

# Summary of Constitutional Court Ruling No. 16/2552

**Dated 4<sup>th</sup> November B.E. 2552 (2009)\***

**Re: The Supreme Court referred the objection of defendants (Miss Pinrat Siriratanaprasert, the third defendant, and Mr. Patinya Siriratanaprasert, the fourth defendant) in Civil Case No. 1493/2543 of Ratchaburi Provincial Court to the Constitutional Tribunal for a ruling on whether or not section 229 of the Civil Procedure Code was contrary to or inconsistent with section 272 in conjunction with section 2, section 4, section 26, section 27, section 28 and section 233 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) (identical principles to section 219 in conjunction with section 2, section 4, section 26, section 27, section 28 and section 197 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2550 (2007)).**

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## **1. Summary of background and facts**

1. Ratchaburi Provincial Court gave a judgment in Civil Case No. 1493/2543 (2000) on 24<sup>th</sup> October B.E. 2543 (2000) stating that Miss Pinrat Siriratanaprasert, the third defendant, and Mr. Patinya Siriratanaprasert, the fourth defendant (applicants), and other defendants comprising five persons, were jointly liable for a payment due to the plaintiff. If the five defendants failed to pay the sums or made an incomplete payment, the land along with the structures thereon belonging to the third and fourth defendants would be seized and sold in the market, the proceeds from which would be applied to the repayment of debts to the plaintiff. Thereafter, all five defendants failed to comply with the judgment. The plaintiff therefore led the legal execution officer to seize such land and the structures thereon for market sale.

2. The third and fourth defendants submitted a motion to Ratchaburi Provincial Court on 2<sup>nd</sup> October B.E. 2546 (2003) requesting for a revocation of the market sale. Ratchaburi Provincial Court dismissed the motion. Both defendants therefore submitted an appeal against the order of Ratchaburi Provincial Court. Court of Appeals Region 7 ordered Ratchaburi Provincial Court to direct both defendants to first provide the plaintiff's costs pursuant to the Court of First Instance's order which had to be deposited at the court. As a result, Ratchaburi Provincial Court ordered both defendants to deposit such costs at the court within 15 days as from the day of receipt of the order, or otherwise the appeal would be deemed as abandoned.

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3. Both defendants submitted an appeal to the Supreme Court against the order of Court of Appeals Region 7, which was filed in Ratchaburi Provincial Court. Ratchaburi Provincial Court, however, did not admit the submission of appeal to the Supreme Court, finding that the appeal was made on an interlocutory order, in relation to which an appeal to the Supreme Court was prohibited. Both defendants therefore appealed against the order of Ratchaburi Provincial Court which denied the submission of appeal to the Supreme Court. The Supreme Court found that the order of Ratchaburi Provincial Court which directed both defendants to provide costs in lieu of the plaintiff, to be deposited at the court within 15 days, was an interlocutory order of Court of Appeals Region 7. If both defendants were of the opinion that such order of Court of Appeals Region 7 was incorrect or unlawful in any way, they could first of all comply with the order of Court of Appeals Region 7 by providing costs in lieu of the other party, and thereafter exercising the right to object to such order in order to acquire the right to appeal to the Supreme Court after a reading of the judgment of Court of Appeals Region 7. The actions of both defendants in this case in immediately appealing against the order of Court of Appeals Region 7 while the case was pending trial in Court of Appeals Region 7 was prohibited under section 226(1) in conjunction with section 247 of the Civil Procedure Code. An order was therefore made to dismiss the motion.

4. Court of Appeals Region 7 gave an order stating that the failure of both defendants to deposit costs in lieu of the plaintiff at the court within the time prescribed by the Court of First Instance was deemed as a neglect of the proceedings within time determined as appropriate by the court and thus an abandonment of the appeal as provided under section 174(2) in conjunction with section 246 and section 132(1) of the Civil Procedure Code. The case was expunged from the dockets of Court of Appeals Region 7.

5. Both defendants submitted a Supreme Court appeal against the order of Court of Appeals Region 7, which expunged the case, to Ratchaburi Provincial Court on 15<sup>th</sup> November B.E. 2548 (2005). Ratchaburi Provincial Court ordered the admittance of the Supreme Court appeal and on the same day both defendants submitted a motion to Ratchaburi Provincial Court objecting that section 229 of the Civil Procedure Code, as regards the provision that an appellant was required to deposit costs payable to the other party pursuant to a judgment or order with the Court along with the appeal, was a provision of law which obstructed the carrying out of case proceedings in all three courts. It was therefore requested that the Court of First Instance or the Supreme Court refer the matter to the Constitutional Court for a ruling on whether or not section 229 of the Civil Procedure Code was contrary to or inconsistent with section 272 in conjunction with section 2, section 4, section 26, section 27, section 28, section 30 and section 233 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), and thus unenforceable under section 6 of the Constitution.

