

Unreasonable Delay in Consideration of a Complaint^{*}

Supreme Administrative Court Judgment No. A. 473/2559, dated 17th March B.E. 2559 (2016)

Miss. V (P)

v.

Office of the Consumer Protection Board (D)

The Plaintiff concluded an agreement selling a parcel of land including building with Miss P. who was authorized to trade in real estate and execute land allocation. Miss P. did not transfer ownership of the land and building to the Plaintiff after receiving a payment under the agreement. The Plaintiff then filed a complaint with the Defendant asking it to assist her in acquiring the ownership of land and building. She argued that the Defendant considered the complaint with delay so she filed a case with the Administrative Court of First Instance. The Supreme Administrative Court held that the official of the Defendant performed his/her duty as required by the law with unreasonable delay, under Section 9 paragraph one (2) of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999). However, damages shall not be awarded since a wrongful act committed by the official of the Defendant was not directly caused by the official of Defendant's performance of official duties with unreasonably delay. As a result, the Supreme Administrative Court reversed the Judgment of the Administrative Court of First Instance which ordered the Defendant to reimburse damages to the Plaintiff.

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Legal Principles: *Wrongful Act, Perform a duty with unreasonable delay*

Administrative Court Procedure: *Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999): Section 9 paragraph one (2)*

Legal Provisions: *Consumer Protection Act, B.E. 2522 (1979)*

Liability for Wrongful Act of Officials Act, B.E. 2539 (1996)

Civil and Commercial Code

Regulation of Consumer Protection Board on Government Procedure for the Public

Judgment (Summary)

In 1996, the Plaintiff concluded an agreement selling a parcel of land, a land title deed No.96209, Pathumthani, including building, in the amount of 399,990 Thai Baht, with Miss P. who was authorized to trade in real estate and execute land allocation. Later, in 1998, Miss P. did not transfer ownership of the land and building to the Plaintiff after receiving a payment under the agreement. On 8th August 2005, the Plaintiff filed a complaint with the Defendant asking it to assist her in acquiring the ownership of land and building under the agreement. On 21st August 2006 and 20th March 2008, respectively, the Defendant invited Miss P. to the office of the Defendant to provide the Defendant a statement and negotiate with the Plaintiff, but Miss P. failed to do. The Plaintiff then met with an official of the Defendant and the official recommended her to take legal action against Miss P. to claim the ownership of the land and building or request the Defendant to repay the money, pursuant to the Consumer Case Procedure Act, B.E. 2551 (2008). On 21st September 2009, the Defendant notified the Plaintiff to submit an application to receive the money in a case which the Bankruptcy Court issued an order for absolute receivership against Miss P. The Defendant also informed the Plaintiff that the Thanyaburi provincial court ordered Miss P. to make a payment to her creditor; if she failed to do so or did not fully make the payment, the 40 parcels of land which included the dispute land would be seized for sale in the public auction. The Plaintiff asserted that the Defendant considered the complaint with unreasonable delay; as a result, she was injured by not acquiring the ownership of the land and building under the land sale and purchase agreement. She then filed a case with the Administrative Court of First Instance.

The Supreme Administrative Court held that it had been more than four years since the Plaintiff submitted the complaint to the Defendant until the Defendant notified the Plaintiff about the order for absolute receivership and the Judgment of the Thanyaburi provincial court. Moreover, the Defendant called for negotiation between the Plaintiff and Miss P. with delay - one year after the complaint was filed, and it took one year and seven months for the Defendant to call for the second negotiation. The issue of the complaint submitted to the Defendant was within the Defendant's power and duty under Section 10 paragraph one (1) of the Consumer Protection Act, B.E. 2522 (1979). It was also the issue that the Defendant may take legal proceedings upon receipt of the complaint from the Plaintiff, pursuant to Section 39 of the Act. The Defendant had a power and duty to receive the complaint and submit it to the Consumer Protection Board under Section 20 of the Act, so it shall report the case and submit it to the Board for consideration promptly and notify the Board's decision in due time. The official of the Defendant failed to do so; instead, the official suggested the Plaintiff take legal action against Miss P. The official performed his/her duty as required by the law with unreasonable delay, under Section 9 paragraph one (2) of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999). The Defendant shall be liable for damages caused by its official who committed a wrongful act during the performance of his/her duty, under Section 4 and Section 5 paragraph one of the Liability for Wrongful Act of Officials Act, B.E. 2539 (1996) read with Section 420 of the Civil and Commercial Code.

On the issue of whether the official committed a wrongful act to the Plaintiff, the official had to intentionally or negligently committed a wrongful act in the performance of his/her official duties or perform the duties with unreasonably delay and the act was resulted in injury to the Plaintiff. The damages awarded by the Court would be damages occurred or directly caused by the wrongful act which was the cause of action in the case. In order to follow up the complaint, the Plaintiff had to travel to the office of the Defendant for several times. The travel expenses paid by the Plaintiff were not damages resulting from the official of Defendant's performance of official duties with unreasonably delay. The Supreme Administrative Court then reversed the Judgment of the Administrative Court of First Instance which ordered the Defendant to reimburse 4,000 Thai Baht to the Plaintiff within 30 days from the date the judgment is final.