

Summary of the Constitutional Court Ruling No. 42-43/2542

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

Re : The Sikhio Provincial Court referred the opinion of the defendant 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

Thanachat Finance Public Company Limited and Bangkok Bank Public Company Limited, as plaintiffs, separately filed complaints against Mr. Suchat Amnuaymongkorn as defendant (the applicant) at the Sikhio Provincial Court which could be summarized as follows:

1. Thanachat Finance Public Company Limited, a plaintiff, filed a complaint against Mr. Suchat Amnuaymongkorn (the applicant) as first defendant, Mrs. Pukkavadi Thongsa-att as second defendant and Miss Naerunchala Uttang as third defendant in disputes arising out of promissory notes and mortgage. The plaintiff applied to the Court to enforce the repayment of debts by the defendants jointly or as substitute of the sum of Baht 3,453,191.80 together with interest at the rate of 29 per cent per annum on the principal sum of Baht 3,000,000 as from the day following the date of the filing of lawsuit until all debts had been repaid to the plaintiff.

2. Bangkok Bank Public Company Limited, a plaintiff, filed a complaint against Mr. Suchat Amnuaymongkorn as defendant in disputes arising out of overdraft contract and mortgage. The plaintiff applied to the Court to enforce the repayment by the defendant of the sum of Baht 17,363,779.07 together with interest at the rate of 19.25 per cent per annum on the principal sum of Baht 16,834,193.80 as from the day following the date of filing of lawsuit until all debts had been repaid to the plaintiff.

The applicant submitted the applications for the Sikhio Provincial Court to temporarily stay its trial and adjudication of the case and to submit two applications of the applicant altogether to the Constitutional Court for a ruling on whether or not the two Notifications of the Bank of Thailand, the Notification of Thanachat Finance Public Company Limited and the Interest for Loan of the Financial Institutions Act, B.E. 2523 (1980), as amended by the Interest for Loan of the Financial Institutions Act (No. 3), B.E. 2535

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(1992) in the part of the interest rate exceeding 15 per cent per annum were contrary to section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

2. The issues considered by the Constitutional Court

The Constitutional Court considered both applications and was of the opinion that the issues to be considered were identical. The Court therefore accepted these applications for joint consideration. The issues to be considered were as follows:

First issue: whether the Notification of the Bank of Thailand, Re: Prescribing financial company practices in relation to raising loan or receiving money from people and prescribing interest rates and discounts which financial companies could pay or charge, dated 28th May B.E. 2535 (1992), and the Notification of Thanachat Finance Public Company Limited, Re: Fixing the highest interest rate which Thanachat Finance Public Company Limited could charge on customers, dated 1st June B.E. 2535 (1992), were contrary to section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and 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) was contrary to section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held that this issue had been ruled by the Court in its Ruling No.5/2542 dated 22nd April B.E. 2542 (1999) that the Notification of the Bank of Thailand prescribing financial company practices in relation to raising loan or receiving money from people and prescribing interest rates and discounts which financial companies could pay or charge, dated 28th May B.E. 2535 (1992) was issued by the Governor of the Bank of Thailand with the approval of the Minister of Finance by virtue of section 27 and section 30 (1) and section 30 (2) of the Finance, Securities and Credit Foncier Businesses Act, B.E. 2522 (1979). This Notification, however, was not issued by an organ exercising legislative power. It was therefore not the provision of law under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). As regards the Notification of Thanachat Finance Public Company Limited, Re: Fixing the highest interest rate and discounts which Thanachat Finance Public Company Limited could charge on customers, dated 1st June B.E. 2535 (1992), it was an analogy with the Notification of Sin Asia Finance and Securities Public Company Limited on which the Constitutional Court had already ruled as stated above.

As for whether the Notification of the Bank of Thailand, Re: Prescribing commercial bank practices in relation to interest rates and discounts, dated 28th May B.E. 2535 (1992) was contrary to section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the Court held that this Notification was an analogy with 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). The issue in relation to the latter Notification had been ruled by the Constitutional Court in its Ruling No. 4/2542 dated 1st April B.E. 2542 (1999) that this Notification 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 thus 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 under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

Second issue: whether the Interest for Loan of the Financial Institutions Act (No.3), B.E. 2535 (1992) only in the part of the charge of interest at the rate exceeding 15 per cent per annum was contrary to section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court had ruled, in its Ruling No. 5/2542 dated 22nd April B.E. 2542 (1999), that the Interest for Loan of Financial Institutions Act in the part of the charge of interest at the rate exceeding 15 per cent per annum was not contrary to section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

Hence, both the first issue and the second issue needed not be reconsidered by the Constitutional Court.

3. Ruling of the Constitutional Court

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