

CASE LAW NO. 51/2021/AL

On the determination of ownership of the car parking area of an apartment building

Approved by the Judicial Council of the Supreme People's Court on November 25th, 2021, and published under Decision No. 594/QĐ-CA dated December 31st, 2021, by the Chief Justice of the Supreme People's Court.

Source of the Case Law:

The Appellate Judgment No. 82/2020/DS-PT dated March 6th + 23rd, 2020, of the People's Court of Hà Nội City regarding the case of "Request to declare Service Contract invalid, request to recognize ownership of the basement" between the plaintiff, Joint Stock City Construction and Development Company S, and the defendant, H Mixed-Use Building Management Board; with the interested parties including 03 people.

Location of the Case Law's Content:

Paragraph 22 of the "Court's Opinion" section.

Summary of the Case Law:

- Case Background:

The car parking area of the apartment building was constructed according to standards and was not included in the apartment sale price in the apartment purchase contract.

- Legal Resolution:

In this case, the Court must determine that the car parking area of the apartment building is the private property of the investor.

Relevant Legal Provisions:

- Article 70 of the Housing Law 2005 (corresponding to Article 100 of the Housing Law 2014);

- Point b, Clause 1 and Point c, Clause 2, Clause 3, Article 49 of Decree No. 71/2010/NĐ-CP dated June 23rd, 2010, of the Government detailing and guiding the implementation of the Housing Law;

- Circular No. 02/2016/TT-BXD dated February 15th, 2016, of the Ministry of Construction on the regulations on management and use of apartment buildings.

Keywords:

"Apartment building"; "Car parking basement"; "Private ownership of the investor".

CASE DETAILS

The Plaintiff, Joint Stock City Construction and Development Company S (hereinafter "Company S"), through its complaint and authorized representative's statements during the case proceedings, established the following:

Company S was granted a license by the competent authority to develop the H Mixed-Use Building project, located at km 10 A Street, Ward B, District C, Hà Nội (now No. 131 A Street, Ward B, District C, Hà Nội).

The project's legal documents, approved by the relevant state agency, detail a building with 34 floors above ground (excluding technical and roof floors) and two basement levels. The commercial and office areas, encompassing floors one through eight, are directly operated or leased by Company S.

Construction commenced in late 2008 and concluded by late 2010. The two basement floors and commercial service areas are asserted by Company S

to be its private property, classified as investment real estate subject to depreciation regulations. Significantly, the construction costs for these areas were calculated separately and not included in the sale price of the individual apartments. Apartment sales began in November 2008, and the building was officially operational by the end of 2010.

Following the building's completion, Company S initially engaged a professional management unit. This responsibility was subsequently transferred to the H Residence Project Management Board, a subsidiary of Company S. In August 2016, to comply with Circular No. 02/2016/TT-BXD issued by the Ministry of Construction regarding apartment building management and use, the H Residence Project Management Board was transformed into One-member Limited Liability Service Management and Business D.

On September 26th, 2016, Company S and the building owners convened the first apartment building conference. This gathering elected a Management Board and established operational regulations for the H Mixed-Use Building Management Board. The five-member board composition includes three representatives from the residential area, one representing the commercial and office area, and a final member representing the investor (Company S). The Management Board operates under a model similar to a Cooperative's Board of Directors and received recognition from the People's Committee of Ha Dong District via Decision No. 10974/QĐ-UBND dated November 15th, 2016.

Following the establishment of the Management Board, One-member Limited Liability Service Management and Business D continued managing and operating the building. However, Company S contends that the Management Board acted unlawfully on August 24th, 2017, when it entered into Building Management Service Contract No. 01/2017/HĐDV with a new service provider, Joint Stock Company G. The alleged violations are as follows:

- Company S argues that the Management Board did not comply with

Circular No. 02/2016/TT-BXD, a regulation governing apartment building management and use. Specifically, they allege the Board:

- + Did not hold a meeting or draft a resolution with at least 75% board member consensus on changing the management service provider (as mandated by Article 25 of the Circular).

- + Did not convene a building conference to obtain approval from over 50% of building owners for the change in service provider (as mandated by Article 14 of the Circular).

- Company S further asserts that the Building Management Service Contract signed between the Management Board (represented by Mr. Đỗ Thái S1) and Joint Stock Company G included provisions that infringed upon the investor's ownership rights. The specific allegation is that the Management Board "independently disposed of the property belonging to Company S without the Company's consent." As evidence, they cite Point n, Clause 1, Article 3 of the service contract, which references the parking service in the two basement floors (claimed by Company S to be their private property).

Company S bolsters its claim of ownership by referencing the apartment sale contracts and related documents. They assert that no clause exists within these documents that recognizes or indicates the basement parking areas or floors one through eight as common property.

Based on these arguments, Company S seeks the following remedies from the Court:

- A judicial declaration recognizing the parking areas in both basements (totaling 4,380m²) as the property of the investor (Company S).

- An order compelling the Management Board and Joint Stock Company G to return control of the aforementioned parking areas to Company S.

