
Identifying The Bona Fide Third Party in Public Transactions Under the Current Vietnam Public Code

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Abstract

A bona fide third party in a Public transaction is not required to return property to the owner as prescribed in Clauses 1 & 2, Article 133 of the Public Code. In addition, this person is also not required to return property in some cases according to the provisions of the law on marriage and family, Public judgment enforcement and property auction. If not falling into the cases of not requiring the property return, this person must return the property to the owner and have his/her interests protected as prescribed by law. Therefore, the identification of the “third person”, “bona fide” and the element of “bona fide third party” will clarify the concept as well as the identifying signs of this person.

Keywords: bona fide, bona fide possession, third person, bona fide third person.

Introduction

Protection of the right of bona fide third parties in Public transactions is increasingly concerned and in the direction of giving priority to protection over property owners, especially for assets subject to ownership registration. This issue is specified specifically and in detail in the 2015 Public Code. Although there are many regulations related to the protection of the interests of a bona fide third party such as: protection conditions, arising legal consequences, competent authorities to protect, and protection measures... but there are no regulations on the concept of a bona fide third person. Therefore, the study of this concept is of great significance to accurately determine the protected subject for the case of “*protection of the interests of a bona fide third party in the Public transactions*”. The article analyzes the opinions of experts on the provisions of the Public Code, other relevant laws, and the identification of actual third parties; Through which the author comments, evaluates and gives his opinion on the concept as well as the elements of identifying the actual third party within the Public transaction.

Research methodology: analysis, synthesis, interdisciplinary research, comparative jurisprudence and case study.

1. A bona fide third party as prescribed by the Public Code

The term “*bona fide third party*” appeared in the Public legal system of Vietnam for the first time in the Public Code 1995 in Article 147, but there is no specific concept of the “*bona fide third party*”, rather there are only conditions of protection of the rights of a bona fide third party in the Public transactions. This term continues to be mentioned in Article 138 of the Public Code 2005. Inherited by the provisions of the 1995 Public Code, the term “pure third party” is also not defined, but only refers to the conditions for protecting the interests of the actual third party in a Public transaction, and supplements in terms of protection in the case of protection based on the object of the transaction are not subject to the registration of ownership and immovable property or ownership. Not all cases when Public transactions are invalid, but the transaction property has been allocationred by another transaction to a bona fide third party, the transaction with the third party will still have the same effect as the 1995 Public Code, but on a case-by-case basis, 2005 Public Code has different provisions on the recognition or non-recognition of the effect of the Public transactions with a bona fide third party. The current provisions of the Public Code also do not articulate the concept of a bona fide third person. The law prioritizes protecting the interests of a bona fide third party over the owner. Article 133 of this Code not only divides actual third-party security cases based on the content of the transaction, which is not subject to ownership of immovable property and registration of movable or immovable property, but before or after the transaction period (for movable or immovable property based on the period of registration of property with the appropriate state agency, ownership must be registered).

Although the Public Code does not refer to the concept of bona fide third person but has defined the element “*To be entitled to good faith*” means the right that the owner has reason to believe that he has a right to

property (Article 180). According to the contents of the law, "good faith" is determined based on the factor "there is a basis for believing that he/she has the right to property under his/her rights." but what are "bases" is not explained by any law. Articles 167 & 168 of the Public Code 2015 mention "possessor in good faith" but can not confirm whether the "bona fide third party" is the "possessor in good faith" because the Public Code does not stipulate this issue. However, when presenting the right to reclaim property from a bona fide possessor, Article 168 referred to Clause 2, Article 133 in regard to protect the rights of a bona fide third party when the Public transaction is invalid. With this method of legal reference, the Public Code "implicitly" affirms that the "bona fide possessors" include the "bona fide third party".

The "bona fide third party" is defined in Article 133 as follows:

- According to Section 1, a property for the object of the transaction that is not required to be registered, and paragraph 1, Clause 2, for the object of the transaction being a property that must be registered and has been registered at a competent state agency before the time of property allocation: a bona fide third person is in a relationship with at least three subjects in at least two Public transactions. Specifically: the first relationship between the owner of the property and the person who does not have the right to dispose of the property through invalid Public transactions and the second relationship between the person who does not have the right to dispose of the property and the third person in good faith through Public transactions (depending on the case that Public transactions are invalid or not).

