THE LEGAL ISSUES IN HIRE PURCHASE AS PROVIDED IN THAI CIVIL AND COMMERCIAL CODE

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Abstract - A hire purchase is a type of transaction which features a prominent role throughout the history as in the current days since it gives the chance for everyone who desires to own the property to be able to possess it early and benefitted from such property by paying the hire installment periodically instead of engaging in a normal purchase. However, based on this study, Thai hire purchase law is still filled with loopholes since it allows the owner to resume possession when the contract is terminated as provided in Thai Civil and Commercial Code section ***574***. Nevertheless, the provision itself does not describe the approach, method, or duration for the resumption of possession. This loophole allows the owner to arbitrarily resume possession and forcing the hirer out of possession by any illegal means(coercion, duress, physical abuse or mental abuse, etc.). These actions are considered to be the extreme violation of rights and freedom. In addition, they are strongly prohibited by law and, because of this issue, the hirer thus is not protected by the law as it should be. I, the author of this thesis, would like to suggest the revision for the legal measures in protecting the hirer by adding the approach, method, and duration for resumption of possession to the hire purchase provisions of Thailand. Namely, there should be the obligation for the owner to notify the hirer before the owner himself resumes possession. The notification shall be no less than ***7*** days in order for the hirer to return the property without any of his damage. However, if the owner has already done such action but the hirer still continues on possessing the property, the owner shall take the legal action by litigation. Further, the provisions should provide the time of commencement and time limit for resumption of possession when the contract is terminated by giving the time of commencement as no less than ***7*** days after sending a notification and the time limit is no more than 1 year after the contract is terminated.

Keywords - Hire-Purchase, Hire of Property, The Civil and Commercial Code of Thailand

I. INTRODUCTION

Normally, a personal ways desires to own the property necessary to the living such as a habitation(such as a house, a condominium unit, a townhouse, etc.)or a vehicle (such as a car or a motorcycle). However, when we look at the price of such properties, we can see that they are extremely expensive when compared with the average income of Thai people. By this reason, the middle class or the individual with low income cannot easily own the property by a normal purchase. Therefore, a new type of transaction was born and creates an opportunity for a low-income or middle-income person. Besides, this new type of transaction also serves as a promotional strategy (PathaichitEakjariyakorn, 2014) and is popular throughout the history. Such transaction is called hire purchase.

The word "hire purchase" refers to the contract which the owner of the property lease his property with a promise of sale or ownership transfer if the hirer has pay a complete number of hire installment as agreed. (Thai Civil and Commercial Code, Section 572 provides that "A hire-purchase is a contract whereby an owner of a property lets it out on hire and promises to sell it to, or that it shall become the property of, the hirer, conditionally on his making a certain number of payments. The contract of hire-purchase is void unless made in writing.") Based on this definition, we can see that a hire purchase is the contract based on 2 contracts; a hire of property and a promise of sale. It is a bilateral contract as both parties will receive the benefit when all conditions are met. In this, matter, we can see that the hirer could benefit from the property, unlike a normal purchase, during the installment process (Sanunkorn Soththipun, 2015) which can take a long time to complete. However, the hirer instead must overall pay a higher pricesince the price of property in hire purchase includes the interest and the additional fee for a longer time in completing the contract than normal purchase (Mana Pittayaporn,1969). And if the hirer has already completed the hire installment, the ownership will be transferred. Therefore, hire purchase is a form of reciprocal contract. (Thai Civil and Commercial Code Section 369 provide that "A party to a reciprocal contract may refuse to perform his obligation until the other party performs or tenders performance of his obligation. But this does not apply, if the other party's obligation is not yet due.") However, a hire purchase will be complete and legally applicable to both parties when it is made written and followed the form which provided by the provisions (Pongrat Krueklin, 2001).

Originally, Thailand has no provision of hire purchase. Later, there was an addition to the Code, Title 3 Specific Contracts, which also included the 3 sections of hire purchasewith it. These sections are section 572-574, promulgated on January 1, B.E. 2467. They were later revised on April 1,B.E. 2472, and this revision is still effective on these days (Samrueang Mekkriangkrai, 2012). In summary,

section 572 provides the definition and form of hire purchase, section 573 provides the termination of hire purchase by the hirer and section 574 provides the termination of hire purchase by the owner.

Section 572 A hire-purchase is a contract whereby an owner of a property lets it out on hire and promises to sell it to, or that it shall become the property of, the hirer, conditionally on his making a certain number of payments.

Section 573 The hirer may at any time terminate the contract by redelivering the property at his own expense to the owner.

Section 574 The owner may also terminate the contract in case of default of two successive payment, or breach of any material part of the contract; in which case all previous payments are forfeited to the owner who is entitled to resume possession of the property.
In case of breach of contract by default of the last payment, the owner is entitled to forfeit previous payment and resume possession of the property only after the expiration of one instalment period.