- A declaration rendering both Building Management Service Contract

No. 01/2017/HĐDV (between the Management Board and Joint Stock Company G) and Service Provision Contract No. 02/2019/HĐDV/BQT-YB (between the Management Board and Limited Liability Apartment Management and Operation Company Y) null and void.

- An order compelling the Management Board and Joint Stock Company G to restore the original condition of the rear door on the first floor of the Mediamart Thanh Xuân Supermarket.

While withdrawing its initial request for damages related to the parking area's impact on their business activities, Company S reserves the right to pursue such claims in a separate lawsuit.

Defendant: H Mixed-Use Building Management Board

- *Mr. Đỗ Thái S1 presented the following:*

The H Mixed-Use Building Management Board was legally established and recognized according to Decision No. 10974 dated November 15th, 2016, of the People's Committee of Hà Đông District. According to this decision, the members of the Management Board included: Mr. Đỗ Thái S1, Mr. Trần Văn T, Mr. Nguyễn Vũ G1, Mr. Trịnh Xuân T1, and Mr. Nguyễn Khánh T2.

Around March 2017, Ms. Bùi Thị N replaced Mr. Nguyễn Khánh T2. On August 27th, 2018, Mr. Nguyễn Văn L replaced Ms. Bùi Thị N, and the current Management Board includes Mr. Đỗ Thái S1, Mr. Trần Văn T, Mr. Nguyễn Vũ G1, Mr. Trịnh Xuân T1, and Mr. Nguyễn Văn L.

Initially, when the apartment building first came into operation without a Management Board, a professional company was hired by Company S to manage and operate the building. However, such arrangement was not in accordance of the law. On November 15, 2016th, after the Management Board was established, they hired Company G to operate and manage the building. During the contract performance, Company G did not adhere to the contract,

leading the Management Board to terminate the contract with Company G on March 23rd, 2019. Subsequently, the Management Board signed a new Building Management Service Contract with Limited Liability Apartment Management and Operation Company Y .

Regarding the contract invalidity claim, the board contests the Company's request to declare the Building Management Service Contract with Company G null and void. They argue that the Company lacks standing to make such a request. The Board cites Circular No. 02 of the Ministry of Construction, mandating the establishment of a Management Board within one year of the building's completion. According to the Board, the Company failed to comply with this regulation, delaying the Board's establishment until September 26, 2016, six years after the building became operational. They further assert that Company G fulfilled its contractual obligations, and the Board has already terminated the contract. Finally, the Board contends that the Company no longer owns any property within the building, thus lacking the legal basis to challenge the Building Management Service Contract.

Regarding the basement ownership claim, the board disputes the Company's ownership of the basement parking area. They argue that the contract for the building lacks any provision designating the basement as under the Company's management or use. Furthermore, they claim the Company's financial reports from 2010 to 2016 did not include the parking area. Only in subsequent reports, after the Board's establishment, was the area included. The Board posits that the Company must provide construction documents approved by the Department of Construction, as-built audit documents approved by relevant authorities, and a financing plan approved by the Department of Finance to establish ownership. They argue that if these documents demonstrate the Company's financing of the basement construction, the area would be considered "common property" under the Housing Law 2015, subject to compensation but not return to the Company.

Regarding the supermarket door and damages claim, the Board denies any involvement or responsibility for the alleged alteration of the rear storage door on the first-floor supermarket. They reject any claims for compensation or restoration related to this issue, as well as any claims for damages arising from the alleged illegal occupation of the Company's property.

Mr. Trịnh Xuân T1 and Mr. Trần Văn T, members of the Management Board, presented the followings:

Mr. T1 and Mr. T share the same viewpoint as Company S. They request the Court to declare the Building Management Service Contract No. 01/2017/HĐDV signed on August 24th, 2017, between the Building Management Board and Joint Stock Company G, and the Service Provision Contract No. 02/2019/HĐDV/BQT-YB signed on February 1st, 2019, between Limited Liability Apartment Management and Operation Company Y and the Building Management Board null and void; recognize the parking area in Basement 1 with an area of 2,330m² and in basement 2 with an area of 2,050m² as the property of the investor; compel the Building Management Board and Joint Stock Company G to return this area to Company S; and compel the Building Management Board and Joint Stock Company G to restore the original condition of the rear door of the 1st-floor supermarket and compensate for damages caused by illegal actions affecting the business activities of the Company.

The interested parties:

1. Joint Stock Company G (referred to as Company G) presented the following:

Joint Stock Company G, a company registered for the express purpose of managing and operating apartment buildings, entered into a Service Contract (the "Contract") with the H Mixed-Use Building Management Board (the "Board") on August 24, 2017. Mr. Đỗ Thái S1, acting as a representative of the

Board, signed the Contract on behalf of the Board. The Contract provided for Company G to manage the apartment building located at 131 A Street, Ward B, District C. The term of the Contract commenced on September 1st, 2017, and was slated to conclude on December 30th, 2019.

Under the Contract, Company G was obligated to provide a range of services, including security, cleaning, technical services, and others as outlined in the agreement. The Contract established a fee structure based on unit prices set by the Board. The number of vehicles and the corresponding square footage for service charges were determined and provided by the Board. Company G collected fees based on this data and charged service fees accordingly.

