**CASELAW NO. 21/2018/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. 08/2016/KDTM-GDT dated 20 May 2016 of the Judicial Council of the Supreme People’s Court with regard to the commercial case concerning *“Dispute on the asset lease contract”* in Quang Ninh Province between Company D Ltd as the plaintiff and Joint Stock Company C.

**Location of contents of the case law:**

Paragraph 1 of the section *“Findings of the Court”*

**Overview of the case law:**

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

An asset lease contract has a term of lease and no agreement on termination conditions. The lessee terminates the contract prior to its expiry without the lessor’s consent.

The period from the date the lessee gives its written notice until the termination of contract is too short, which results in the lessor not being able to have another contract to immediately replace for the remaining period of the lease contract.

The lessor requests the lessee to pay the rental for the asset for the remaining period of the contract.

* ***Legal resolution of the case law:***

In this case, the fault must be determined to be attributable to the lessee and the lessee must be liable for the damage caused to the lessor. The actual damages to be considered are the amount of the vehicle rental for the remaining period of the contract.

**Applicable provisions of laws relating to the case law:**

* Article 426 of the Civil Code 2005 (corresponding to Article 428 of the Civil Code 2015);

* Articles 269, 302, 303 of the Commercial Law 2005.

**Key words of the case law:**

*“Lease contract”, “Conditions for termination of a contract”, “Terminate a contract prior to its expiry”, “Compensation for damages”, “Actual damages”, “Fault”.*

### CONTENTS OF THE CASE

In the Statement of Claims dated 18 March 2007 and further testimonies, the representative of Company D Ltd presented as follows:

On 10 April 2006, Company D Ltd (hereinafter referred to as Company D) signed Economic Contract No. 1141/HD-CNQN (on leasing tugboats) with Joint Stock Company C. According to the contract, Company D leased to Joint Stock Company C 02 steel hull tugboats of the 135 CV capacity pulling + pushing type and Maritime registration No. NB2010 and NB2172; concurrently, Company D accepted to provide the maneuvering service (by way of pushing or pulling) for the ships of Joint Stock Company C into or out of the port of loading at Port No. 10-10 and Khe Day Quang Ninh Port; the unit price (including VAT) was VND50,000,000/month for one tugboat; the total cost of fuel for the tugboat payable by Joint Stock Company C to Company D is calculated at the rate of 17 liters of diesel oil/01 hour of machine operation/01 machine having capacity of 135 CV plus 0.23 liters of lubricating oil /01 hour/01 tugboat, (the fuel cost would be calculated by both parties at the time of payment and charges of the 02 terminals, if any). Company D was responsible for assigning personnel on the vessel including 01 captain, 01 chief engineer, and 01 pilot; and paying for the salaries of all workers on the vessel, etc. The contract is effective from the signing date to the end of 31 December 2006.

On 17 August 2006, Joint Stock Company C sent Official Letter No. 2349 INDEVCO to request Company D to terminate and liquidate Contract No. 1141/HD-CNQN dated 10 April 2006 prior to its expiry as of 20 August 2006.

On 18 August 2006, Company D sent Official Letter No. 59.CVCty responding to Official Letter 2349 INDEVCO of Joint Stock Company C with the content as follows: Company D invited Joint Stock Company C to pay off the rental as to 02 tugboats for the second quarter of 2006 (in accordance with the Minutes of payment reconciliation and settlement dated 13 July 2006) and in the event that Joint Stock Company C had no further need to lease 02 tugboats as of 20 August 2006, Company D invited Joint Stock Company C to make payment as to 02 tugboats for the remaining period of the contract from 1 August 2006 to 31 December 2006.

On 4 September 2006, Joint Stock Company C and Company D established a minute of settlement of the rental of the tugboats; accordingly, both parties jointly determined the total amount paid payable Joint Stock Company C to Company D till 21 August 2006 as VND511,539,505.

On 16 January 2007, Joint Stock Company C paid Company D the amount of VND511,539,505.

