**CASE LAW NO. 07/2016/AL**

*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 1July 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 38m2 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 38m2, 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 7m2 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 7m2 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 7m2 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 69m2; on 21April 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 38m2 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 7.8m2 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 07m2 of the house to Mr. Chien, but Mr. Chien requested that he include the room of 38m2 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 07m2, 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 38m2 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 38m2 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 7m2 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.

1. 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.
2. 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.
3. To not accept Mr. Song’s requests for compensation caused by Mr. Thanh.
4. To reject the other requests of the involved parties.
5. 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 firstinstance court ruling.

On 12 October 2009, Mr. Do Trong Thanh submitted an appeal to disagree with the firstinstance 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 firstinstance 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 39.36m2 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 38.07m2 and auxiliary room 7.095m2, the total of 45.165m2, 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”.*