

# Memorandum about the judgment of the Supreme Court of Thailand (8818/2563)

## © Main points of the factual situation before the rescission

The claimant X concluded a hire-purchase contract of a shovel-loader. Its main terms were as follows:

- Total sum of the payment (HP):  $HP = \text{฿}4,051,200.00$
- The period of the installments: 48 months
- The amount per installment:  $HP / 48 = \text{฿}84,400.00$

Accordingly, the following points would result from the terms above:

- The total payment (HP) consists of the payment of **the price of the shovel-loader (A)** and the payment of **the rental fee (R)**. Therefore:  
$$A + R = \text{฿}4,051,200.00.$$
- The installment for each month covers the partial payment of the price ( $A/48=a$ ) and the payment of the rental fee for each month ( $R/48=r$ ). The content of each installment could be explained in the equation:  
$$a + r = \text{฿}84,400.00$$
- In the actual case, the claimant X delivered the shovel-loader to the defendant Y and offered the benefits of its lease for 48 months. In return, Y paid the installment to X for 35 months as agreed in the contract. This counter-performance could be explained:  
$$35(a + r) = 35 * \text{฿}84,400.00 = \text{฿}2,954,000.00$$
- After that, Y delayed in the payment. X sent the warning notice to Y and requested the payment of the whole outstanding amount within a period of 7 days. Its amount was:  
$$13(a + r) = \text{฿}1,097,200.00$$
- X rescinded the contract after the expiry of the period.
- However, Y continued the payment 3 times. He paid after the rescission totally:  
$$\text{฿}993,388.00$$

## © Restitution of the original state (after the French-, Japanese concept of the rescission)

As the main effect of rescission, each party to the contract is obliged to retribute the performance received to the other party. However, the effect of the lease contract is already accomplished in the passed period. Accordingly, the effect of the rescission of the lease contract is limited to the extinction of its binding force in the future. Therefore, the duty of the restitution consists in the following points respectively:

- X's restitution duty: the payment of the price received (35a)
- Y's restitution duty: the shovel-loader received or its value (mp: market price) if its return is not possible for Y.

### © Compensation for damages (damages in lieu of performance, expectation interest)

As a result of the restitution, the situation of the both parties to the contract was completely initialized. Starting this point, each party should perform their obligation from the contract each other again, but only in a virtual calculation of the economic effects of performance. Besides the stipulated price for the shovel-loader, Y has also to pay the rental fee for 13 months as a compensation for the lost profits of X as follows:

- X's duty of performance: payment of the value (mp) of the shovel-loader instead of its delivery
- Y's duty of conter-performance: payment of the price of the shovel-loader stipulated (48a) and the rental fee for 13 months (13r)

### © Combined total of the restitution and damages in lieu of performance

Finally, these two operations could be combined as follows:

- X's duty: Return of the payment of the price paid (35a) and payment of the value of the shovel-loader (mp)  
35a + mp
- Y's duty: Return of the shovel-loader or its value (mp), payment of the price stipulated (48a) and the rental fee for 13 months  
(shovel-loader or mp), 48a, and 13r

Accordingly, we can distinguish the following two cases:

- Case 1: X requests Y to return the shovel-loader itself and its return is possible for Y:
  - Y's duty consists in:
    - Return of the shovel-loader itself
    - Payment of  $\{(48 - 35)a + 13r\} = 13(a + r)$
  - X's duty consists in:
    - Payment of the value of the shovel-loader (mp)

So, Y's duty consists in the return of the shovel-loader and the payment of  $\{13(a + r) - mp\}$ . The both payments from Y to X and from X to Y can be set off. If the actual value (market price) of the shovel-loader should amount to ₪400,000.00, then Y would owe the shovel-loader and the payment of  $(₪84,400.00 * 13 - ₪400,000.00) = ₪697,200.00$  to X.

- Case 2: X requests Y to pay the value of the shovel-loader or Y cannot return the shovel-loader:
  - Y's duty consists in:
    - Payment of  $\{mp + (48 - 35)a + 13r\} = \{mp + 13(a + r)\}$

- X's duty consists in:
  - Payment of the value of the shovel-loader (mp)

The both payments can be set off. At the end, Y has to pay  $\{(mp - mp) + (48 - 35)a + 13r\} = 13(a + r)$ . So, Y has only to pay the amount of 13 installments unpaid. So, Y would owe the payment of  $(\text{฿}84,400.00 * 13) = \text{฿}1,097,200.00$  to X.

| Case 1      |   |   |     |   |   |
|-------------|---|---|-----|---|---|
| Restitution | X |   | 35a | → | Y |
|             |   | ← |     |   |   |
| Damages     | X |   | mp  | → | Y |
|             |   | ← | 48a |   |   |
|             |   | ← | 13r |   |   |

| Case 2      |   |   |     |   |   |
|-------------|---|---|-----|---|---|
| Restitution | X |   | 35a | → | Y |
|             |   | ← | mp  |   |   |
| Damages     | X |   | mp  | → | Y |
|             |   | ← | 48a |   |   |
|             |   | ← | 13r |   |   |

|       |   |   |     |   |   |
|-------|---|---|-----|---|---|
| Total | X | ← |     |   | Y |
|       |   |   | mp  | → |   |
|       |   | ← | 13a |   |   |
|       |   | ← | 13r |   |   |

|       |   |   |     |   |   |  |
|-------|---|---|-----|---|---|--|
| Total | X | ← | mp  |   | Y |  |
|       |   |   | mp  | → |   |  |
|       |   | ← | 13a |   |   |  |
|       |   | ← | 13r |   |   |  |

|                      |   |               |   |
|----------------------|---|---------------|---|
| Total                | X | ←  + ฿697,200 | Y |
| If mp = ฿400,000 ... |   |               |   |

|       |   |              |   |
|-------|---|--------------|---|
| Total | X | ← ฿1,097,200 | Y |
|-------|---|--------------|---|

### © Transfer of the ownership and its registration

After Y pays the whole expectation interest to X, the economic states of the both parties are exactly same as those after successful completion of the contract. At the end, Y has paid the whole purchase price for the shovel-loader:

- In the case 1 above, however, X recovers the possession of the sold shovel-loader again. It is the same situation *as if X has purchased the shovel-loader back for its market price*. In this case, Y may not claim X to transfer the the registration of the shovel-loader because Y loses its possession.
- In the case 2 above, *Y retains the possession of the shovel-loader* even after the payment of damages, which means the payment of the whole purchase price. Consequently, Y is entitled to the full of the ownership of the shovel-loader. For this reason, Y may claim the transfer of its registration.

### © Damage for delay in payment of damages, depreciation, and value-added tax

The explanation above presupposes that the debtor Y is ready to pay damages after the creditor X has rescinded the contract. In the actual case, however, Y ignored the rescission by

X and continued to offer the payment. If the rescission by X is fully effective, Y is default in the payment of damages after X declared the rescission and claimed damages in lieu of performance from Y. If Y continues to use the the shovel-loader without the payment of damages, then Y must pay the rental fee for this period ( $r * n$ ;  $n = \text{months}$ ). This will be another “lost profits” for X. Moreover, Y must pay the interest for the total amount of the damages from the time when X declared the rescission and claimed damages.

In regard to the depreciation of the shovel-loader during the period where Y uses it, X has no extra entitlement to its compensation because such a depreciation as expected from the normal use is already compensated with the payment of the rental fee.

At last, the hire-purchase was rescinded, but with the payment of the damages in lieu of performance, the contractual transaction of the shovel-loader has been accomplished in its economic result. For this reason, the parties bear the tax liability of the value-added tax.