Following the execution of the Contract, Company G incurred initial investment costs. These expenses included electricity payments to Ha Dong Electricity, technical equipment necessary for operations, and the implementation of a smart parking system. As of the present date, Company G has not fully recovered these initial investments and continues to financially support the project, incurring additional costs of approximately VND 100,000,000.

However, on January 15th, 2019, Company G was unexpectedly informed that the Board had entered into a new building management service contract with another company. The Board terminated the Contract with Company G unilaterally, without any prior discussion or issuance of a formal termination document. In fact, Company G ceased all management and operation activities related to the building on January 20th, 2019.

Regarding the plaintiff's claims, Company G acknowledges its past role in managing and operating the building. However, as they are no longer involved in these activities, they refrain from commenting on the Plaintiff's claims. Company G reserves the right to address any outstanding issues arising from the Contract termination through a separate lawsuit.

2. *Limited Liability Apartment Management and Operation Company Y* (referred to as *Company Y*) presented the followings:

Currently, Company Y has signed and is executing a Service Provision Contract for H Mixed-Use Building from March 1st, 2019. The company signed the contract with the Management Board, not with Company D. The company has signed and executed the contract in accordance with legal regulations. When Company Y started managing the building, it did not need to invest in technical equipment such as card readers. Regarding the plaintiff's claim, Company Y requests the court to adjudicate according to the law.

3. Joint Stock Company M Việt Nam (referred to as Company M) Presents:

In September 2010, Company M signed a lease agreement with Company S at H Building, located at 131 A Street, Ward B, District C. Initially, the two parties signed a lease agreement for the basement and floors 1 to 5 of the building. Around 2014, Company M leased only floors 1, 2, and 3 for business and office use. During the contract execution, there were no issues until 2017, when the Management Board was established and began causing difficulties and losses for Company M's business operations. Now, Company S is filing a lawsuit, and Company M agrees with Company S's claims, requesting the Management Board to stop obstructing its business activities and to remove the barrier wall at the rear of the 1st floor.

In the First-instance Civil Judgment No. 40/2019/DSST dated October 31st, 2019, the People's Court of Hà Đông District, Hà Nội decided:

1. To partially accepting the claims of Joint Stock City Construction and Development Company S:

- Recognizing and acknowledging the parking area in Basement 1 as 942.5m² and the parking area in basement 2 as 1,882.5m² as the property of Joint Stock City Construction and Development Company S.

- Declaring the Building Management Service Contract No. 01 signed on August 24th, 2017, between Mr. Đỗ Thái S1 - Head of the Management Board and Joint Stock Company G and the Service Provision Contract No. 02/2019/HDDV/BQT-YB dated February 1st, 2019, between Limited Liability Apartment Management and Operation Company Y and the Head of the Management Board of H Mixed-Use Building null and void.

- Joint Stock City Construction and Development Company S has the right to dismantle and restore the original condition of the rear door of the 1st floor of H Mixed-Use Building as per the approved design documents by the competent state authority.

2. To suspend the claim for damages against Company G and Mr. Đỗ Thái S1 by Joint Stock City Construction and Development Company S.

Additionally, the judgment also includes provisions on court fees, appeal rights, and enforcement obligations of the parties involved.

On December 2nd, 2019, Mr. Đỗ Thái S1, in his capacity as the representative for the defendant—the Management Board of H Mixed-Use Building—filed an appeal, arguing that the first-instance court's trial was biased, did not comply with legal regulations, cited laws not issued by competent State authorities, and severely infringed upon the legitimate rights and interests of the building's residents. He requested:

- The entire first-instance judgment be vacated;
- The entire parking area of the two basements be recognized as common property of H Mixed-Use Building;
- Clarification of ownership rights over the three commercial floors of H Mixed-Use Building, including the rear wall of the 1st floor currently leased by the investor to another company;
- The plaintiff be required to finalize and hand over the maintenance fund,

transfer the building's documentation, complete and hand over the fire protection system, hand over and inventory the building's equipment, and relinquish control of common and private areas to the Management Board representing the residents as per legal regulations.

At the appellate trial, the plaintiff maintained the original claim and agreed with the first-instance judgment. The defendant maintained their appeal, disagreed with the first-instance judgment, and requested the dismissal of the plaintiff's claims.

The lawyer, after presenting arguments in defense of the plaintiff's legitimate rights and interests, requested the appellate Trial Panel to dismiss the defendant's appeal entirely, uphold the first-instance judgment, and accept the plaintiff's claim regarding the legitimate ownership of the parking areas in the two basements, and to annul the two Building Management Service Contracts signed between the Management Board and Joint Stock Company G and Limited Liability Apartment Management and Operation Company Y at the building located at 131 A Street, Ward B, District C, Hà Nội.

The representative of the People's Procuracy of Hà Nội City presented the following:

Regarding procedural matters: Those conducting and participating in the proceedings complied with the Civil Procedure Code regulations.

Regarding the merits: After analyzing the case's details and considering the defendant's appeal, the representative stated:

The basis for determining ownership of part of the basement areas at 131 A Street, Ward B, District C, Hà Nội:

- At the time of apartment sales from late 2008 to 2010, there were no specific regulations on common and private ownership, so the apartment sale contracts with residents did not clearly specify common and private areas.

