

“DILIGITE JUSTITIAM QUI JUDICATIS TERRAM.” “Ye who judge the earth, give diligent love to justice”

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Briefing, analysis, opinion and insight of legal affairs in Mexico  
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# Building Presale Agreement Rights.

by Julio Vargas

**T**he High Federal Court precedent which we will address today, arises from a case in which a plaintiff defeated a defendant over a defaulted loan, in which among other judge rulings, order to adjudicate through public auction certain piece of land to plaintiff as collection of the amounts due in its favour by defendant.

A third party appear in court filing a motion to stop adjudication of the land on behalf of plaintiff, arguing rights in rem over that land, and pretending to demonstrate such rights in rem with a presale agreement signed with the defendant regarding an apartment that would be built in said land.

Plaintiff of the case in comment argued that the presale agreement does not grant the appearing third party any right in rem over the land plaintiff was to be adjudicated in ownership.

*"Hence, the mere execution of a presale agreement is not proof enough, or in other words, to meet the legal standard, it is required to demonstrate the building material existence, the proper record and constitution of property condominium regime..."*

The high federal court after hearing all the arguments of the parties in a constitutional trial, ruled that a presale agreement, by its nature a consensual contract, is rather a Hope Agreement, this being because the subject matter of the agreement (object- building) that legal wise could be a home or an apartment that physically at the time of execution of the agreement does not exist, because said existence will depend upon the fact that the seller actually builds the building. In this context, the high federal court ruled that in order to demonstrate any legal interest or rights in rem (property rights) over a building its deem necessary that such building actually exists, furthermore that the agreement thereof should be duly recorded on the Property Registrar by its own means or as a result of individualizing the building in a condominium property regime duly recorded and the material existence of the building, are all elements that together will bring legal certainty of said physical and material existence.

*"...a presale agreement of a building does not represent property rights."*

Hence, the mere execution of a presale agreement is not proof enough, or in other words, to meet the legal standard, it is required to demonstrate the building material existence, the proper record

and constitution of property condominium regime; otherwise, the holder of a presale agreement only upholds a sole personal right against the seller, but there is not yet a legal right in rem of ownership or even legal possession right recognizable that may be assigned to buyer in order to uphold or demonstrate any legal interest in court.

Therefore, court ruled, a presale agreement of a building does not represent property rights. Rights in rem may be defined as those that create an immediate and direct relation between an object and the person to whom it is submitted. Rights in rem have two elements: i) a person upholding the right; and ii) the object of said ownership. Property rights concede to its owner a direct power and domain over an object and empowers the withholder to demand from third persons an abstention towards the object or related with to, in other words, it creates a negative obligation to respect the right in rem because that relation emerges directly against any person that claims to uphold an opposite interest to the rights over the object that represents the right in rem of the object thereto.

Property or ownership is a right by excellence and because of its nature shall not be arbitrarily limited by others.

*“Property rights concede to its owner a direct power and domain over an object and empowers the withholder to demand from third persons an abstention towards the object or related with to, in other words, it creates a negative obligation to respect the right in rem...”*

In order for a right in rem to be enforce against third parties it must meet legal certainty of execution date, or otherwise shall only produce legal effects amongst the contracting parties.

Also, recording of those legal acts tends to create acknowledgment to third unrelated parties to the contracting parties of the execution of said legal acts in order to prevent fraud and damages.

## **Police probing Friday's attacks in Paris have been searching premises they believe were used by the attackers.**

A car rented by Salah Abdeslam, the suspected eighth gunman who is now the subject of an international manhunt, is also being inspected. He or his brother Brahim, named as another attacker, are thought to have rented a flat and two hotel rooms. The so-called Islamic State (IS) group says it carried out the multiple attacks in which 129 people died. Investigators believe the car may have been used to bring the attackers to and from Belgium, from where French authorities say the attacks were organized. Images on French media of one of the hotel rooms being examined show syringes and tubes which could be bomb-making equipment. *BBC NEWS 16/11/15.*

## **PM: I will make case for strikes against IS in Syria.**

### **David Cameron has promised a "comprehensive strategy" to win MPs' backing for bombing Islamic State militants in Syria as well as Iraq.**

The prime minister told the Commons the Paris attacks had strengthened the case for air strikes, suggesting there could be a fresh vote on the issue. He wanted to "do the right thing for our country", and hit the "head of the snake" of IS in Raqqa, Syria, he said. Labour leader Jeremy Corbyn said any military response should have the support of the international community and legality from the United Nations. Two years ago, MPs voted against possible UK military action against Syrian President Bashar al-Assad's government to deter the use of chemical weapons. Parliament later approved British participation in air strikes against Islamic State extremists in Iraq, which have been ongoing ever since. *BBC NEWS 16/11/15.*

## **Billions of People Depend on Water From Shrinking Snowpacks.**

Snowpacks are a vital source of water for humans, but they may shrink in some regions as the climate warms. A new study estimates how changes in snow fall will affect water supplies. Justin S. Mankin, an earth scientist at Columbia University, and his colleagues analyzed 421 drainage basins in the Northern Hemisphere that depend on rainfall and snowmelt, and then combined the data with several different climate models. They found that 97 basins, currently serving two billion people, depend heavily on snowmelt. The scientists calculated that the likelihood the basins would receive less snow in the coming century was 67 percent. The study provides important information for city water managers as they make decisions about where to draw water from and how much to use. The loss of snow may also require cities and farmers to find more efficient irrigation methods, to recycle water and to grow fewer water-intensive crops. *New York Times 17/11/2015.*

## **Despite Global Events, U.S. Gasoline Prices Remain Low.**

American travelers are being treated to bargains at the gasoline pump this Thanksgiving weekend. Prices are at their lowest level for the holiday since the financial crisis of 2008 despite heightened tensions in the Middle East and a spate of terrorist attacks that would normally lead to higher prices. About 60 percent of the nation's gas stations are selling gasoline for less than \$2 a gallon, according to Tom Kloza, global head of energy analysis at the Oil Price Information Service, and with 75 percent of all sales nationwide below the \$2 mark. *New York Times 25/11/2015.*

## **Turkey won't apologize for downing Russian warplane, Erdogan says.**

Turkey will not apologize for downing a Russian fighter jet it says violated Turkish airspace near the Syrian border. Turkey has repeatedly said it shot down the Russian warplane on Tuesday only after it ignored several warnings and entered Turkish airspace. Russia has contested the claim, and its rescued co-pilot Capt. Konstantin Murakhtin told state media that "there were no warnings -- not via the radio, not visually." Turkey's military has released audio it says proves its claim; Russia has yet to address the audio. Russian President Vladimir Putin has said the Russian plane was attacked a kilometer inside Syrian territory, while Erdogan says it crashed in Turkey, injuring two people. *CNN 26/11/15.*

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## CONTRIBUTORS

### JULIO VARGAS

Attorney at Law: Admitted to practice law in 1990. Mr. Vargas of Mexican nationality obtained his law degree at the Instituto Tecnológico Autónomo de México A.C. (ITAM). Mr. Vargas is specialized in financial litigation for over 20 years.

LANGUAGES: Spanish and English.

PRACTICE AREAS: Litigation of civil, commercial, stock market, banking, environmental, and administrative law in low courts, appellate and Supreme Court and corporate law.

e-mail: [jvargas@asyv.com](mailto:jvargas@asyv.com)



Prol. Reforma No. 1190 25th Floor,  
Santa Fe México D.F. 05349  
t. (52.55) 52.92.78.14  
f. (52.55) 52.92.78.06  
[www.asyv.com](http://www.asyv.com) / [www.asyv.aero](http://www.asyv.aero)

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