On 18 March 2007, after many unsuccessful negotiations, Company D initiated the lawsuit requesting Joint Stock Company C to pay Company D the amount of VND403,000,000 and interest due to late payment calculated from 21 August 2006 to 31 December 2006 according to the law. At the first-instance hearing, the plaintiff's representative withdrew its claim for payment of interest due to late payment.

The representative of Joint Stock Company C presented that:

The signing and performance of Contract No. 1141/HD-CNQN dated 10 April 2006 with Company D are as the plaintiff presented. On 17 August 2006, due to the fact that there was no further need to use the 02 tugboats, Joint Stock Company C sent the Official Letter to Company D requesting to terminate the Contract prior to its expiry. Joint Stock Company C paid Company D the amount of VND511,539,505. Joint Stock Company C does not agree to pay Company D the amount of VND403,000,000 because it was incorrect with the actual situation and requested Company D to recalculate such amount. Joint Stock Company C only accepted to pay 50% of the total amount declared, but it must be correct and appropriate.

In First-instance Commercial Judgment No. 01/2012/KDTM-ST dated 18 January 2012, the People's Court of Quang Ninh Province ruled:

*Not to accept the claim of Company D Ltd against Joint Stock Company C (now being I Group Corporation Joint Stock Company) for payment of the remaining value of Contract No. 1141HD-CNQN dated 10 April 2006 amounted to VND303,000,000 and the interest due to late payment of VND157,260,000.*

In addition, the first-instance court also ruled on the court fees and the right to appeal of the concerned parties in accordance with the law.

On 10 February 2012, Company D Ltd submitted an appeal against the first-instance judgment (the postmark of the sending post office was 25 February 2012).

In Decision to not accept late appeal No. 87/2012/KDTMPT-QD dated 17 May 2012, the appellate court of the Supreme People's Court in Hanoi ruled not to accept the appeal of Company D Ltd because the time limit for appeal as specified in Article 245 of the Civil Procedure Code had expired.

On 7 June 2012, Company D Ltd submitted a petition for conduct cassation procedure with respect to the Appellate Judgment mentioned above.

In Protest Decision No. 29/2015/KN-KDTM dated 04 May 2015, the Chief Justice of the Supreme People's Court proposed that the Judicial Council of the Supreme People's Court to conduct the cassation procedure in the direction of setting aside the Decision to not accept the late Appeal No. 87/2012/KDTMPT-QD dated 17 May 2012 by the appellate court of the Supreme People's Court in Hanoi and First-instance Commercial Judgment No.01/2012/KDTM-ST dated 18 January 2012 of the People's Court of Quang Ninh Province; to transfer the case to the People's Court of Quang Ninh Province for resettlement in accordance with the law.