- According to paragraph 2, Clause 2, for the object of the transaction that is required to be registered and has not been registered with a competent state agency before the time of property allocation: a bona fide third person is in a relationship of conducting at least one Public transaction with a person who does not have the right to dispose of the property (This person may be the owner of such property pursuant to a judgment or decision of a competent authority but the person does not own the property as a result of the amendment or separation of the judgment or decision) or the result of an auction as an asset of an affiliated company.

When combining Articles 180 and 133 to identify a bona fide third party, the element of "good faith" is determined as "has bases to believe that he/she has the right to the property under his/her possession" which is demonstrated in the fact that the third person in good faith based on documents recognizing the ownership of competent state agencies, on the basis of the asset auction at a competent organization or on the judgment or decision of the competent state agency to determine that the person participating in the transaction with him or her is the owner of the property but then this person is not the owner of the property due to the judgment or decision being canceled or modified (for assets subject to registration of ownership). However, if being interpreted in this way, the law does not consider the will of a bona fide third party. Example: A arbitrarily carries out the procedures for inheriting land use rights without the knowledge of A's co-heirs. Then A is granted a land use right certificate and allocations this land use right to B. B knows this land use right is the common property of A and A's co-heirs, but B still receives the allocation of right to land use (procedure for allocation of land use right in accordance with the law). According to the content of the law, B is determined to be the bona fide third party because of the allocation of property registered for ownership. We can see that B's will is to know that the possessor (A) does not have the right to the entire property in possession but still participates in Public transactions. In addition, for property that is not subject to registration of ownership, Clause 1, Article 133 does not show the element "has bases to believe that he/she has the right to the property under his/her possession".

2. The Bona Fide Third Person in The Opinion of Some Experts

According to the Explanatory Dictionary of Jurisprudence and the Dictionary of Legal Terminology, "A bona fide third party when participating in an invalid Public transaction is the **person who receives allocation of property through the transaction but does not know or is not required to know that such property was obtained by the person allocationring to them from an invalid Public transaction**"¹. This definition indicates that a "third person" is a Public transaction participant with the allocation of the asset and the allocation has previously participated in a Public transaction to obtain this asset but the transaction is invalid; the sign of "good faith" is that the person does not know or is not required to know that the property was obtained from an invalid Public transaction. This sign represents the will of a bona fide third party who "doesn't know" and is based on the rule of "not being required to know".

Some other experts introduce the concept of "bona fide third person" as follows:

¹Hanoi Law University (1995). *An explanatory dictionary of jurisprudence*. Hanoi: People's Public Security Publishing House, 95; Research Institute of Legal Sciences (1999). *An explanatory dictionary of jurisprudence terms*. Hanoi: People's Public Security Publishing House, 50.

The first point of view: “A bona fide third party in an invalid Public transaction is a person who **does not know or cannot know that he or she is involved in a transaction with a person who does not have the right to dispose of the property or the object of the transaction related to the previous transaction**”².

The second point of view: "An actual third party to an illegal Public transaction is the third person associated with the first transaction (which is deemed to be illegal) but it is a matter of a second Public transaction." When entering into a transaction, they have reason to believe that they have a right to property because they do not know or need to know that the person who has transacted with them does not have the right to allocation the property.”³.

The third point of view: “A third party to a Public transaction in good faith is when **participating in a transaction on a voluntary basis, on an equal basis and in compliance with the provisions of the law without knowing that the object of the transaction is an unscrupulous property, because the owner was previously established by a void transaction**. It can be said that this is the most important factor to identify the transaction participant as bona fide. The rule of “do not know and not being required to know” here is also expressed that it is impossible for an ordinary person to know that the property put into the transaction comes from an invalid transaction. Therefore, the law does not require them to know in this case⁴.

