

Summary of the Constitutional Court Ruling No. 7/2545

Dated 19th February B.E. 2545 (2002)*

Re : Is section 30 of the Finance, Securities and Credit Foncier Business Act, B.E. 2522 (1979) contrary to or inconsistent with section 57 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)?

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1. Background and summarized facts

Ngeunthun Utsahakam Public Company Limited, as plaintiff, filed a case against the defendant, Kreethai Company Limited and others (applicant), at the Bangkok South Civil Court in Civil Case Decision No. 12713/2542. The case involved an offence relating to a promissory note and a guarantee contract. The plaintiff requested the court to enforce the applicant to repay debts in the amount of 49,331,506.85 baht plus interests at 21 percent per annum (in accordance with the Notification of the Bank of Thailand) on the capital sum of 30,000,000 baht calculated as from the date of case filing to the date of complete repayment to the plaintiff.

The applicant dismissed the plaintiff's action and countered that section 30 of the Finance, Securities and Credit Foncier Business Act, B.E. 2522 (1979), which provided for the Bank of Thailand to act as an executive organization having the powers, exercisable only with the approval of the Minister of Finance, to determine rates of interest and practices in relation to interests and discounts which the financial company could charge on borrowers, was inconsistent with section 57 paragraph two of the Constitution because there were no provisions requiring the Bank of Thailand to seek the opinions of independent organizations consisting of representatives of the consumers prior to the prescription of consumer protection measures. Hence, the applicant requested that the Bangkok South Civil Court impose a temporary stay on the case and submit the applicant's objections for a ruling of the Constitutional Court.

2. Preliminary issue

Could the Constitutional Court accept this application for consideration under section 264 of the Constitution?

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The Constitutional Court held that this case was in accordance with section 264 of the Constitution and therefore accepted the case for consideration.

3. The issue considered by the Constitutional Court

Was section 30 of the Finance, Securities and Credit Foncier Business Act, B.E. 2522 (1979) contrary to or inconsistent with section 57 paragraph two of the Constitution?

The Constitutional Court held the following opinion:

Section 57 of the Constitution laid down a general principle for the right of a person as a consumer. The rules and procedures were, however, subjected to the provisions of law, which should provide for an independent organization consisting of representatives of consumers for giving opinions on the enactment and issuance of law, rules and regulations and on the determination of various measures for consumer protection. The facts stated that the Consumer Protection Act, B.E. 2522 (2979) came into force prior to the promulgation of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Even though such Act was subsequently amended by the Consumer Protection Act (No. 2), B.E. 2541 (1998), which still did not provide for an independent organization consisting of representatives of consumers for giving opinions on the enactment of laws as stipulated by section 57 paragraph two of the Constitution, such law had been enacted to provide a general protection for the rights of consumers. Duties have been imposed on trade and consumer advertising businesses in order to secure the appropriate fairness for consumers. The provisions of such law also provided for the establishment of an appropriate State agency to inspect, supervise and coordinate the execution of consumer protection related duties by various government agencies. As for the Finance, Securities and Credit Foncier Business Act, B.E. 2522 (1979), especially section 30, the provisions therein conferred the Bank of Thailand with the powers to prescribe certain practices in finance companies in matters relating to interests or discounts, service charge, benefits and securities payable or chargeable, exercisable by the approval of the Minister of Finance. Although the Act did not stipulate on matters related to the protection of the right of a person as a consumer, the law had been enacted to control the operation of finance, securities and credit foncier businesses in order to provide more efficient protections of consumer interests.

4. Ruling of the Constitutional Court

Section 30 of the Finance, Securities and Credit Foncier Business Act, B.E. 2522 (1979) was neither contrary to nor inconsistent with section 57 paragraph two of the Constitution.
