

Summary of the Constitutional Court Ruling No. 9/2543

Dated 2nd March B.E. 2543 (2000) *

Re : The Songkha Provincial Court referred the objection of the defendant (Mr. Chalath Nameklap) 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

Krungthai Bank, PLC., as plaintiff, filed a complaint against Mr. Chalath Nameklap as the defendant in the Civil Pending Case No.1838/2542 in a dispute arising out of the breach of contract, current account, overdraft loan and enforcement of mortgage. Under the complaint, the plaintiff requested the defendant to pay a debt for the mortgage in the amounts of Baht 5,307,156.74 plus interest at the rate of 18 per cent per year for the capital of the amounts of Baht 3,841,391.34 computed as from the day following the date that the lawsuit had been brought until such debt was completely paid to the plaintiff.

The applicant was of the opinion that compound interest and interest at the rate of 18 per cent per year beared on the unpaid amounts of debt exceeded the interest prescribed in the contract. Hence, the plaintiff's complaint was contrary to the Constitution. The Notification of the Bank of Thailand and the announcement of the plaintiff on raising of interest rate was made without the approval of the House of Representative which had a duty in connection therewith under the law. In addition, the claim of default interest at the rate of 18 per cent, 19 per cent, 20.25 per cent and 21.50 per cent per year by the plaintiff without consent of the applicant and a consumers' representative was contrary to section 50 and section 57 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Above all, the above-mentioned objections had never been ruled by the Constitutional Court.

2. Preliminary issue

The applicant applied to the Songkha Provincial Court for staying its trial and adjudication of the case and referring his objection to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

* Published in the Government Gazette, Vol. 117, Part 70a, dated 26th July B.E. 2543 (2000).

3. The issues considered by the Constitutional Court

Was the claim of interest in the case of default without consent of the applicant and consumers' representative contrary to section 50 and section 57 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)?

The Constitutional Court held that:

The application was made to the Constitutional Court only for a ruling on an act of a person or a juristic person not for a ruling on whether any provision of law was contrary to or inconsistent with the Constitution under section 264 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

4. Ruling of the Constitutional Court

The Constitutional Court dismissed the application.