The fourth point of view: “We can picture this relationship as follows: Owner - Mediator - Bona fide third party; First relationship: possibly illicit relationship: theft, robbery, forgery; There may be a legal transaction to allocation the right to use the property such as: mortgage, lease, loan...; may be the act of possessing without legal grounds in good faith: picking up property dropped by the owner, forgetting it but not notifying it according to the law... The second relationship is the relationship that has the nature of infringing upon the rights of the true owner of the property such as transactions with the purpose of allocation ring ownership of the property such as: lending, selling, giving, exchanging; or is the relationship that is likely to lead to the allocation of ownership rights to assets such as mortgages or pledges. Thus, **the last subject in the second relationship is called the third person and it is a bona fide subject because they have been confused about the status of the subject who has established a transaction with them**. They think that they have made a transaction with the person who has the right to dispose of the property, but in fact, it is not.”⁵

In order to provide the concept and the signs to identify the “bona fide third person”, the author analyzes two constitutive factors: the “third person” factor and the “bona fide” factor.

Firstly, in terms of “third person” factor, which is mentioned in Article 133 of the 2015 Public Code; Accordingly, the “third person” must be a person participating in Public transactions⁶ or participating in an asset auction⁷ to receive the asset allocation. According to the provisions of law, property auction is a form of asset sale⁸ and is mentioned in the content of the asset purchase and sale contract,⁹ meaning that the asset auction is also one of the types of property sale contracts. A contract for the sale of property is one of the types

² Nguyen Thi Linh (2020). Some issues on the regulation of bona fide third party protection under the Civil Code 2015 - Practice and complete solutions. *Journal of People's Court*, (No 22, 2nd volume, November 2020), 47.

³ Cao Ngoc Anh Thi (2022). Bona fide third-party identification in invalid civil transactions. *Journal of People's Court*, (1st volume, April 2022), 41.

⁴ Nguyen Van Cuong & Nguyen Minh Hang (2011). *Invalid land use rights transactions – Law & practice*. Hanoi: Information and Communication Publishing House, 128.

⁵ Vu Thi Hong Yen (2007). Protect the interests of a bona fide third party when the owner sues to reclaim the property. Proceedings of the school-level seminar: Revision of the Civil Code. Scientific conference at school level, 11/12/2007, Hanoi Law University. Retrieved on April 28, 2022. Access link: <http://thongtinphapluatdansu.edu.vn/2008/01/03/2352-2/> .

⁶ “In case a civil transaction is invalid, but the object of the transaction is a non-registered property that **has been allocationred to a bona fide third party ...**” (Clause 1, Article 133) and “In case of an invalid civil transaction, but the property has been registered at a competent state agency, then **allocationred by another civil transaction to a bona fide third party ...**”. (Paragraph 1, Clause 2, Article 133).

⁷ In case the property subject to registration has not yet been registered at a competent state agency, the civil transaction with the third party will be invalidated, unless **the third party in good faith receives this property through the sale of the property auction at a competent organization**” (Paragraph 2, Clause 2, Article 133).

⁸ “Property auction is **a form of asset sale** with two or more people participating in an auction according to the principles, order and procedures prescribed in this Law, except for the case specified in Article 49 of this Law” (Clause 2, Article 5 of the Law on Property Auction 2016).

⁹ Mentioned in Article 451 (Property Auction), Section 1 (Property purchase and sale contract), and Chapter XVI (Some common contracts) of the Civil Code 2015.

of Public transactions¹⁰. Therefore, “*third person*” here can be understood as a person participating in Public transactions (including asset auction) to receive asset allocation. The above views are also in the direction that a “*third person*” is a participant in Public transactions. The question is whether “*third person*” necessary is in relation to at least two Public transactions? That is, in the case of this relationship, there must be at least two Public transactions related to the allotment of property determined by a third party: the previous Public transaction allocates the property to the person without the right to dispose of the property, and the subsequent Public transaction results in the property being allocated to the actual third party. The second and third views are also the direction of Clause 1, Article 133 of the Public Code 2015 and other experts¹¹. The author agrees with this point of view but offers another interpretation for this case¹², based on the revised and supplemented contents of the 2015 Public Code compared with the 2005 Public Code. This content of Clause 1, Article 133 of the 2015 Public Code in comparison with Clause 1, Article 138 of the 2005 Public Code does not amend and supplement with regard to “*cases in which the Public transaction is invalid*”, but changes and supplements with regard to properties in transactions “*which have been registered at a competent state agency*”. As such, an important element is that this regulation must be attached to the transactional asset and not to the previously invalidated Public transactions. “*Third person*” should be understood as a person participating in Public transactions with a person who does not have the right to dispose of property, and whether there were any previous Public transactions or does not determine the “*third person*” factor. This is also consistent with some of the following views:

- “*The first type, only a Public transaction is required, where the property and the object of the transaction are of the type that must be registered, it will be registered at a competent state agency, a third party in good faith has established a transaction based on such registration, that transaction is not invalid*”¹³: this point of view in the direction of dividing paragraph 1, Clause 2, Article 133 of the Public Code 2015 into two basic types, and the first type only requires a Public transaction of allocation of property between a bona fide third party and a person who does not have the right to dispose of the property.