Based on the Dispatch No. 279/BXD dated October 18th, 2017, from the Ministry of Construction giving guidance to Company S; Resolution No. 12 dated April 25th, 2008, from the Board of Directors of Company S approving the investment project for H Mixed-Use Building; Dispatches No. 20005/18/CV-AC dated November 6th, 2017, and No. 20014/18/CV-AC dated January 18th, 2018, from Limited Liability Auditing and Consultant Company E confirming: *"Revenue and expenses from the business of the two basements have been accounted for and declared for VAT and corporate income tax annually. The cost of constructing H Mixed-Use Building allocated to the two basements is VND 30,229,191,000, recognized as an increase in the company's fixed assets, not allocated to the apartment sales price"*. There is sufficient basis to determine the parking areas in basements 1 and 2 at H Mixed-Use Building are under the management of Company S.

However, according to points c, clause 2, clause 3, Article 49 of Decree 71/2010/NĐ-CP regarding the common ownership of apartment buildings, the parking areas (for bicycles, disabled persons' vehicles, and two-wheeled motor vehicles) are defined as common property of the apartment building. For the car parking area, since it is not included in the apartment sale price, it is the private property of the investor.

- Regarding the Building Management Service Contract No. 01/2017/HĐDV signed on August 24th, 2017, between the Management Board and Joint Stock Company G, and the Service Provision Contract No. 02/2019/HĐDV/BQT-YB signed on February 1st, 2019, between Limited Liability Apartment Management and Operation Company Y and the Management Board of H Mixed-Use Building:

According to Articles 14 and 25, as well as clause 2, point a of Circular 02/2016/TT-BXD dated February 15th, 2016, issued by the Ministry of Construction, and pursuant to the regulations of the Management Board, the Management Board is authorized to enter into Building Management Service

Contracts with companies specialized in apartment building management. However, such actions must strictly adhere to legal procedures. In this case, the Management Board signed contracts with two companies without complying with these procedures. They unilaterally changed management companies without convening a meeting of apartment owners, which requires at least 50% of representatives who received the handover to attend and consent. Additionally, they failed to organize a Management Board meeting where at least 75% of the members approved the change.

These actions constitute a violation of the investor's rights, particularly regarding the management of both basements. Therefore, the decision of the first-instance court to declare the two Building Management Service Contracts void is justified.

- Regarding the determination of ownership concerning the three commercial floors of H Mixed-Use Building, including the rear wall of the 1st floor, several documents are pivotal. These include Decision No. 461 dated March 4th, 2008, issued by the People's Committee of Hà Tây Province approving the investment project for H Mixed-Use Building; Dispatch No. 6606 dated December 6th, 2010, from the People's Committee of Hà Nội concerning the conversion of floors 6, 7, and 8 from residential to office use; and Dispatch No. 7494 dated November 5th, 2014, by the People's Committee of Hà Nội, which pertains to the conversion of floors 4 and 5 from commercial to office use.

H Mixed-Use Building, comprising 34 above-ground floors and 2 basements, allocates floors 1 to 8 for service, commercial, and office purposes. The company has appropriately sold and leased areas within the building according to their designated functions. Consequently, a foundation exists to assert that the three commercial floors of H Mixed-Use Building are owned by the investor.

In line with these findings, the first-instance court correctly awarded Joint

Stock City Construction and Development Company S the right to dismantle and restore the rear entrance on the 1st floor of H Mixed-Use Building to its original state, as per the approved design documents issued by competent state authorities.

- Regarding the defendant's request for the plaintiff to finalize and hand over various items, including the maintenance fund, building documents, fire protection system, and building equipment inventory, as well as to relinquish control of common and private areas to the Management Board representing the residents, it is pertinent to note that no counterclaim was filed by the defendant during the first-instance trial. Consequently, the appellate Trial Panel lacks a basis to consider these requests.

Upon review, the defendant's appeal is deemed meritless. However, the first-instance judgment did not definitively resolve the issue of car and motorcycle parking areas, which presents challenges for enforcement. Therefore, pursuant to clause 2 of Article 308 of the Civil Procedure Code, the appellate Trial Panel is urged to amend the first-instance judgment, specifically clarifying the positions of car and motorcycle parking areas to facilitate enforcement.

COURT'S OPINION:

[1] After reviewing the case files and evidence presented at the trial and based on the results of examination at the trial, the Trial Panel determined:

[2] Regarding procedural matters:

[3] The defendant filed an appeal within the statutory time limit and paid the appellate court fee advance, making the appeal valid.

[4] Regarding the absence of interested parties who did not file appeals, despite being duly summoned by the court, their absence at the trial without justifiable reasons requires the court to proceed with the trial according to

Article 296 of the Civil Procedure Code.

[5] Regarding the merits: examination of the defendant's appeal.