II. OBJECTIVES OF STUDY

A. Find origin, concept, and theory of the provisions of hire purchase in Thailand
B. Study the legal measures used in protecting the rights of the hirer and find suitable approaches, methods, or duration for resumption of possession when there is a termination of hire purchase as provided in Thai Civil and Commercial Code section 574.

III. SCOPE OF STUDY

This thesis analyzes and focuses on the impact which might be caused by arbitrary resumption of possession as a way to find a guideline for suitable approaches, methods, or duration for resumption of possession as provided by Thai Civil and Commercial Code section 574 and other provisions related to hire purchase.

IV.METHODOLOGY AND DATA ANALYSIS

This thesis, the Legal Issues in Hire Purchase as provided by Thai Civil and Commercial Code is done by documentary research through compiling and analyzing various information sources. The information sources are divided into 2 categories which are primary data (books and provisions) and secondary data (theses, academic articles, legal journals, and electronic data). The information from both sources is used for analyzing and determining the legal protection measures for the hirer(Chuencheewin Yimfuang, 2017).

V. EXPECTED BENEFITS

A. Discover the origin, concept, and theory of the provisions of hire purchase in Thailand
B. Discover the legal measures used in protecting the hirer and suitable approaches, methods, or duration for resumption of possession when the contract is terminated as provided by Thai Civil and Commercial Code section 574.

RESULTS AND DISCUSSION

At present, it has been found that owner is usually an entrepreneur or a financial institution that have a high bargaining power. Typically, the owner will always set the standard contract or adhesion contract as a way to preclude his liability and some of his obligations. The preclusion causes an inverse and adverse effect as it makes the hirer subject to more obligations and loses some of his rights since the rights of the hirer are based on the owner's obligations (Sirirat Fongvithu, 2004). Additionally, this contract always involves the clause which gives more power to the owner and therefore unfair to the hirer who is usually a natural person with much less bargaining power. The contract put the hirer in an unfavorable condition and make him comply with the clause without any power of objection as it will be hard for the hirer to object the contract because the hirer usually possess the limited resource and knowledge.

When considering section 574, we can see that there are 2 cases which the owner can revoke the hire purchase;
1.The hirer is obliged to pay the hire installment if the hirer does not pay the hire installment on time for 2 successive payment or there is a default of final payment or
2. The hirer has breached the contract on substantial part.

These allow the owner to terminate the hire purchaseand resume possession as resumption of possession is a rights of recovery from a person who has no right to detain it as provided by Thai Civil and Commercial Code section 1336 (Ratchadaporn Thongsook, 2006). Regardless, such provision only allows the resumption of possession but does not describe the specific approach or method. The owner might set a standard clause in the contract which allows him to resume possession without any need of litigation when the hirer has breached the contract (Pollakarit Bavornkrailert, 2007). This example shows how the damage can be caused it such loophole still exists. As it was found in practice, the owner usually resume possession by using any illegal means(coercion, duress,physical abuse or mental abuse, etc.). Further, these actions are against the public morals and strongly prohibited by the law. If

there is still no revision for hire purchase provision, the hirer will always suffer from the owner's abuse of rights.

Moreover, such provision does not specify the time limit for resumption of possession. This result in the situation which the owner can resume possession whenever he want even though the duration specified in hire purchase is already over since the contract has been long terminated (as provided by Thai Civil and Commercial Code section 574). Thus, I view this as the case which the provision gives too much power to the owner and thus consequently make the hirer feels insecure about his right of possession.

CONCLUSION

A hire purchase is a form of transaction which is necessary to the living. Nevertheless, based on this study, I found that there are still some legal loopholes which cause the hirer to be unprotected by the law as it should be. For this matter, I would like to suggest the solution by adding suitable approaches, methods, or duration for resumption of possession to the Thai Civil and Commercial Code section 574.

Therefore, there should be a revision on such provision by adding the owner's obligation for the owner to notify the hirer first before the resumption of possession for no less than 7 days. The notification may be done verbally, impliedly or by sending a written document. If the owner has already followed the measure I suggest but the hirer still continues on possessing the property, the owner shall instead use the rights of litigation. However, the owner cannot resume the possession arbitrarily or use any illegal means. Also, the time of commencement and time limit should be added to the provision as conditions for resumption of possession; the time of commencement is no less than 7 daysafter sending a notification and the time limit is no more than 1 year after the contract is terminated.
For Thai Civil and Commercial Code section 574, I would like to suggest the revision of this provision as a way to protect the rights of the hirer as follows;

"The owner may also terminate the contract in case of default of two successive payments, or breach of any material part of the contract; in which case all previous payments are forfeited to the owner who is entitled to resume possession of the property by using a legal means when he has already notified the hirer with no less than 7 days before resumption and the time limit for resumption is no more than 1 year after the contract is terminated.

In case of breach of contract by default of the last payment, the owner is entitled to forfeit previous payment and resume possession of the property only after the expiration of one installment period. The resumption of possession must be done by using a legal means when he has already notified the hirer with no less than 7 days before resumption and the time limit for resumption is no more than 1 year after the contract is terminated."

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