

Summary of Constitutional Court Ruling No. 1/2552

Dated 25th February B.E. 2552 (2009)*

Re: The Supreme Court referred the objection of Mr. Chai Chessombat, the second defendant in Civil Case No. 639/2547 (2004), Judgment No. 1133/2547 (2004) of the Ubon Ratchathani Provincial Court, to the Constitutional Court for a ruling on whether or not section 234 and section 236 paragraph one of the Civil Procedure Code were contrary to or inconsistent with section 2, section 3, section 4, section 29, section 30, section 233 and section 272 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

.....

1. Summary of background and facts

The Supreme Court referred the objection of Mr. Chai Chessombat, the second defendant (applicant) in Civil Case No. 639/2547 (2004), Judgment No. 1133/2547 (2004), between Krung Thai Bank Public Limited, the plaintiff, and Lankam Food Industries Company Limited, the first defendant, Mr. Chai Chessombat, the second defendant, which requested a Constitutional Court ruling under section 264 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). The facts in the application and supporting documents could be summarized as follows.

1.1 Krung Thai Bank Public Limited, the plaintiff, filed an action against both defendants on allegations of an overdrawn account, guarantee and promissory note. Ubon Ratchathani Provincial Court gave judgment that both defendants should be jointly or severally liable for repayment of the overdrawn account together with interests, which were existing entitlements to legitimate contractual rights. As for the obligations under the promissory note, both defendants should be jointly or severally liable for the repayment of debts together with interests as from the date of case filing till the complete repayment of debts to the plaintiff. In the event of a failure to repay or incomplete repayment, the mortgaged properties would be foreclosed and sold in the market, the proceeds from which would be used to repay the plaintiff. If the net proceeds from the market sale were insufficient, other properties would be seized and sold in the market to obtain funds for the complete repayment of debts owed to the plaintiff.

* Published in the Government Gazette Vol. 126, Part 34a, dated 29th May B.E. 2552 (2009)

1.2 The applicant (second defendant) filed an application dated 4th June B.E. 2547 (2004) motioning the Court to refer the applicant's objection that section 30 of the Emergency Decree on Thai Asset Management Corporation B.E. 2544 (2001) was contrary to or inconsistent with section 2 and section 30 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) and subject to section 6 of the Constitution to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). The Court of First Instance issued an order that the application was not an objection that a provision of law applicable to the case was contrary to or inconsistent with the Constitution and therefore found that the criteria under section 264 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) had not been satisfied. Hence, the application was dismissed. The applicant appealed the order. The Court of First Instance ordered the rejection of the appeal application. The applicant appealed against the order rejecting the appeal application. The Court of First Instance ordered that the application was an appeal on an interlocutory order which the appellant was required to pay costs for the other party as well as an appeals fee. As the appellant failed to provide such costs and fees, an order was therefore made to reject the appeal application.

The Court of Appeals Region 3 ordered that, as the applicant filed an appeal on an order rejecting an appeal application without providing payment pursuant to the judgment or providing securities in the Court of First Instance, the application was not in accordance with section 234 of the Civil Procedure Code. The second defendant's appeal application was therefore unlawful. As regards the Court of First Instance's rejection of the application to appeal against the order filed by the second defendant, the Court of Appeals Region 3 concurred in the result. The application was thus dismissed. The application fee was borne by the applicant. The applicant appealed the order to the Supreme Court. The Court of First Instance rejected the second defendant's application to appeal to the Supreme Court.

1.3 The applicant objected that the provisions of section 234 of the Civil Procedure Code which provided that "...and deposit all costs at the Court and make payments pursuant to the judgment or provide security for the Court within fifteen days as from the date of Court order," were provisions which prevented case from proceeding in all three levels of Courts as provided by section 233 and section 272 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). Such provisions were therefore contrary to or inconsistent with section 3, section 4, section 29, section 30, section 233 and section 272 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), and section 236 paragraph one of the Civil Procedure Code was contrary to or inconsistent with section 272 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). The Court of Justice's order to "affirm as final the rejection of the Court of First Instance" and that no appeal to the Supreme Court was available, was an order inconsistent with section 3, section 4, section 29, section 30, section 233 and section 272 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) in conjunction with section 2 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) which provided that "Thailand adopts a democratic regime of government with the King as Head of the State." The interpretation of section 236 of the Civil Procedure Code that a case or order of the Court of Appeals was

final in the Court of Appeals and not appealable to the Supreme Court was an interpretation inconsistent with section 2 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

