

Plaint

Case Black No. 2328/2550

The Civil Court

29th May 2007

Civil Case

Between:

Plaintiff: Pol. Lt. Col. Thaksin Shinawatra, represented by his Attorney Mr. Tharat Sombatboon

Defendant: Mr. Kaewsan Atiphoti, the first defendant, and other persons named, totaling 10 persons as per the list attached to this Plaint

Charge or Offence: Tort, claim for damages in the amount of 500,000,000 Baht

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2. During the period from 8th May to 9th May 2007, all ten Defendants had jointly committed various illegal acts against the Plaintiff thereby causing prejudice to the Plaintiff’s rights, and also jointly disseminated false statements, the details are as follows:

2.1 The 1st Defendant as Director and Secretary of the Assets Examination Committee (AEC) made various statements to the public and to the press, with intention to have it presented as news that **“the Meeting of the AEC resolved to make an accusation against Dr. Thaksin Shinawatra and thereby appointing the Investigation Committee, on the grounds of malfeasance performance of duties which is an offence under Section 157 of the Criminal Code in order to unfairly benefit Shin Corporation PLC and its related companies, namely, AIS, by conversion of the telecommunications concession fee into excise tax, because Mr. Thaksin Shinawatra gave instruction to have the telecommunications concession fee changed to excise tax.”**

Furthermore, the 1st Defendant also gave his opinion confirming such information and further stated that **“This was corruption at political level, namely, the government and the wealthy joined together to interfere with the public’s liberty. This was a betrayal of the public trust”**. Mr. Kaewsan also made a statement that by conversion

from the concession fee to the excise tax by issuing the Emergency Decree on Excise Tax Rates, AIS benefited because it then paid less money to TOT (the “Telephone Organization of Thailand, a State enterprise). Such action by Dr. Thaksin Shinawatra benefited only AIS, so other competitors had to make higher payments, thereby excluding newcomers. **This Emergency Decree was therefore deemed invalid.** This would destroy the free telecommunications system and would be disadvantageous to the public due to the fact that mobile phone charges should actually be decreased by ten percent based on the decrease in tax rate. It can be seen that on the date Pol. Lt. Col. Thaksin held his office on the first occasion, shares in Shin Corporation generated the total revenue of Baht 20,000 million, and after five years, their value was increased to Baht 73,300 million. Mr. Kaewsan said that this difference came from the benefit illegally created by an abuse of power. Moreover, Mr. Kaewsan, the AEC Secretary, added that it was found from the investigation that Dr. Thaksin Shinawatra gave direct instructions based on the paper prepared by Mr. Boonklee Plungsiri, Chief Executive Officer of Shin Corporation Group during his study at the National Defense College of Thailand. The conversion of the concession agreement was successful in the second session of the Thaksin’s government which Doctor Suraphong Suebwonglee attended in his capacity as the Minister of Information Technology and Communication. On the first date of holding office, Doctor Suraphong presented the policy on conversion of concession fee into excise tax. He informed the press that within the following week, the AEC would appoint the subcommittee to investigate into such matter. However, Mr. Kaewsan provided the reason of not making any accusation against the Minister in charge was that the amendment of law on this occasion, the persons who received direct benefits are members of Dr. Thaksin’s family being the shareholders of Shin Corporation, holding 49 percent of all shares therein.

2.2 Thereafter, the 2nd Defendant, represented by the 3rd Defendant to the 10th Defendant, published in “Post Today” daily newspaper, dated 9th May 9 2007, the statement made by the 1st Defendant to the public and the press as per Clause 2.1.

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The Plaintiff hereby submits to the Court that, before the Plaintiff held the office as Prime Minister, the Plaintiff gave the word of honor to His Majesty the King that **“I shall be loyal to His Majesty the King and shall honestly perform duties and in good faith for the benefit of the nation and the public and shall maintain and comply with the Constitution of the Kingdom of Thailand in all respects.”** The Plaintiff had never behaved differently from his word of honor. The Plaintiff never gave instructions to change the telecommunications concession fee to excise tax; or dishonestly performed his duties in bad faith in favor of the business of his family members; or connived with capitalists at blocking the public’s liberty; **and thought about betrayal to his native country and Thais or rebelled against the nation**, as stated by the 1st Defendant and published in the “Thai Post” Newspaper by the 2nd Defendant, represented by the 3rd Defendant to the 10th Defendant.