- The first point of view also segregates into two cases; in which, the first case requires only one Public transaction between the third person in good faith and the person who does not have the right to dispose of the property.

- According to the fourth point of view, the intermediary (who does not have the right to dispose of the property) does not necessarily through Public transactions with the property owner to obtain the property, but might through the act of violating the law (theft, robbery, fraud, etc.) or acts of possessing without a legal basis in bad faith (picking up property dropped by the owner, forgetting it but not notifying it according to the law, etc.). This person then allocates the property to a bona fide third party through Public transactions. It means that there are also cases where there is only one Public transaction between a bona fide third party and a person who has no right to dispose of the property.

- We can refer to several cases in practice involving the bona fide third parties as follows:

- + The first case: According to the Appellate Judgment No. 06/2017/HNGĐ-PT dated November 16, 2017 of the People’s Court of Hoa Binh Province on the divorce, Mr. Nguyen Trong L was granted a certificate of the right to use land during the marriage and Mr. L allocation of these land use rights to Mr. Nguyen Thanh T and Mr. Bui Van Q. The trial panel determined that Mr. T and Mr. Q were the bona fide third person: “*On the other hand, Mr. L have already allocation to Mr. Nguyen Thanh T and Mr. Bui Van Q the three land plots above. The allocation is done before Ms. N has a request to divide the common property and involves a bona fide third party*”. Thus, there is only one Public transaction between a bona fide third person (Mr. T and Mr. Q) and the person who has no right to dispose of the property (Mr. L because these land use rights are the common property of Mr and Mrs. L and Mr. Phan Quach Thuy N).

¹⁰ “Civil transaction is a contract or unilateral legal act that gives rise to, changes or terminates civil rights and obligations” (Article 116 of the 2015 Civil Code).

¹¹ “The third person in good faith must first be the third person in the relationship with the first transaction (which has been deemed invalid) but is the subject of the second civil transaction. The property received by this third person through the second transaction is also the subject of the first transaction. In other words, the appearance of a bona fide third person must be associated with the premise of two transactions, but cannot appear with the situation of only one transaction. (Than Van Tai & Nguyen Thi Phi Yen (2017). The third person in good faith under the 2015 Civil Code and the Law on Marriage and Family 2014. *Journal of Legislative Studies*, 08(336), 50.

¹² The first and fourth views also have two interpretations of the “third person” for the case in Clause 1, Article 133 of the Civil Code 2015.

¹³ Tuong Duy Luong (2018) . Provisions of the Civil Code on protection of righteous third parties and settlement practices. *People’s Court Magazine*, (02, second period January 2018), 15.

+ The second case: According to the first instance judgment No. 51/2018/HS-ST dated May 9, 2018 of the People's Court of Mai Son district, Son La province on the crime of property theft, Mr. T and Mr. D stole 2 silver cords and Masstel and Samsung J3 phones. Mr. T gave the Samsung J3 phone to Mr. D and Mr. L to sell. Mr. D and Mr. L sold this phone to Le Van L1. The trial panel also identified that Mr. L1 was the bona fide third person: *"This money is paid when the defendants went to Le Van L1's store to repair and then sold the phone to L1. L1 does not know that the property is obtained by the defendants' crimes, so the transaction between L1 and T, D is a Public transaction; L1 is a bona fide third person"*. Thus, there is only one Public transaction between the bona fide third person (Mr. L1) and the person who has no right to dispose of the property (Mr. D and Mr. L).

