

Summary of the Constitutional Court Ruling No. 40/2545

Dated 9th July B.E. 2545 (2002)*

Re : Is section 9 of the Emergency Decree on Asset Management Corporation, B.E. 2541 (1998) contrary to or inconsistent with section 4, section 26, section 27, section 29, section 30, section 48 and section 50 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)?

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1. Background and summarized facts

The Thon Buri Civil Court submitted the objection of defendants, the applicants, requesting that the Constitutional Court make a ruling on whether or not the Emergency Decree on Asset Management Corporation, B.E. 2541 (1998), which contained provisions on the assignment of claim rights from financial institutions to the Asset Management Corporation excluding the requirement of notice to the debtors, was contrary to or inconsistent with section 4, section 26, section 27, section 29, section 30, section 48 and section 50 of the Constitution.

The following facts were stated in the application. Thonburi Asset Management Company Limited, as plaintiff, filed a lawsuit against Mr. Hok Sae-Lor and Mr. Phairoj Siripornlert, the applicants, as first and second defendants who were debtors of Thai Farmers Bank Public Limited Company, in Civil Case Decision No. 1687/2544. The first defendant received credit under a loan contract. The second defendant was the guarantor of the first defendant's debts under the loan contract. Subsequently, Thai Farmers Bank Public Limited Company entered into a contract of sale with the plaintiff which assigned the credits to the latter. The plaintiff was assigned the rights and benefits, including all existing securities in the form of guarantees, mortgages and pawns held by Thai Farmers Bank Public Company Limited, which also included claim rights in the two defendants' outstanding debts. Both defendants submitted to the Thon Buri Civil Court that the assignment of claim rights between the plaintiff and Thai Farmers Bank Public Company Limited had no legal force because it had been conspired by the two parties, which the two defendants had no knowledge of and had not given their consents. The two defendants stated that the provisions of the Emergency Decree on Asset Management Corporation, B.E. 2541 (1998) were inconsistent with the provisions of the Constitution on human dignity, rights and liberties of a person, the enactment of the law which was intended for application to a specific case or a specific

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person, unjust discrimination and restriction of the rights in property and a restriction of the liberty to engage in free competition under section 4, section 26, section 27, section 29, section 30, section 48 and section 50 of the Constitution.

2. Preliminary issue

The preliminary issue considered by the Constitutional Court was whether or not the application could be accepted for consideration under section 264 of the Constitution.

The Constitutional Court considered that in the case under the application, the applicant, who were defendants, objected that the Emergency Decree on Asset Management Corporation, B.E. 2541 (1998) provided for the assignment of claim rights from the financial institutions to the Management Corporation without the requirement of notice of assignment to the debtors, to which the defendants did not consent and which was being made against the will of the debtors, and therefore such assignment of claim rights were unlawful. It could from then be inferred that section 9 of the Emergency Decree on Asset Management Corporation, B.E. 2541 (1998) contained provisions which were contrary to or inconsistent with section 4, section 26, section 27, section 29, section 30, section 48 and section 50 of the Constitution. Such provisions of the Emergency Decree on Asset Management Corporation, B.E. 2541 (1998) were provisions of law which the court was going to apply to a case and there had not yet been a ruling of the Constitutional Court in relation to such provisions. The case was therefore in accordance with section 264 paragraph one of the Constitution and accepted for consideration.

3. The issues considered by the Constitutional Court

The Constitutional Court considered the issue on whether or not section 9 of the Emergency Decree on Asset Management Corporation, B.E. 2541 (1998) was contrary to or inconsistent with section 4, section 26, section 27, section 29, section 30, section 48 and section 50 of the Constitution.

The Constitutional Court held as follows. In relation to the rights and liberties under section 4 in conjunction with section 26, section 27, section 29 and section 30 of the Constitution, the Constitution offered equal protection to the rights and liberties of persons recognized by the Constitution. However, this did not imply that the rights and liberties could not in any way be restricted or discriminated as section 29 and section 30 of the Constitution provided for the imposition of restrictions of such rights and liberties and discrimination. A restriction of rights and liberties had to satisfy the requirements of section 29 of the Constitution, i.e. only cases where the provisions of the law were specifically enacted for the purpose determined by this Constitution and only to the extent of necessity and provided that it should not affect the essential substances of such rights and liberties. Such law should also be of general application and should not be intended to apply

to any particular case or person. As for discriminations, only unjust discriminations were prohibited under section 30 of the Constitution.

As for rights and liberties under section 48 and section 50 of the Constitution which the applicant claimed the Emergency Decree on Asset Management Corporation, B.E. 2541 (1998) as being contrary to or inconsistent with, both the rights under section 48 of the Constitution and the liberty under section 50 of the Constitution, in other words, the rights of a person in property and the liberty to engage in an enterprise or an occupation and to undertake a fair and free competition, could be restricted provided that such restriction of rights in property under section 48 and restriction of liberty to engage in an enterprise or an occupation and to undertake a fair and free competition under section 50 of the Constitution was within the requirements for restriction of rights and liberties under section 29 of the Constitution.

The provisions which the applicant claimed as being contrary to or inconsistent with the various provisions of the Constitution were necessary provisions under the reasons which were stated for the enactment of the Emergency Decree due to the country's economic crisis. Such enactments were made pursuant to section 48 and section 50 of the Constitution which allowed the restriction of such right and liberty. There was no prejudice to the right and liberty under section 48 and section 50 of the Constitution because the nature of the debtors' debts remained unaltered and no additional burden or duties had been imposed on the debtors. The debtors could still raise any arguments it might have against the original creditor against the new creditor who had been assigned with the claim rights. The Emergency Decree on Asset Management Corporation, B.E. 2541 (1998) only provided for a procedure for the assignment of claim rights different from the Civil and Commercial Code only in order to introduce convenience and expediency as a spontaneous remedy for the economic crisis problem. Moreover, the provisions of this Emergency Decree were of general application and were not intended to apply to any particular person or company.

4. Ruling of the Constitutional Court

The Constitutional Court unanimously held that section 9 of the Emergency Decree on Asset Management Corporation, B.E. 2541 (1998) was neither contrary to nor inconsistent with section 4, section 26, section 27, section 29, section 30, section 48 and section 50 of the Constitution.