6. The Supreme Court gave an order on 13<sup>th</sup> February B.E. 2550 (2007) that this was a case where the Supreme Court had to apply section 229 of the Civil Procedure Code, and as both defendants objected that section 229 of the Civil Procedure Code was contrary to or

inconsistent with section 272 in conjunction with section 2, section 4, section 26, section 27, section 28, section 30 and section 233 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), but the Constitutional Court had already decided in Ruling No. 61/2548 that section 229 of the Civil Procedure Code was neither contrary to nor inconsistent with only section 30 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) without rulings on other sections; therefore, a temporary stay or proceedings was imposed and the opinions of both defendants transmitted through official channels to the Constitutional Court for a ruling only with respect to the question of whether or not section 229 of the Civil Procedure Code was contrary to or inconsistent with section 272 in conjunction with section 2, section 4, section 26, section 27, section 28 and section 233 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.

After consideration, the Constitutional Court found that this application had been admitted for trial and was pending proceedings by the Constitutional Tribunal under the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) when the Constitution of the Kingdom of Thailand B.E. 2550 (2007) was subsequently promulgated to replace the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006), coming into force as of 24<sup>th</sup> 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; section 300 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) would continue to apply until the enactment of an Organic Act on Constitutional Court Procedures; and section 300 paragraph four provided that all cases or matters pending proceedings in the Constitutional Tribunal under paragraph one would 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 would be transferred to the powers and duties of the newly appointed Constitutional Court. The Constitutional Court therefore had the power to try and adjudicate this application.

## **3. Issues considered by the Constitutional Court**

After consideration, the Constitutional Court found as follows. At the time of the Constitutional Court's trial of this application, the Constitution of the Kingdom of Thailand B.E. 2550 (2007) had already been promulgated. The constitutional review of any provision of law had to take into consideration whether the provision of law was contrary to or

inconsistent with the Constitution in force at the time of Constitutional Court ruling. However, as the provisions of section 2, section 4, section 26, section 27, section 28, section 233 and section 272 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), which were raised in the applicants' objection that a provision of law was contrary to or inconsistent with, embodied identical principles to section 2, section 4, section 26, section 27, section 28, section 197 paragraph one and section 219 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), this case therefore had to be decided under section 2, section 4, section 26, section 27, section 28, section 197 paragraph one and section 219 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

The issue which had to be considered by the Constitutional Court was therefore whether or not section 229 of the Civil Procedure Code was contrary to or inconsistent with section 219 in conjunction with section 2, section 4, section 26, section 27, section 28 and section 197 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

The Constitutional Court found that section 229 of the Civil Procedure Code was a provision on the rules of appeal for a judgment or order. It was provided that the appellant should make the appeal in writing and submit to the Court of First Instance within one month as from the day the judgment or order was read. In addition, the appellant had to deposit the fees payable to the other party pursuant to the judgment or order at the court along with the appeal. The appellant also had to submit copies of the appeal to the court for forwarding to the respondent. On the objection that section 229 of the Civil Procedure Code, which provided that the appellant had to deposit the fees payable to the other party pursuant to a judgment or order at the court along with the appeal, was a provision of law that obstructed the submission of a case to all three levels of the court, it was found that section 229 was a provision which granted the right of appeal to a party by providing a duty for such party appealing against the judgment or order to comply with rules and conditions that were equally applicable to all parties wishing to submit an appeal. Moreover, the fees which the appellant was required to deposit at the court along with the appeal were fees already due from the appellant under the judgment or order of the Court of First Instance, and the deposit provided security in the event that the Court of Appeals gave judgment and the case was finally decided that the appellant was liable for costs of the other successful party. The successful party would then be entitled to receive the pre-paid costs from the fees deposited by the appellant at the court without having to commence enforcement proceedings. At the same time, if the Court of Appeals gave judgment in favour of the appellant, the appellant would have the right to a return of the deposited costs.

Section 219 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) was merely a provision which provided for the Courts of Justice's structure for trial proceedings in three court levels, viz. the Court of First Instance, Court of Appeals and Supreme Court. In other words, the trial and adjudication of cases in the Courts of Justice would proceed in accordance with the court hierarchy, except for cases provided otherwise by the Constitution or by law. Hence, a party did not necessarily have the right to commence proceedings in all three levels of the Courts of Justice in all cases. Thus, section 229 of the

Civil Procedure Code, in regard to the provisions requiring the appellant to deposit fees payable to the other party pursuant to a judgment or order at the court along with the appeal, was not a provision of law that restricted rights or obstructed the commencement of proceedings in all three court levels as claimed by the applicants. Moreover, section 229 of the Civil Procedure Code was not a provision pertaining to human dignity, rights, liberties and equality, or pertaining to the exercise of powers by an organ without due regard to human dignity, rights, liberties and equality. Section 229 of the Civil Procedure Code was therefore neither contrary to nor inconsistent with section 219 in conjunction with section 2, section 4, section 26, section 27, section 28 and section 197 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

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

By virtue of the foregoing reasons, the Constitutional Court held that section 229 of the Civil Procedure Code was neither contrary to nor inconsistent with section 219 in conjunction with section 2, section 4, section 26, section 27, section 28 and section 197 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

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