In addition, according to Article 133 of the Public Code 2015, there is also a case where a third person in good faith receives property through a Public transaction with a person who does not have the right to dispose of the property without any previous Public connections connected to the transaction property. Specifically: Clause 1 of this Article refers to the provisions of Article 167 of the Public Code 2015. The content of Article 167 shows that there is only one Public transaction for property that is not subject to registration of ownership between a bona fide third party and a person who does not have the right to dispose of the property through a contract with or without compensation. In Paragraph 2, Clause 2 of this Article, we also see that there is only one Public transaction between a third person in good faith and a person who does not have the right to dispose of property, there are two cases: *case 1*, the bona fide third person receives the property through Public transactions of asset auction at a competent organization; *case 2*, a bona fide third person receives property through Public transactions with a person who, according to a judgment or decision of a competent state agency, is the owner of the property but then this person is not the owner of the property due to judgment or decision being canceled or modified.

Secondly, regarding the element of *"bona fide"*, as mentioned in Section 1, the 2015 Public Code stipulates bona fide possession in Article 180. According to the Law, *"bona fide"* means *"There is reason to believe that there is a right to property currently owned "* and it does not explicitly claim that its material *"bona fide"* depends only on the will of the rightful possessor and does not depend on other factors. At present, there are various views on bona fide: *"Bona fide is not deceitful"*¹⁴, *"Bona fide is righteous, honest, and the situation is clear"*¹⁵. With this understanding, the element of *"bona fide"* depends on the will of a third person. The first and fourth opinions are also in this direction. From the perspective of comparison with foreign laws, The Japanese Public Code, the Uniform Commercial Code of the US and the Turkish Public Code state the important factors to determine that *"bona fide"* are honesty, kindness, and non-deception¹⁶. The second point of view declares that *"bona fide"* depends not only on the will of the third party but also on the provisions of the law that *"do not require to know that the person who has made a transaction with him or her does not have right of allocation over the transactional asset"*. According to the third point of view, the most important factor to determine *"bona fide"* is that the third person participating in Public transactions must be on a voluntary and equal basis and comply with the provisions of the law without knowing or being forced to know the assets put into the transaction came from a voided transaction. Therefore, the law does not require them to know in this case. Thus, in addition to depending on the will of a third party, the element of *"bona fide"* must also be based on the basis prescribed by law. Accordingly, the factor *bona fide* is understood as *"having grounds to believe that one has a right to the property currently possessed"* and *"grounds to believe that one has a right to the property currently possessed"* is understood as a *"third person does not know or is required to know that they participate in Public transactions with a person who does not have the right to dispose of property"*. This shows that the third person *"doesn't know"* is dependent on their will and *"is not required by law to know"* is based on

¹⁴Institute of Languages (2010). *Common Vietnamese Dictionary*. Hanoi: Thanh Nien Publishing House, 606.

minar: Revision of the Civil Code. Scientific conference at school level, 11/12/2007, Hanoi Law University. Retrieved on April 28, 2022. Access link: <http://thongtinphapluatdansu.edu.vn/2008/01/03/2352-2/>.

¹⁶ *"In case a civil transaction is invalid, but the object of the transaction is a non-registered property that has been allocationred to a bona fide third party ..."* (Clause 1, Article 133) and *"In case of an invalid civil transaction, but the property has been registered at a competent state agency, then allocationred by another civil transaction to a bona fide third party ..."*. (Paragraph 1, Clause 2, Article 133).

¹⁶ *In case the property subject to registration has not yet been registered at a competent state agency, the civil transaction with the third party will be invalidated, unless the third party in good faith receives this property through the sale of the property auction at a competent organization"* (Paragraph 2, Clause 2, Article 133).

¹⁶ *"Property auction is a form of asset sale with two or more people participating in an auction according to the principles, order and procedures prescribed in this Law, except for the case specified in Article 49 of this Law"* (Clause 2, Article 5 of the Law on Property Auction 2016).