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

### FINDINGS OF THE COURT

1. On 10 April 2006, Company D leased Joint Stock Company C 02 steel hull tugboats and provided the maneuvering service for the ships into or out of Port No. 10-10 and Khe Day Quang Ninh Port, being effective from the signing date to 31 December 2006 under Economic Contract No. 1141/HD-CNQN. There was no agreement on conditions for termination of Contract. However, on 17 August 2006, Joint Stock Company C sent Official Letter No. 2349 INDEVCO to inform Company D of termination of the Contract as of 20 August 2006 for the reason of *“no further need to lease the 02 tugboats”*. The period from the date when Joint Stock Company C sent its written notice until the termination of the Contract was too short, which caused damage to Company D due to the fact that Company D was not able to have another contract to immediately replace after such termination. The fault was attributable to Joint Stock Company C, hence Joint Stock Company C must be liable for the damage caused to Company D. The actual damages to be considered were the amount of the vehicle rental for the remaining period of the Contract.
2. Before the lawsuit, Company D s Official Letter No. 75CVCtyDG (with no day and month specified but dated 2006) requesting Joint Stock Company C to pay the rental of 02 tugboats from 21 August 2006 until 31 December 2006 with the total amount of VND250,000,000. In Official Letter No. 2774 INDEVCO dated 17 October 2006, Joint Stock Company C only agreed to pay for the salaries of workers operating the tugboats. Disagreeing with it, on 18 March 2007, Company D Ltd initiated the lawsuit requesting Joint Stock Company C to pay the amount of VND403,000,000 (as the amount for leasing 02 tugboats for the remaining period of the contract). Thus, this could be considered as the actual damages that the plaintiff claimed.
3. When the first-instance court accepted the case for first-instance re-hearing, Company D requested the remaining value of the contract from 21 August 2006 to 31 December 2008, which amounted to VND403,000,000 and interest. Since Company C paid the amount of VND100,000,000, there remained the outstanding amount of VND303,000,000 and interest due to late payment. The first-instance court opined that the claim had no basis and rejected such claim because it was for the amount of the remaining value of the contract that had not been performed yet. On the other hand, the first-instance court determined that due to the fact that Company D had the right to claim damages but Company D did not request such amount, the court did not consider the claim of Company D, which was not correct and negatively impacted the lawful rights and interests of Company D.
4. According to the minutes of the first-instance hearing dated 18 January 2012, because the representative of Company D was present at the hearing, he/she must acknowledge the content and decision of the court. On 10 February 2012, Company D submitted its appeal (the postmark of the sending post office was 25 February 2012, the receiving postmark was 27 February 2012), which was determined as a late appeal under Article 245 of the Civil Procedure Code. However, Company D stated that the reason for the late appeal was that the representative of the Company did not hear clearly when the presiding judge announced the Judgment, which was not based on the provisions in Section 5, Part I of

Resolution No. 05/2006/NQ-HDTP dated 4 August 2006 of the Judicial Council of the Supreme People's Court. Therefore, the appellate court did not accept the late appeal, which was correct.

1. Regardless of the fact that the Decision to not accept the late appeal No. 87/2012/KDTMPT-QD dated 17 May 2012 of the appellate court of the Supreme People's Court in Hanoi has sufficient basis, since the first-instance judgment is effective in accordance with the decision, it was necessary to set aside the Decision to not accept late appeal No. 87/2012/KDTMPT-QD dated 17 May 2012 by the appellate court of the Supreme People's Court in Hanoi and First-instance Commercial Judgment No. 01/2012/KDTM-ST dated 18 January 2012 of the People's Court of Quang Ninh Province; to transfer the case to the People's Court of Quang Ninh Province for re-settlement in accordance with the law.

For the above reasons, pursuant to Article 297.3, Article 299.1 and Article 299.2 of the Civil

Procedure Code (amended and supplemented under Law No. 65/2011/QH12 dated 29 March 2011),

### RULES

1. To set aside the Decision to not accept the late appeal No. 87/2012/KDTMPT-QD dated 17 May 2012 by the appellate court of the Supreme People's Court in Hanoi and First-instance Commercial Judgment No. 01/2012/KDTM-ST dated 18 January 2012 of the People's Court of Quang Ninh Province with regard to hearing the Commercial case concerning the dispute on the asset lease Contract between the plaintiff as Company D Ltd and the defendant as Joint Stock Company C.

1. To transfer the case to the People's Court of Quang Ninh Province for re-settlement in accordance with the law.

**CONTENTS OF THE CASE LAW**

“*[1] On 10 April 2006, Company D leased Joint Stock Company C 02 steel hull tugboats and provided the maneuvering service for the ships into or out of Port No. 10-10 and Khe Day Quang Ninh Port, being effective from the signing date to 31 December 2006 under Economic*

*Contract No. 1141/HD-CNQN. There was no agreement on conditions for termination of Contract. However, on 17 August 2006, Joint Stock Company C sent Official Letter No. 2349 INDEVCO to inform Company D of termination of the Contract as of 20 August 2006 for the reason of “no further need to lease the 02 tugboats”. The period from the date when Joint Stock Company C sent its written notice until the termination of the Contract was too short, which caused damage to Company D due to the fact that Company D was not able to have another contract to immediately replace after such termination. The fault was attributable to Joint Stock Company C, hence Joint Stock Company C must be liable for the damage caused to Company D. The actual damages to be considered were the amount of the vehicle rental for the remaining period of the Contract*”.