OPINION:**

[1] On May 12<sup>th</sup>, 2009, Mr. Phan Thanh L entered into a deposit agreement with Ms. Trương Hồng Ngọc H, depositing VND 2,000,000,000 for the purchase of a house located at 1222C (new number 25/2), Street 43, Ward T, District H, Hồ Chí Minh City. This property was acquired by Ms. H through an auction conducted by the Hồ Chí Minh City Civil Judgment Enforcement Agency, as per Asset Transfer Decision No. 786/QĐ-THÁ dated March 2<sup>nd</sup>, 2009. Article 5 of the deposit contract stipulated that Ms. H was obligated to complete the procedures for obtaining the ownership certificate for the aforementioned house within 30 days of the contract signing and subsequently execute a notarized sale contract. Failure to meet this deadline would result in a penalty equivalent to the VND 2,000,000,000 deposit. Upon the expiration of this period, Ms. H failed to fulfill her contractual obligation, prompting Mr. L to initiate legal proceedings seeking the return of the VND 2,000,000,000 deposit and the imposition of a penalty in the same amount.

[2] Ms. Trương Hồng Ngọc H contested the penalty, agreeing only to return the deposit with interest at the prevailing bank rate. She attributed her

non-compliance to delays in the transfer of ownership by the Civil Judgment Enforcement Agency.

[3] In evaluating Mr. Phan Thanh L's claim for the deposit penalty, it is important to note that at the time of the deposit, Ms. H had received possession of the house but had not completed the transfer procedures due to the Hồ Chí Minh City Civil Judgment Enforcement Agency's control over all relevant documents. Therefore, it is essential to ascertain whether Ms. H's failure to finalize the ownership transfer within the stipulated 30-day period resulted from her own inaction in coordinating with the Civil Judgment Enforcement Agency or was due to objective delays on the part of the agency.

[4] Following the appellate trial, Ms. H submitted Dispatch No. 4362/THA dated June 5<sup>th</sup>, 2009, from the Hồ Chí Minh City Civil Judgment Enforcement Agency to the Supreme People's Court. This dispatch elucidated that the delay in transferring ownership to Ms. H, the auction winner, stemmed from a complaint lodged by Mr. Nguyễn Tấn L1, demanding that Ms. Trần Thị Kim P settle an outstanding debt of 38 SJC gold taels incurred during Mr. L1's purchase of the house. Consequently, the court must verify and obtain the original copy of Complaint No. 4362/THA dated June 5<sup>th</sup>, 2009, from the Hồ Chí Minh City Civil Judgment Enforcement Agency, along with documentation detailing the agency's process for transferring ownership to the auction winner. If it is determined that the Civil Judgment Enforcement Agency was responsible for the delay, then the fault causing Ms. H's non-compliance would be deemed objective, absolving her of liability for the deposit penalty. Conversely, if it is established that Ms. H was remiss in completing the transfer procedures, the fault would lie solely with her, making her liable for the penalty.

[5] Both the first-instance and appellate courts failed to adequately investigate and clarify these issues, resulting in an unsubstantiated decision to uphold Mr. Phan Thanh L's lawsuit and order Ms. Trương Hồng Ngọc H to pay

the VND 2,000,000,000 penalty.

In light of the foregoing, pursuant to Clause 2, Article 291, and Clause 3, Article 297 of the Civil Procedure Code;

**IT IS DECIDED:**

1. To vacate the Appellate Civil Judgment No. 522/2010/DS-PT dated May 6<sup>th</sup>, 2010, of the Hồ Chí Minh City People's Court, and to vacate the First-instance Civil Judgment No. 344/DS-ST dated November 11<sup>th</sup>, 2009, of the People's Court of Phú Nhuận District, Hồ Chí Minh City, regarding the case of "Dispute over Deposit Contract" between the plaintiff, Mr. Phan Thanh L, and the defendant, Ms. Trương Hồng Ngọc H, with Mr. Lại Quang T as a interested party.

2. To remand the case file to the People's Court of Phú Nhuận District, Hồ Chí Minh City for a first-instance retrial in accordance with the law.

**CONTENT OF THE CASE LAW:**

*“[1] ... Article 5 of the deposit contract stipulated that Ms. H was obligated to complete the procedures for obtaining the ownership certificate for the aforementioned house within 30 days of the contract signing and subsequently execute a notarized sale contract. Failure to meet this deadline would result in a penalty equivalent to the VND 2,000,000,000 deposit. Upon the expiration of this period, Ms. H failed to fulfill her contractual obligation, prompting Mr. L to initiate legal proceedings seeking the return of the VND 2,000,000,000 deposit and the imposition of a penalty in the same amount.*

*[3] ... at the time of the deposit, Ms. H had received possession of the house but had not completed the transfer procedures due to the Hồ Chí Minh City Civil Judgment Enforcement Agency's control over all relevant documents...*

*[4] ... If it is determined that the Civil Judgment Enforcement Agency was responsible for the delay, then the fault causing Ms. H's non-compliance would be deemed objective, absolving her of liability for the deposit penalty... ”*