¹⁶ Mentioned in Artic

the provisions of the law. Some other experts, when commenting on this issue, also said that to determine the “*bona fide*” or “*not bona fide*” factor relies on legal rules that a third party must know about the legitimacy of the Public transactions¹⁷. In the trial practice, the element of “*bona fide*” is determined by the Court according to the provisions of the law: according to the Official Letter answering a number of problems in trial, the Supreme People’s Court gave a way to determine “*not bona fide*” which is reflected in the fact that the bank (the third person) has the obligation to appraise and verify the collateral but has failed to perform this obligation or has performed this obligation but failed to perform the next task to collect papers and evidences on whether the person who is managing and using the real estate knows about the mortgage of the property¹⁸. Thus, the law stipulates that in this case, the bank must know (must perform the obligation to appraise, verify, and collect documents and evidence) but the bank fails to do so, so it is a “*not bona fide third party*”. From this content, it can be inferred that the element of “*bona fide*” or “*not bona fide*” must be based on the provisions of law. In addition, in some other judgments, the Court determined that the “*not knowing*” of a bona fide third party must be based on the legal basis; meaning that, in that case, the law provides that the third person is not required to know that the person allocationring the property to him/her through Public transactions is the person who does not have the right to dispose of the property¹⁹.

le 451 (Property Auction), Section 1 (Property purchase and sale contract), and Chapter XVI (Some common contracts) of the Civil Code 2015.

¹⁷ “Civil transaction is **a contract** or unilateral legal act that gives rise to, changes or terminates civil rights and obligations” (Article 116 of the 2015 Civil Code).

¹⁷ “The third person in good faith must first be **the third person in the relationship with the first transaction** (which has been deemed invalid) **but is the subject of the second civil transaction**. The property received by this third person through the second transaction is also the subject of the first transaction. In other words, the appearance of a bona fide third person must be associated with the premise of two transactions, but cannot appear with the situation of only one transaction. (Than Van Tai & Nguyen Thi Phi Yen (2017). The third person in good faith under the 2015 Civil Code and the Law on Marriage and Family 2014. *Journal of Legislative Studies*, 08(336), 50.

¹⁷ The first and fourth views also have two interpretations of the “third person” for the case in Clause 1, Article 133 of the Civil Code 2015.

¹⁷ Tuong Duy Luong (2018) . Provisions of the Civil Code on protection of righteous third parties and settlement practices. *People's Court Magazine*, (02, second period January 2018), 15.

¹⁷Institute of Languages (2010). *Common Vietnamese Dictionary* . Hanoi: Thanh Nien Publishing House, 606.

¹⁷Institute of Legal Sciences (2006). *Law Dictionary*. Hanoi: Encyclopedia - Judicial Dictionary Publishing House, 550.

¹⁷ “Frankness or dishonesty is determined on the basis of whether a person knows a particular thing or not. These terms have nothing to do with good or bad moral connotations, and thus in this case **the term only has the meaning of whether or not an element of deception exists**” (Institute for Training Studies (1998) *Japanese Law - Volume II*. Hanoi: Thanh Nien Publishing House, 221); “Good faith except as otherwise provided in Article 5, means *honesty in fact and the observance of reasonable commercial standards of fair dealing*” (Section 1-201) (The Uniform Law Commission & the American Law Institute (1952). *The Uniform Commercial Code of US*. Retrieved April 29, 2022. Access link: <https://www.law.cornell.edu/ucc/1/1-201>); “In cases where the law establishes a legal conclusion to good faith, the important factor is the existence of goodness. However, anyone who does not show the expected diligence according to the requirements of the situation cannot claim good faith” (Yaşar & Zafer İcer (2019). The Concept of “Good Faith” in Criminal Law. *Ceza Hukuku ve Kriminoloji Dergisi-Journal of Penal Law and Criminology* 2019, 7(2), 258. Accessed on April 29, 2022. Access link: https://www.researchgate.net/publication/336103457_The_Concept_of_Good_Faith_in_Criminal_Law).

on, C used this property as collateral for a loan at the Bank, but when signing the contract to mortgage the property, **the Bank did not appraise and verify it, so the Bank did not know that Mr. A and Mrs. B still managed and used the property or have appraised it but there is no document or evidence to prove that Mr. A and Mrs. B know the mortgage of this property. In this case, the mortgagee (the Bank) is not a bona fide third party** as prescribed in Clause 2, Article 133 of the Civil Code 2015 ...” (Document No. 02/TANDTC-PC dated August 2, 2021 of the Supreme People’s Court on the resolution of some problems in trial).