[6] The basis for determining ownership of the parking areas in the two basements:

[7] Joint Stock City Construction and Development Company S holds the official investment license for the H Mixed-Use Building project located at 131 A Street, Ward B, District C, Hà Nội. This project encompasses 34 above-ground floors (excluding technical and roof floors) and 2 basements, with floors 1 to 8 allocated for services, commercial, and office purposes. The company has adhered to these designations in selling and leasing areas within the building.

On September 26th, 2016, during the inaugural apartment building meeting, regulations were established, leading to the formation of the Management Board of H Mixed-Use Building. This Board includes 3 representatives for the residents, 1 representative for the investor, and 1 representative for the commercial and office sectors. Operating under the model of a Cooperative's Board of Directors, the Management Board received recognition from the People's Committee of Đ District via Decision No. 10974/QĐ-UBND dated November 15th, 2016 (subsequently amended twice).

According to the Management Board's regulations, the building must be managed by a management company. Initially, One-member Limited Liability Service Management and Business D undertook this role and continued managing the building. However, on August 24th, 2017, the Management Board entered into Building Management Service Contract No. 01/2017/HĐDV with a new management company, Joint Stock Company G. Subsequently, in February 2019, the Management Board signed another Building Management Service Contract with Company Y.

[8] Company S, the plaintiff, asserted that the Management Board

infringed upon its ownership rights by appropriating parking areas in the two basements and erecting a barrier at the rear entrance of the supermarket on the 1st floor. The Management Board's execution of Building Management Service Contracts allegedly violated Articles 14 and 25 of Circular No. 02/2016/TT-BXD in several respects: there was purportedly no consensus from at least 75% (4/5) of the Management Board members regarding the proposal to change the management company; the approval of over 50% of the representatives of the building's owners was allegedly not obtained; and the terms of the Building Management Service Contracts were claimed to encroach upon the investor's ownership rights, particularly concerning unilateral decisions regarding the parking areas in the two basements.

[9] It is evident that when the Company was approved for the H Mixed-Use Building project investment and during the project implementation and signing of apartment sale contracts with customers from late 2008 to 2010, based on the Housing Law 2005 and the Decree 71/2010/NĐ-CP dated June 23rd, 2010, detailing and guiding the implementation of the Housing Law, point b, clause 1, Article 49 states: *"The areas privately owned by the investor (the investor retains, does not sell, and does not allocate the value of these privately owned areas into the apartment sale price for apartment owners)"*.

[10] Point c, Clause 2, Clause 3, Article 49 of the Decree No. 71/2010/NĐ-CP stipulates the common ownership in apartment buildings as follows:

[11] *"Parking areas (for bicycles, disabled persons' vehicles, and two-wheeled motor vehicles) are constructed according to building standards and may be located in the basement, on the first floor, or in other areas inside or outside the apartment building.*

[12] *For car parking areas, they must be constructed according to building standards, but the investor decides whether they belong to the common ownership of the apartment building owners or the private ownership*

of the apartment building owner...

[13] *The private ownership and common ownership areas in the apartment building specified in this article must be clearly stated in the apartment building sale contract.*”

[14] Point c, Clause 8, Article 4 of the Decision No. 01/2013/QĐ-UBND dated January 4th, 2013, regulates the management and use of apartment buildings in Hà Nội. In the glossary section (implementing Article 70 of the Housing Law, Article 49 of Decree No. 71/2010/NĐ-CP, Article 4 of Decision No. 08/2008/QĐ-BXD), the Hà Nội People's Committee explains that for car parking areas in the basement, the investor decides whether they belong to the common ownership of the apartment building owners or the private ownership of the apartment building owner. If the car parking areas in the basement are included in the apartment sale price, they are considered common ownership; if not included, they are considered the private ownership of the investor.

[15] According to the Dispatch No. 279 dated October 18th, 2017, from the Ministry of Construction to Joint Stock City Construction and Development Company S (Exhibit 370), it states: “...*According to the attached documents, the apartment building sale contracts between the Company and customers do not include agreements on common and private ownership. Therefore, the investor must provide documents proving that the construction investment costs for the basement and commercial service areas were not included in the apartment sale price. If the documents prove that the investor did not allocate these construction investment costs into the apartment sale price, these areas belong to the private ownership of the investor. The investor must ensure these areas are used correctly according to the project's approved design and the sale contract with customers.*

[16] *The determination of whether the investor allocated construction investment costs for the basement and commercial service areas into the apartment sale price is based on the approved project documents and audited*

financial statements.”

[17] According to the Dispatch No. 2.0018/19/CV/KTTV dated October 23rd, 2019, from the Branch of the Limited Liability Auditing and Consultant Company E in Hà Nội to the People's Court of Hà Đông District, it states:

[18] *“1. The construction cost of H Mixed-Use Building allocated for the two basements is 30,229,191,000 VND, recognized as an increase in the fixed assets of Joint Stock City Construction and Development Company S, not allocated to the apartment sale price.*

[19] *2. The audited annual financial statements of the Company show the types of taxes the Company must pay to the state, including VAT, corporate income tax, personal income tax, business license tax, and land tax. Specifically:*

[20] *- VAT and corporate income tax related to the car parking service business in the two basements are declared and paid by Joint Stock City Construction and Development Company S and shown in the annual financial statements from 2017 and earlier. The 2018 financial statements and the first six months of 2019 no longer reflect this business activity.*

