

Summary of the Constitutional Court Ruling No. 38-40/2542

Dated 20th July B.E. 2542 (1999)*

Re : The Bangkok South Civil Court and the Suphan Buri Provincial Court referred the objection of the defendants to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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1. Background and summarized facts

It appeared from all three applications of the applicants that Bangkok Commercial Bank Public Company Limited, as plaintiff, filed two complaints against the applicants as defendants at the Bangkok South Civil Court in two civil cases, and Krungthai Bank Public Company Limited, as plaintiff, filed a complaint against the applicant at the Suphan Buri Provincial Court in a civil case. Each application could be summarized as follows:

1) Bangkok Commercial Bank Public Company Limited, a plaintiff in the Civil Pending Case No. 26191/2541, filed a complaint against Mr. Somchai Chaisrichavala as defendant at the Bangkok South Civil Court in disputes arising out of current account, loan, bills and enforcement of mortgage. The plaintiff applied to the Court to enforce the repayment by the defendant of the sum of Baht 343,065,615 together with interest at the rate of 25 per cent per annum on the principal sum of Baht 14,545,787.94, the principal sum of Baht 185,500,000 and the principal sum of Baht 17,694,063.59 as from the day following the date of the filing of lawsuit until all debts had been repaid to the plaintiff.

2) Bangkok Commercial Bank Public Company Limited, a plaintiff in the Civil Pending Case No. 27173/2541, filed a complaint against Pinijsombat Company Limited as first defendant, Mr. Krekkiert Chaleejan as second defendant, Captain Mom Rajawong Damrongdej Disakul as third defendant, Mr. Pini Intaratoot as fourth defendant and Mom Luang Rongrith Pramoch as fifth defendant at the Bangkok South Civil Court in disputes arising out of breach of contract, promissory notes, suretyship and compensation. The plaintiff applied to the Court to enforce the repayment by all defendants jointly or as substitute of the sum of Baht 39,333,445.89 together with interest at the rate of 25 per cent per annum on the principal sum of Baht 23,100,000 as from the day following the date of the filing of lawsuit until all debts had been repaid to the plaintiff.

* Published in the Government Gazette, Vol. 116, Part 85a, dated 21st September B.E. 2542 (1999).

3) Krungthai Bank Public Company Limited, a plaintiff in the Civil Pending Case No. 1872/2541, filed a plaint against Mr. Daeng Sawangsri as defendant at the Suphan Buri Provincial Court in disputes arising out of overdraft loan and enforcement of mortgage. The plaintiff applied to the Court to enforce the defendant to repay the debt from overdraft loan in the principal sum of Baht 1,117,514.20 together with interest calculated up to the day of the filing of lawsuit in the amount of Baht 18,079.59 the total of which were Baht 1,135,593.79, and the interest at the rate of 20.25 per cent per annum on the principal sum of Baht 1,117,514.20 as from the day following the date of the filing of lawsuit until all debts had been repaid to the plaintiff.

The applicants who were defendants under those cases as stated in 1), 2) and 3), in their pleas, refused the plaintiffs' plaints, specifically the issue of interest rate charged on them. All three applicants therefore submitted the applications to the Bangkok South Civil Court and the Suphan Buri Provincial Court for imposing a temporary stay on the trial and adjudication of the case and referring the applications to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) that the notification fixing the highest interest rate issued by the plaintiff by virtue of the Notification of the Bank of Thailand, Re: Prescribing commercial bank practices in relation to interest rates and discounts, dated 20th October B.E. 2536 (1993), which was applied to charge the interest on the applicants and was to be applied in the case by the Courts, was contrary to section 6 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

2. The issues considered by the Constitutional Court

The Constitutional Court considered all three applications and was of the opinion that the issues to be considered were identical. The Court accepted these applications for joint consideration. The issue to be considered was whether the Notification of the Bank of Thailand, Re: Prescribing commercial bank practices in relation to interest rates and discounts, dated 20th October B.E. 2536 (1993) which was in force at the time of entering into the contract was contrary to section 6 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)?

The Constitutional Court held the following opinion:

The issue according to all three applications made for the Constitutional Court ruling had been ruled by the Court in its Ruling No.4/2542 dated 1st April B.E. 2542 (1999) that the Notification of the Bank of Thailand, Re: Prescribing commercial bank practices in relation to interest rates and discounts, dated 20th October B.E. 2536 (1993) was issued by virtue of section 14 of the Commercial Banking Act, B.E. 2505 (1962), as amended by the Commercial Banking Act (No. 2), B.E. 2522 (1979), and it was applicable within the scope of powers in the primary Act. Such Notification was not issued by an organ exercising legislative power. It was therefore not the provision of law in the meaning of section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). As for the Notifications

issued by three commercial banks as stated in the applications, they were analogies with the Notification of Thai Commercial Bank Public Company Limited which was not the Notification issued by a State authority. They were therefore not the provisions of law which the Constitutional Court could consider. Hence, the issue needed not be reconsidered.

3. Ruling of the Constitutional Court

By reasons stated above, the Constitutional Court dismissed the applications.