In respect of the Emergency Decree Amending Act on Excise Tax Rates B.E. 2527 (1984) (No. 4) B.E. 2546 (2003), **the Constitutional Court issued the Judgment No. 32/2548** which can be summarised as follows: “The enactment of the Emergency Decree Amending Act on Excise Tax Rates B.E. 2527 (1984) (No. 4) B.E. 2546 (2003) by the government was made according to the policy of the Administration to generate revenue for the state in order to ensure the stability of the country’s fiscal system, with the objective to use such revenue for public benefit and without limitation of the rights and liberty in using the national telecommunication resources. The public had the same rights and liberty to use such resources. This was to ensure the stability of the national economy, not limiting the free trade or lowering the concession fee to render a loss of the government’s revenue. On the contrary, this would generate revenue directly to the government instead of passing the fund through a state enterprise which will subsequently be converted into public limited companies. Therefore, the state will continue to receive revenue without any change in revenue shared or any amendment to the concession agreements because the existing operators shall pay the revenue shared at the same rate according to the agreements made before the enforcement of the said Emergency Decree, **thereby having no conflict or inconsistency with the Constitution of the Kingdom of Thailand B.E. 2540 (1997).**”

An increase in the value of the shares in Shin Corporation Public Company Limited was a reflection of the change in market value which is in its ordinary course. The SET

index is a good indicator and also reflects the country's economic situation. During the period the Plaintiff was in charge of the administration of the country as the Prime Minister, the value of most shares traded on the Stock Exchange increased, not only the shares in Shin Corporation Public Company Limited. The SET's index therefore clearly showed the improvement of the national economy during the period the Plaintiff was in charge of the country's administration.

3. Regarding the act committed by the ten Defendants as mentioned above, the 1st Defendant, in particular, who once was a senator and had been a lecturer in law at a reputable university in Thailand, with good legal knowledge would have been well aware that in a criminal case, it shall be presumed that the alleged offender shall be deemed innocent until proven guilty. An alleged offender or a defendant shall be entitled to an investigation or consideration in a quick, continuous and fair manner, in accordance with international principles. Furthermore, Section 3 of the Interim Constitution of the Kingdom of Thailand and all previous Constitutions of the Kingdom of Thailand guarantee such principle. **On the other hand, the 1st defendant stated to the press and provided his personal opinion confirming that the Plaintiff committed an offence; that the Plaintiff dishonestly performed the duties and in bad faith; that the Plaintiff betrayed Thais; connived with capitalists by issuing a law in favor of his family's business. The 2nd Defendant, represented by the 3rd Defendant to the 10th Defendant, continuously published the said statements as headlines of their newspaper indicating that the Plaintiff betrayed the nation by abusing the power as Prime Minister in favor of the family's business even though no plaint had been filed with the Court and no final judgment had been issued stating that the Plaintiff committed an offence, which is the legal procedure to prove whether or not the Plaintiff committed an offence, as stated by the 1st Defendant and published by the 2nd Defendant to the 10th Defendant.** The acts committed by all Defendants are thus not considered as providing an opinion or presentation of statements in good faith, but are considered to be statements at press conferences, opinions and publication of statements with bias and non-neutral standing, intending to eliminate the people's trust in the Plaintiff. In addition, all Defendants knew well that the Constitutional Court issued a judgment on such case, with detailed reasons as specified above, but they continued to publish such statement to the public. Such act is deemed to be a joint defamatory statement and giving a false statement with

(Translation - Excerpt)

respect to the Plaintiff to third persons by way of advertising in the form of documents, pictures, broadcasting or announcements causing the Plaintiff to be defamed and disliked. Those acts were intentional.