[21] *- The land tax for the construction area of H Mixed-Use Building, paid by Joint Stock City Construction and Development Company S according to the notification from the Hà Đông District Tax Department, is 23,850,000 VND per year.”*

[22] Based on the pertinent regulations and feedback from the Ministry of Construction and Limited Liability Auditing and Consultant Company E, it is affirmed that common ownership areas for apartment building owners encompass parking spaces designated for bicycles, disabled persons' vehicles, and two-wheeled motor vehicles. However, concerning car parking areas in the basement, ownership determination rests with the investor, who decides whether these areas fall under common or private ownership. As stipulated in

the apartment building sale contracts, car parking areas in the basement were excluded from the apartment sale price, thereby constituting private ownership of the investor.

Consequently, the first-instance court's decision to partially uphold Company S's claim and acknowledge the investor's private ownership of the car parking areas in Basement 1 and Basement 2 of H Mixed-Use Building at 131 A Street, Ward B, District C, Hà Nội, is substantiated.

[23] According to the design and construction drawings approved by the Company under the Decision No. 32 QĐ/CT-KT dated March 27th, 2009, and the completion drawings dated December 31st, 2010, the Basement 1 parking area is 2,330m², with 26 car spaces and 555 motorcycle spaces. However, during the design and construction phase, the generator was moved from Basement 2 to Basement 1 due to unsuitable conditions in Basement 2. The detailed drawings show the generator located in the area for 16 motorcycle spaces, in the outermost area from column A to column B extending from column 1, covering about 42m² (adjacent to the ventilation area). The 16 motorcycle spaces were relocated to the area of two car spaces (spaces 12 and 13) within columns C to D and columns 5 to 6. Therefore, the actual car that can be parked in Basement 1 is only 24 cars.

[24] The parking area in Basement 2 is 2,050m², with 68 car spaces and 67 motorcycle spaces.

[25] To determine the exact locations of the car and motorcycle parking spaces, after the arguments at the appellate trial on March 6th, 2020, the People's Court of Hà Nội City temporarily suspended the trial to inspect and appraise the parking areas as a basis for resolving the case. However, on March 19th, 2020, when the People's Court of Hà Nội City went to the building's basement to inspect and appraise according to the Decision to suspend the trial issued on March 6th, 2020, the defendant summoned numerous non-litigants to the appraisal session, obstructing and preventing the court from conducting the

inspection and appraisal, for which the defendant must bear responsibility.

[26] Therefore, to determine the locations of the car and motorcycle parking spaces, after hearing the litigants' statements at the trial and considering the plaintiff's explanatory documents and detailed drawings, the Trial Panel found them consistent with the construction design drawings and as-built drawings provided by the plaintiff during the first-instance trial. This formed the basis for determining the locations and areas of the car and motorcycle parking spaces in the two basements to resolve the case.

[27] According to Decision No. 26/2004 dated November 2nd, 2004, by the Minister of Construction, promulgating the TCXDVN (Vietnamese Building Standards) 323:2004 "*High-Rise Residential Buildings - Design Standards*":

[28] - *The standard area for a car parking space is 25m² per car;*

[29] - *The standard area for a motorcycle parking space is 2.5m² to 3.0m² per motorcycle, calculated at 2 motorcycles per household, and 0.9m² per bicycle, calculated at 1 bicycle per household.*

[30] H Mixed-Use Building has 228 apartments. Therefore, with 2 motorcycles per household, this totals 456 motorcycles needing 2.5m² per motorcycle, equating to 1,140m², and 228 bicycles needing 0.9m² per bicycle, equating to 205.2m². The total area allocated for motorcycle and bicycle parking is 1,345.2m². According to the design drawings and as-built records, Basement 1 accommodates 555 motorcycles, and Basement 2 accommodates 67 motorcycles, totaling 622 motorcycles needing 2.5m² per motorcycle, equating to 1,555m² (more than the area allocated for 228 apartments).

[31] However, the first-instance court only subtracted the total parking area in the two basements by the motorcycle parking area, with the remaining area determined as car parking spaces for the investor, which is inaccurate and inconsistent with the design drawings and as-built records, making it difficult

to enforce the judgment. Therefore, the appellate court amended this part to reflect the actual areas and locations of car and motorcycle parking spaces for the parties involved.

[32] Regarding the request to declare void the two Apartment Building Management Service Contracts, namely Contract No. 01/2017/HDDV signed on August 24th, 2017, between the building's Management Board and Joint Stock Company G, and Contract No. 02/2019/HDDV/BQT-YB signed on February 1st, 2019, between Limited Liability Apartment Management and Operation Company Y and the building's Management Board:

[33] The Management Board of H Mixed-Use Building, duly elected by the apartment building owners' conference and formally recognized by the People's Committee of Hà Đông District through Decision No. 10974 dated November 15th, 2016 (subsequently amended on April 3rd, 2018, and August 27th, 2018), holds the authority under the law to enter into apartment building management service contracts with specialized companies, provided all legal procedures are properly followed. However, in the case of the contracts signed with the aforementioned management companies, the Management Board failed to adhere to the procedures outlined in Circular No. 02/2016/TT-BXD dated February 15th, 2016, issued by the Ministry of Construction, as well as its own operational regulations.

