

Ordering the Office of the Consumer Protection Board to consider
product safety complaints^{*}

Supreme Administrative Court Judgment No. A. 738/2563, dated 17th August B.E. 2563 (2020)

Miss S (P)

v.

Office of the Consumer Protection Board (D1)

The Consumer Protection Board (D2)

The Plaintiff concluded an Agreement of Purchase and Sale by agreeing to purchase an apartment with a business operator. Later, the Plaintiff found that the elevators in the building were not properly working. The Plaintiff sent a letter asking the business operator to fix the problem for several times, but the said problem had still occurred. In addition, a water heater inside the bathroom was wrongly installed, which may be harmful to life and property of the Plaintiff and other residents living in the same building. The business operator had ignored the said problem. The Plaintiff then lodged her complaints relating to such unsafe products to the Defendant No.1 on 10th and 11th October 2013. The Defendant No.1 did not issue a summon instructing the business operator to appear for giving statements or evidence as necessary for assisting in the consideration of competent officials until 10th April 2014, which was the date the Plaintiff filed a plaint to the Administrative Court of First Instance. The act of the Defendant No.1 was not consistent with the Consumer Protection Act, B.E. 2522 (1979). Therefore, the Administrative Court of First Instance held that the Defendant No.1 performed its duty as required by the law with unreasonable delay. The Court ordered the Defendant No.1 to take action in investigating the Plaintiff's complaints within forty-five days from the date the judgment is final. The Supreme Administrative Court affirmed.

^{*} Summarized by Patchanat Chainuwat, Bachelor of Laws (LL.B.), Thammasat University, Master of Laws (LL.M.) in International and Comparative Law, Chicago-Kent College of Law - IIT, USA, Master of Laws (LL.M.) in International Economic and Business Law, Kyushu University, Administrative Case Official Professional Level, Public Law Study Group 3, Bureau of Research and Legal Studies, the Office of the Administrative Courts.

Legal Principles: *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): Section 4 paragraph one (3) and (4), Section 5 paragraph one (4), Section 10 paragraph one (1), (1/1), and (2), Section 20 (1)*

Regulation of Consumer Protection Board on Government Procedure for the Public, B.E. 2551 (2008): Rule 12, Rule 14 paragraph one

Judgment (Summary)

The Plaintiff claimed that the Plaintiff concluded an Agreement of Purchase and Sale by agreeing to purchase an apartment with a business operator. Later, the Plaintiff found that the elevators were not properly working. The Plaintiff sent a letter asking the business operator to fix the problem for several times, but the said problem had still occurred. In addition, a water heater that the Plaintiff received from the business operator was made for the kitchen, but the business operator modified the heating system and installed it to the bathroom with no temperature adjustment which may cause harm to life and property of the Plaintiff. The Plaintiff requested for a new replacement, but the business operator did not provide it. The Plaintiff then lodged her complaints relating to such unsafe products to the officials of the Defendant No.1 on 10th and 11th October 2013. The Defendants No.1 and No.2 have the responsibility to consider the complaints; however, they did not take any action for about six months. The act of both Defendants is considered as neglecting official duties required by the law to be performed or performing such duties with unreasonable delay. As a result, the Plaintiff filed a plaint to the Administrative Court of First Instance.

The Supreme Administrative Court held that the Plaintiff submitted two complaints to the Defendant No.1. The first complaint, dated 10th October 2013, was about the improperly installation of water heater. The second complaint, dated 11th October 2013, was about the defect of elevators. Even though it appeared that the Defendant No.1 contacted the business operator by phone to inquire more information and Rule 12 of the Regulation of Consumer Protection Board on Government Procedure for the Public, B.E. 2551 (2008) allowed the Defendant No.1 to do so, the Defendant No.1 had to continue the investigation if the issue had not been settled. The Defendant No.1 still had a responsibility to issue a summon instructing the business operator to appear for giving

statements or evidence as necessary for assisting in the consideration of competent officials under Section 5 paragraph one (4) of the Consumer Protection Act, B.E. 2522 (1979) to propose to the Defendant No.2 to consider complaints from consumers suffering grievances or injury in consequence of acts of business operators, or to mediate or compromise disputes in connection with violation of rights of consumers in reliance on an agreement concluded by the consumer and the business operator prior to the institution of an action in Court, or to take action in connection with goods or services which may be harmful to consumer according to Section 10 paragraph one (1), (1/1), and (2) of the said Act. The Defendant No.1 did not issue a summon instructing the business operator to appear for giving statements or evidence as necessary for assisting in the consideration of competent officials until 10th April 2014, which was the day the Plaintiff filed a plaint to the Administrative Court of First Instance. The Defendant No.1 could have taken the action before the Plaintiff submitted a plaint to the Court. Furthermore, the said problem should have been solved in urgent because it may have impact to safety to life and property of the Plaintiff and other consumers living in the same building. The act of the Defendant No.1 was not consistent with the Consumer Protection Act, B.E. 2522 (1979), which aimed to protect consumers rights, especially the right to be afforded safety in the use of goods or services, including the right to have injury considered and compensated under Section 4 paragraph one (3) and (4) of the said Act. Therefore, the Supreme Administrative Court affirmed the judgement of the Administrative Court of First Instance which held that the Defendant No.1 performed its duty as required by the law with unreasonable delay under Section 20 (1) of the Consumer Protection Act, B.E. 2522 (1979), in pursuant with Rules 12 and 14 paragraph one of the Regulation of Consumer Protection Board on Government Procedure for the Public, B.E. 2551 (2008). The Court then ordered the Defendant No.1 to take action in investigating the Plaintiff's complaints within forty-five days from the date the judgment is final.