After consideration, the Supreme Court found that in this case the Court of Appeals Region 3 applied the provisions of section 234 of the Civil Procedure Code as the governing principle in giving the order to reject the second defendant's appeal. Once the second defendant appealed such order to the Supreme Court, the Court of First Instance applied section 236 paragraph one of the Civil Procedure Code as the governing principle in ruling and giving an order to reject the second defendant's appeal to the Supreme Court. The second defendant thence submitted a motion to appeal the order rejecting the appeal to the Supreme Court as well as a motion requesting the Supreme Court to refer the matter to the Constitutional Court for ruling. It was objected that section 234 and section 236 paragraph one of the Civil Procedure Code was contrary to or inconsistent with section 2, section 3, section 4, section 29, section 30, section 233 and section 272 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). This case was therefore an objection that a provision of law to be applied to a case by the Courts was contrary to or inconsistent with the Constitution and there had not yet been a ruling of the Constitutional Court in relation to such provisions. The Supreme Court thus imposed a temporary stay of proceedings and referred the second defendant's opinion through official channels to the Constitutional Court for a further ruling under section 264 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

2. Preliminary issue

The preliminary issue was whether or not the Constitutional Court had the power to admit this application for trial and adjudication.

The Constitutional Court found as follows. This application was pending proceedings in the Constitutional Court when the Constitution of the Kingdom of Thailand B.E. 2540 (1997) was repealed by the Announcement of the Council for Democratic Reform No. 3, dated 19th September B.E. 2549 (2006). The Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) was subsequently promulgated wherein section 35 paragraph one provided that all matters provided by law to be the powers of the Constitutional Court or a problem which arose on the constitutionality of a law should become the powers of the Constitutional Tribunal, and paragraph four provided that all cases or matters pending proceedings in the Constitutional Court prior to 19th September B.E. 2549 (2006) should be transferred to the powers and responsibilities of the Constitutional Tribunal. Thereafter, the Constitution of the Kingdom of Thailand B.E. 2550 (2007) was promulgated to replace the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) and came into force as from 24th August B.E. 2550 (2007). Section 300 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) provided that the Constitutional Tribunal under the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) became the Constitutional Court and paragraph three provided that the provisions of section 35 paragraph two,

paragraph three and paragraph four of the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) should remain in force until the enactment and coming into force of the Organic Act on Constitutional Court Procedures. Section 300 paragraph four of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) provided that all cases or matters pending proceedings in the Constitutional Tribunal under paragraph one shall be continued by the Constitutional Court under this section, and upon the appointment of Constitutional Court Judges under this Constitution, such pending cases or matters should be transferred to the powers and duties of the newly appointed Constitutional Court. The Constitutional Court therefore had the power to rule on this application.

3. Issues considered by the Constitutional Court

The Constitutional Court found that during the trial and adjudication of this application, the Constitution of the Kingdom of Thailand B.E. 2550 (2007) was already promulgated. The constitutional review of any provision of law should therefore be premised on whether the provision of such law was contrary to or inconsistent with the Constitution in force at the time of trial in the Constitutional Court. However, since the provisions of section 2, section 3, section 4, section 29, section 30, section 233 and section 272 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), which were asserted in the applicant's objection as being the constitutional provisions in relation to which provisions of law were inconsistent, contained identical principles to section 2, section 3, section 4, section 29, section 30, section 197 and section 219 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), the Constitutional Court therefore sought to rule on this application in accordance with section 2, section 3, section 4, section 29, section 30, section 197 and section 219 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

The Constitutional Court considered the application and documents in support of the application and found it appropriate to determine that there were 2 issues which required rulings, as follows:

First Issue. Whether or not section 234 of the Civil Procedure Code was contrary to or inconsistent with section 219 in conjunction with section 3, section 4, section 29, section 30 and section 197 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

The Constitutional Court found as follows. Section 3 and section 4 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) were provisions in Chapter I General Provisions. Section 29 and section 30 were provisions in Chapter III Rights and Liberties of Thai People. Section 197 and section 219 were provisions in Chapter X Courts, of which section 197 was a provision in Part 1 General Provisions and section 219 was a provision in Part 3 Courts of Justice. Section 219 paragraph one provided for the organization and structure of judicial proceedings of the Courts of Justice in three levels, namely the Court of First Instance, Court of Appeals and the Supreme Court, except where provided otherwise by the Constitution or by law. Section 219 was therefore not a provision

which conferred rights to a party to carry out proceedings in all three levels of Courts. The Constitution merely conferred a person in need to be able to exercise the right to judicial proceedings. However, the particular courts where such rights could be exercised depended on suitability as provided by law. The law provided for each court to have the competence to try particular cases and/or to try cases finally in such court. Section 219 paragraph two, paragraph three, paragraph four and paragraph five of the Constitution were provisions relating to the Supreme Court's powers to try and adjudicate cases, not being relevant to the issue in this application. Section 234 of the Civil Procedure Code provided that an appellant of a Court of First Instance's order which rejected an application to appeal to the Court of Appeals had to file a motion in the Court of First Instance, whereby the appellant had to deposit all costs at the Court and make payments pursuant to the judgment or provide security to the Court in lieu of making the payments pursuant to the judgment within fifteen days as from the Court order. Such provisions provided for duties which required full compliance by the appellant. The appellant's duty to deposit costs at the Court and make payments pursuant to the judgment or provide security to the Court were legal measures to ensure that the successful party under the judgment of the Court of First Instance would receive complete repayment of judgment debts, including costs that had to be borne by the other party according to the judgment or order, as well as to prevent undue deferrals to the case that would cause delays in enforcement causing detriment to the other party. It was therefore appropriate to furnish the successful party with security for judgment debts. Otherwise, the unsuccessful party could use the law in this regard to defer legal enforcements.