Specifically, they unilaterally changed management companies without convening an apartment building owners' conference, obtaining the requisite attendance and agreement of at least 50% of representatives of apartment owners who had undergone handover, failing to organize a Management Board meeting, and not securing the necessary 75% agreement from Board members. The defendant claimed to have terminated the contract with Company G; however, Company G confirmed they ceased managing the building since February 2019 without a formal termination of contract. Subsequently, the Management Board entered into a new contract with Limited Liability

Apartment Management and Operation Company Y, while the contract with Joint Stock Company G remains legally effective. This situation violates the investor's rights, particularly in managing both basements.

Therefore, the first-instance court's decision to declare the two management service contracts void, in response to the plaintiff's request, is substantiated.

[34] The first-instance court appropriately refrained from addressing the implications of the void contracts in this case, as the parties did not request it. Should no agreement be reached, the parties retain the option to pursue separate civil litigation as necessary.

[35] Regarding the determination of ownership concerning the three commercial floors of H Mixed-Use Building, along with the rear wall constructed on the first floor, several official documents provide the foundation for this determination. These include Decision No. 461/QĐ-UBND dated March 4th, 2008, issued by the People's Committee of T Province approving the investment project for the construction of H Mixed-Use Building; Dispatch No. 9906/UBND-XD dated December 6th, 2010, issued by the People's Committee of Hà Nội City, which pertains to the conversion of floors 6, 7, and 8 from residential to office use; and Dispatch No. 7495/VP-QHKT dated November 5th, 2014, issued by the People's Committee of Hà Nội City, concerning the conversion of floors 4 and 5 from commercial to office use.

These documents collectively establish that the three commercial floors within H Mixed-Use Building are owned by the investor, who has accordingly sold and leased these floors in accordance with their designated functions. Moreover, in addition to determining ownership, the first-instance court rightfully adjudged that Joint Stock City Construction and Development Company S possesses the right to dismantle and restore the rear door of the first floor of H Mixed-Use Building to its original state as per the approved design by the competent state authority. This decision is legally justified.

[36] Regarding the defendant's request for the investor to settle and hand over the maintenance fund, hand over the building records, complete and hand over the fire prevention and firefighting system, hand over and make inventory of the building's equipment, and relinquish the control of common and private areas to the Management Board representing the residents. The first-instance court did not consider or resolve these requests because the defendant did not file a counterclaim, and the interested parties did not file an independent claim. Therefore, the first-instance court's decision complies with the law, and the appellate court has no grounds to accept the defendant's appeal on this matter.

[37] Regarding the plaintiff's withdrawal of part of the lawsuit, requesting Mr. Đỗ Thái S1 and Company G to compensate for damages due to unauthorized actions affecting the business activities of Company S, this withdrawal was entirely voluntary. The first-instance court's decision to dismiss this part of the lawsuit was in accordance with the law.

[38] However, in citing legal provisions, the first-instance court made several incomplete and inaccurate citations. The defendant's appeal on this matter is justified, and the appellate court needs to amend it to comply with legal regulations. Other grounds for the defendant's appeal lack merit, and the appellate Trial Panel finds no basis to accept them.

[39] The statements by the lawyer protecting the plaintiff's lawful rights and interests and the recommendations of the representative of the Hà Nội People's Procuracy are well-founded and should be accepted.

[40] Regarding court fees: The Management Board of H Mixed-Use Building must bear the court fees according to the law. Joint Stock City Construction and Development Company S, having been partially successful in its claims, must bear the first-instance civil court fees for the part of the claim that was not accepted.

In light of the foregoing,

IT IS DECIDED:

Pursuant to Clause 2, Article 308 of the Civil Procedure Code.

Pursuant to Articles 163, 164, and 169 of the Civil Code 2015;

Pursuant to the Housing Law 2005;

Pursuant to Decree No. 71/2010/NĐ-CP dated June 23rd, 2010, by the Government;

Pursuant to Resolution No. 326/2016/UBTVQH14 dated December 30th, 2016, by the Standing Committee of the National Assembly on the court fees and charges.

The appellate court amends the First-instance Civil Judgment No. 40/2019/DSST dated October 31st, 2019, of the People's Court of Hà Đông District, Hà Nội City, as follows:

1. The court partially accepts the claims of Joint Stock City Construction and Development Company S against the Management Board of H Mixed-Use Building regarding the recognition of car parking areas in Basement 1 and Basement 2 of H Mixed-Use Building located at 131 A Street, B Ward, C District, Hà Nội City, as the property of Joint Stock City Construction and Development Company S.

- The court determines and recognizes the car parking area in Basement 1 as 600m²; and the car parking area in Basement 2 as 1,700m², belonging to Joint Stock City Construction and Development Company S.