¹⁹ “At the time of allocation on September 21, 2009, the apartment was not prevented from being bought, sold or allocationred by the competent authority, although at this time the plaintiff has sued for the ownership of the apartment, but the plaintiff has not sent a written notice to company F about the dispute and company F is also not included in the proceedings to be notified about the dispute arising related to the company’s ownership of the apartment, so **the company F could not know whether the apartment above had a dispute**. Therefore, in the transaction of allocationring the above apartment sale contract between the defendant and Mr. H2, **Mr. H2 was completely in good faith**”, “Then, on September 25, 2009, Mr. Tu Minh H2 allocationred the contract of selling the apartment to Ms. H and company F signed a contract with the same number with Ms. H. **This allocation is also completely legal and bona fide because all three participants in the transaction could not know that there was a dispute arising in connection with the apartment ownership**” (Ho Chi Minh City People’s Court (2019). Judgment No. 803/2019/DS-PT, dated September 12, 2019 on property claims. Accessed 30/4/2022. Access link:

<https://thuvienphapluat.vn/banan/ban-an/ban-an-8032019dspt-ngay-12092019-ve-doi-tai-san-114883>); *The first-instance level separates the civil transaction on the land use right allocation contract between Mr. C and Mr. T’s wife into another lawsuit when the request is incomplete, has not fully resolved the case and has not guaranteed interests of a bona fide third party is Bank K*, “When accepting a mortgage, **Bank K is not obligated to know whether Mr. Le Ngoc C’s is identified as**

3. Conclusion On the Concept of And Factors to Identify The Bona Fide Third Person

Referring to the provisions of the Public Code, other relevant laws, and expert opinions, the author proposes the concept of an actual third party as follows: a genuine third party is a person who does not know or is required by law to participate in a public transaction with a person who does not have the right to dispose of property, or: a genuine third person is a participant in a public transaction with a person who has no right to dispose of property but has reason to believe that he or she has reason to believe. The participant in a public transaction with is the person who has the right to dispose of the property.²⁰.

Factors to identify a bona fide third person:

- Persons participating in the Public transactions (including asset auctions) to receive property allocation (the “third person” element).
- Do not know or not to be required by the law to know that he/she participates in the Public transactions with a person who does not have the right to dispose of property; or: there are grounds to believe that the person participating in the Public transactions with him or her is the one who has the right to dispose of the property (the “bona fide” factor).

Public Code 2015 provides a regulation to protect bona fide third parties in the event of invalidation of the Public transactions, but does not generalize the signs of identifying a bona fide third party through its own concepts or characteristics. This not only affects the protection of legitimate rights and interests of this subject, but may also lead to discretion in the practice of law application by the Court and other competent agencies. Therefore, it is necessary to supplement the concept as well as the elements to identify the bona fide third person in the context that the Public transactions are increasingly complex and the property is allocationed through many subjects, the “third person” will appear more frequently and need to be precisely defined as the subject of a “bona fide third party”. /.

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the owner in the land use right certificate is legal or not, nor is it required to know whether previous transactions are fake or not” (Can Tho City People’s Court. Verdict 181/2019/DS-PT, October 25, 2019 on the dispute over land use rights and land use right allocation contract. Accessed 30/ 4/2022. Access link: <https://thuvienphapluat.vn/banan/ban-an/ban-an-1812019dspt-ngay-28102019-ve-tranh-chap-hop-dong-chuyen-nhuong-quye-n-su-dung-dat-115419>); “Considering that the above civil transactions comply with the order and procedures prescribed by law. Therefore, based on Clauses 2 and 3, Article 133 of the Civil Code, Mr. K2 and Mr. D1 are third parties to buy property, so their interests should be assured as of bona fide third parties, so there are grounds for the first instance court to not accept the entire claims of the plaintiff’s” (Dak Lak Provincial People’s Court Judgment No. 15/2020/DS-PT dated February 14, 2020 on a dispute related to the request to declare a notarized document being invalidate and cancel the legal value of land use right certificates. Accessed on April 30, 2022. Access link: <https://fdvn.vn/tong-hop-20-ban-an-bao-ve-people-thu-ba-ngay-tinh/>).

²⁰The phrase “there are grounds to believe that the person participating in civil education with him or her has the right to dispose of property” is reflected in the fact that he does not know or is not required by law to know that he or she participates in civil education with someone who does not have the right to decide. take property”.

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