On the issue of whether or not section 234 of the Civil Procedure Code was contrary to or inconsistent with section 3, section 4, section 29 and section 30 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), the Constitutional Court found as follows. Section 234 of the Civil Procedure Code provided that an appellant whose appeal was rejected by the Court of First Instance had the right to appeal the order to the Court of Appeals. However, the appellant was required to deposit all costs at the Court and make payments pursuant to the judgment or provide security to the Court within fifteen days as from the date of Court order. The provisions of this section applied generally and equally to all parties wishing to appeal an order of the Court of First Instance as in this case. The provisions therefore did not affect the sovereign powers of the Thai people, did not violate human dignity, rights and liberties, equality of persons, while also ensuring that the appellant of the order was under a duty to carry out acts to protect the rights of the successful party to the case on an equal basis without specifically directing any particular appellant of an order. The rationale was to ensure that that the other party's debts would be repaid without deferment and to ensure justice for all parties. There was no prejudice to the essential substance of any right and liberty. Furthermore, any person in the situation of the appellant of an order would be treated equally under the law without unfair discrimination. Section 234 of the Civil Procedure Code was therefore neither contrary to nor inconsistent with section 3, section 4, section 29 and section 30 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

As for the objection on whether or not section 234 of the Civil Procedure Code was contrary to or inconsistent with section 197 and section 219 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), the Constitutional Court found as follows. Section 197 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) provided for the principle on trial and adjudication of cases as being the powers of the Courts. Proceedings had to be in accordance with the Constitution and laws and conducted in the name of the King. Judges and justices had to be independent in the trial and adjudication of cases. Section 219 paragraph one provided for the organization of trial and adjudication of cases in the Courts of Justice in the respective levels of Courts, namely the Court of First Instance, Court of Appeals and Supreme Court. The provision did not confer a right to the party to carry out proceedings in all three levels of the Courts of Justice. Section 219 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), in its final provisions also stated that "...except as provided otherwise in this Constitution or other laws." Such provision meant that the Constitution or other laws could contain provisions for each Court to have specific powers to try and adjudicate cases and/or to try and adjudicate cases finally in such Court or in any Court level of the Courts of Justice. Section 219 paragraph two, paragraph three, paragraph four and paragraph five of the Constitution referred to the powers of trial and adjudication of the Supreme Court, which was not related to the issues in the application. Rules that the appellant of an order had to comply with section 234 of the Civil Procedure Code were prescribed in order to expedite the trial of cases by the Courts and to avoid losses to the party and relevant persons as necessary and appropriate to the case. The provision was therefore neither contrary to nor inconsistent with section 197 and section 219 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

Second Issue. Whether or not section 236 paragraph one of the Civil Procedure Code was contrary to or inconsistent with section 219 in conjunction with section 2, section 3, section 4, section 29, section 30 and section 197 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007)?

After consideration, the Constitutional Court found as follows. The Constitutional Court had made rulings in Ruling No. 10/2549 dated 16th May B.E. 2549 (2006) that section 236 paragraph one of the Civil Procedure Code was neither contrary to nor inconsistent with section 272 in conjunction with section 3, section 4, section 29, section 30 and section 233 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), which embodied the identical principles to section 219 in conjunction with section 3, section 4, section 29, section 30 and section 197 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). The ruling related to the same issue as the second issue in this application. It was therefore not necessary to make another ruling on this issue. The remaining issue which had to be ruled upon was whether or not section 236 paragraph one of the Civil Procedure Code was contrary to or inconsistent with section 2 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

Section 2 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) was a provision in Chapter I General Provisions. The provision referred to the Thailand's

governing principle, which was the democratic form of government with the King as Head of the State. No recognition was made of any right and liberty of any person. Hence, on the objection that section 236 paragraph one of the Civil Procedure Code was not in accordance with the democratic form of government in relation to judicial powers, the Constitutional Court found that section 236 paragraph one of the Civil Procedure Code was a provision in relation to the performance of functions and the powers and duties of the Courts amounted to exercises of judicial powers as provided by law. Appeals to the Court of Appeals or the Supreme Court were allowed subject to the rules prescribed by law. Such provision was therefore not inconsistent with the principles of the democratic form of government.

4. Ruling of the Constitutional Court

The Constitutional Court held that section 234 of the Civil Procedure Code was neither contrary to nor inconsistent with section 219 in conjunction with section 3, section 4, section 29, section 30 and section 197 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), and section 236 paragraph one of the Civil Procedure Code was neither contrary to nor inconsistent with section 219 in conjunction with section 2, section 3, section 4, section 29, section 30 and section 197 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).