- Based on the detailed drawings (attached to the judgment), the specific locations of car and motorcycle parking spaces are as follows:

** The parking area in Basement 1 is 2,330m²:*

- Of which, 600m² (including space for vehicles to move areas) is divided

into 24 car spaces. The car parking locations are determined from the length of Axis E to Axis F, from Axis E to Axis C, from Axis 1 to Axis 6 extended (numbered 1 to 11 and 14 to 26 on the detailed drawing, excluding the elevator core area).

- The motorcycle parking area is $1,387.5\text{m}^2$ (including space for vehicles to move areas) divided into 555 motorcycle spaces. The motorcycle parking locations are determined from half the length of Axis F to Axis E, from Axis F to Axis G extended, from Axis D to Axis A extended, and from Axis 1 to Axis 6 extended (excluding functional area spaces).

- The generator area is 42m^2 , from Axis A to Axis B, on the outermost side from Axis 1 extended.

The remaining area of Basement 1 is determined as $2,330\text{m}^2 - 600\text{m}^2 - 1,387.5\text{m}^2 - 42\text{m}^2 = 300.5\text{m}^2$, which is the investor's air circulation area to ensure ventilation in Basement 1.

** The parking area in Basement 2 is $2,050\text{m}^2$:*

- Of which, $1,700\text{m}^2$ is designated for car parking (including space for vehicles to move areas), divided into 68 car parking spaces. The car parking locations are determined from three-quarters of the length of Axis F to Axis G, from Axis F to Axis A extended, and within the range from Axis 1 to Axis 6 extended (excluding the elevator core area and functional area spaces).

- The motorcycle parking area is 167.5m^2 (including space for vehicles to move areas), divided into 67 motorcycle spaces. The motorcycle parking locations are determined from one-quarter of the length of Axis G extended to Axis F plus Axis G extended, within the range from Axis 2 to Axis 5, and within one-quarter of the length of Axis 1 to Axis 2 and from Axis G to Axis D (excluding functional area spaces).

- The remaining area of Basement 2 is determined as: $2,050\text{m}^2 - 1,700\text{m}^2 -$

167.5m² = 182.5m², which is the investor's air circulation area to ensure ventilation in Basement 2.

2. The Building Management Service Contract No. 01/2017/HĐDV signed on August 24th, 2017, between Mr. Đỗ Thái S1, Head of the Management Board of the building, and Joint Stock Company G, and the Service Provision Contract No. 02/2019/HĐDV/BQT-YB dated February 1st, 2019, between Limited Liability Apartment Management and Operation Company Y and the Head of the Management Board of H Mixed-Use Building, are declared null and void.

Should the parties fail to agree on resolving the consequences of these void contracts, they retain the right to initiate separate civil litigation as per legal provisions.

3. Joint Stock City Construction and Development Company S is granted the right to dismantle and restore the rear door of the first floor of H Mixed-Use Building to its original state, in accordance with the design approved by competent state authorities.

4. The court dismisses part of Joint Stock City Construction and Development Company S's claim pertaining to the request for compensation from Company G and Mr. Đỗ Thái S1 for damages.

5. Regarding court fees:

- The Management Board of H Mixed-Use Building must bear the first-instance civil court fee of VND 300,000 and is exempt from the appellate civil court fee. The VND 300,000 advance payment for the appellate civil court fee paid as per Receipt No. 0008476 dated December 5th, 2019, at the Civil Judgment Enforcement Agency of Hà Đông District, Hà Nội City, will be deducted from the first-instance civil court fee to be borne. It is confirmed that the defendant has fully paid the court fee.

- Joint Stock City Construction and Development Company S must bear the first-instance civil court fee of VND 300,000 for the part of the claim that was not accepted. The VND 300,000 advance payment for the first-instance civil court fee paid as per Receipt No. 0001681 dated July 30th, 2018, at the Civil Judgment Enforcement Agency of Hà Đông District, Hà Nội City, will be deducted from the first-instance civil court fee to be borne. It is confirmed that the plaintiff has fully paid the court fee.

6. The parties are entitled, under Article 2 of the Law on Civil Judgment Enforcement, to agree on enforcement procedures, request enforcement, voluntarily enforce the judgment, or be compelled to enforce the judgment as per Articles 6, 7, 7a, and 9 of the same law. The statute of limitations for judgment enforcement is governed by Article 30 of the Law on Civil Judgment Enforcement.

The appellate judgment is publicly announced and takes effect from the date of pronouncement.

CONTENT OF THE CASE LAW:

“[22] Based on the pertinent regulations and feedback from the Ministry of Construction and Limited Liability Auditing and Consultant Company E, it is affirmed that common ownership areas for apartment building owners encompass parking spaces designated for bicycles, disabled persons' vehicles, and two-wheeled motor vehicles. However, concerning car parking areas in the basement, ownership determination rests with the investor, who decides whether these areas fall under common or private ownership. As stipulated in the apartment building sale contracts, car parking areas in the basement were excluded from the apartment sale price, thereby constituting private ownership of the investor.

Consequently, the first-instance court's decision to partially uphold Company S's claim and acknowledge the investor's private ownership of the

car parking areas in Basement 1 and Basement 2 of H Mixed-Use Building at 131 A Street, Ward B, District C, Hà Nội, is substantiated.”