

# **Summary of the Constitutional Court Ruling No. 87/2547**

**Dated 16<sup>th</sup> December B.E. 2547 (2004)\***

**Re: Ratchaburi Provincial Court referred the objection of defendants (Bangkok Screen Production Company Limited and others) to the Constitutional Court for a ruling under section 264 of the Constitution on whether or not section 31 of the Emergency Decree on Thai Asset Management Corporation, B.E. 2544 (2001), was contrary to or inconsistent with section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and on whether or not section 55 of the Civil Procedure Code and section 194 and section 204 of the Civil and Commercial Code were contrary to or inconsistent with section 3 and section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).**

.....

## **1. Background and summarized facts**

The Ratchaburi Provincial Court referred the objection of applicants, defendants in Civil Case No. 293/2545, which requested for a Constitutional Court ruling under section 264 of the Constitution on whether or not section 31 of the Emergency Decree on Thai Asset Management Corporation, B.E. 2544 (2001), was contrary to or inconsistent with section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and whether or not section 55 of the Civil Procedure Code and section 194 and section 204 of the Civil and Commercial Code were contrary to or inconsistent with section 3 and section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The facts could be summarized as follows. Financial Institution Asset Management Corporation, as plaintiff, filed a lawsuit against Bangkok Screen Production Company Limited, the first defendant, Mr. Manop Taksinamane, the second defendant, Mr. Phairoj Taksinamane, the third defendant and Mr. Chaiwat Seagjong, the fourth defendant, for breaches of loan contract, discounted sale of cheques, promissory notes, guarantees and for the foreclosure of a mortgage. The case was recorded as Civil Case No. 293/2545. In brief, the first defendant entered into a loan contract and discounted sale of cheques by issuing a promissory note to Cathay Trust Finance Company Limited. As security for such debts, the second to fourth defendants registered a mortgage of land and buildings to Cathay Trust Finance Company Limited. In addition, the second to fourth defendants provided personal guarantees and became jointly liable for the first defendant's debts to the Cathay Trust

---

\* Published in the Government Gazette, Vol. 122, Part 70a, dated 23<sup>rd</sup> August B.E. 2548 (2005)

Finance Company Limited as from the date of contract. The first defendant had repaid interests and a portion of the principal. However, at the due date of repayments, the first defendant defaulted on the outstanding debts. Subsequently on 5<sup>th</sup> August B.E. 2540 (1997), the Minister of Finance ordered Cathay Trust Finance Company Limited to suspend its business operations and instructed the Organisation for Reform of the Financial Institution System to sell Cathay Trust Finance Company Limited's assets to be followed by a winding up. On 1<sup>st</sup> June B.E. 2542 (1999), the plaintiff lawfully received a transfer of Cathay Trust Finance Company Limited's assets. As a result, the plaintiff received the company's rights to claim against the four defendants. Pursuant to the Emergency Decree on Reform of the Financial Institution System, B.E. 2540 (1997), all four defendants were deemed to have notice of the transfer without actual notice. The plaintiff made several demands to the four defendants for repayment, which were ignored by all four defendants. The plaintiff therefore filed a lawsuit against the defendants in court.

All four defendants submitted defences against the plaintiff's claims and also filed a motion objecting that section 31 of the Emergency Decree on Thai Asset Management Corporation, B.E. 2544 (2001), was contrary to or inconsistent with section 30 of the Constitution and that section 55 of the Civil Procedure Code and section 194 and section 204 of the Civil and Commercial Code were contrary to or inconsistent with section 3 and section 30 of the Constitution.

The Ratchaburi Provincial Court held that the case in this application was in accordance with section 264 paragraph one of the Constitution. The application was therefore submitted to the Constitutional Court for consideration.

## **2. Preliminary issue**

The preliminary issue was whether or not the Constitutional Court had the power to accept this application for consideration under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held that, under the application, the applicant objected that section 31 of the Emergency Decree on Thai Asset Management Corporation, B.E. 2544 (2001), was contrary to or inconsistent with section 30 of the Constitution, and that section 55 of the Civil Procedure Code and section 194 and section 204 of the Civil and Commercial Code were contrary to or inconsistent with section 3 and section 30 of the Constitution. In addition, this case was referred to the Constitutional Court by the Ratchaburi Provincial Court for a ruling under section 264 of the Constitution. Therefore the Constitutional Court had the power to accept the application for consideration.

## **3. The issues considered by the Constitutional Court**

The first issue was whether or not section 31 of the Emergency Decree on Thai Asset Management Corporation, B.E. 2544 (2001), was contrary to or inconsistent with section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

On this issue, the Constitutional Court had already made Ruling No. 86/2547, dated 7<sup>th</sup> December B.E. 2547 (2004), that section 31 of the Emergency Decree on Thai Asset Management Corporation, B.E. 2544 (2001), was neither contrary to nor inconsistent with section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), because section 31 of such Emergency Decree conferred equal legal protection, and did not in any way constitute unjust discrimination against a person on the grounds of differences in personal status or economic or social standing. Therefore, it was not necessary to rule on this issue again.

The second issue was whether or not section 55 of the Civil Procedure Code and section 194 and section 204 of the Civil and Commercial Code were contrary to or inconsistent with section 3 and section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held as follows. Section 55 of the Civil Procedure Code was concerned with the rights of a person to seek judicial redress when a dispute arises as to the rights and duties of a person under the civil law, which would then be tried or adjudicated by the court. Section 194 and section 204 of the Civil and Commercial Code were provisions on obligations. A person might create a legal relationship voluntarily by creating mutual obligations that must be performed. Section 194 was a provision in Chapter 1 on object of an obligation whereby a creditor had the right to demand a debtor to satisfy debts. Section 204 was a provision in Chapter 2 on the effects of obligations and Part 1 on non-performance. The provision provided for the repayment period of an obligation and the instances where a debtor was deemed as having defaulted. Section 55 of the Civil Procedure Code was a procedural law whereas section 194 and section 204 of the Civil and Commercial Code were substantive laws. The laws in all those three sections were provisions of law that did not contain any texts relating to the sovereignty of the Thai people, the King as Head of State and the exercise of powers through the National Assembly, Council of Ministers and Courts of the King under section 3 of the Constitution. Moreover, such provisions were applicable to the people on an equal basis and the people received equal protection under the law. There was no unjust discrimination against a person on the grounds of personal status, economic or social standing, etc. under section 30 of the Constitution.

#### **4. Ruling of the Constitutional Court**

The Constitutional Court therefore held that section 31 of the Emergency Decree on Thai Asset Management Corporation, B.E. 2544 (2001), was neither contrary to nor inconsistent with section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and that section 55 of the Civil Procedure Code and section 194 and section 204 of the Civil and Commercial Code were neither contrary to nor inconsistent with section 3 and section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

---