

(Unofficial Translation - Excerpt)

**Plaint**

**Case Black No. Or. 1770/2550**

The Criminal Court

11<sup>th</sup> May 2007

Between:

Plaintiff: Khunying Pojaman Shinawatra, represented by her Attorneys Mr. Boonchaliew and Chaliew Dutsadee

Defendant: Mr. Nam Yimyam

Charges: Malfeasance in judicial office, being an official unduly performing the duties causing damage to any person.

Details of the Plaintiff:

1. This case arose from the fact that the Plaintiff purchased land (under 4 title deeds) on Tiemraummitr Road covering a total area of 33-0-78.9 rai for a value of Baht 772 million from the Financial Institutions Development Fund ("FIDF"). Before the Plaintiff purchased such land from the FIDF, the total area of the land was approximately 35-2-92.1 rai, totaling 13 title deeds, which were announced for bidding via internet on 10<sup>th</sup> July 2003. The bidding date was scheduled to be held on 22<sup>nd</sup> July 2003, and any person wishing to participate in the bidding could register the bid during the period from 15<sup>th</sup> July to 17<sup>th</sup> July 2003 at Samart Info Media Co., Ltd. (24 hours via internet) or at the FIDF from 9.00–12.00 hours. The FIDF set the minimum sales price at Baht 870 million, but on the bidding date, no bid was submitted. The FIDF then cancelled the bidding.

Later, the FIDF has measured and divided such land. After the land measurement and division, the land title deeds were changed to 4 title deeds. The land area of 33-0-78.9 rai remains the same. The bidding was held again and the general public could attend and submit the offers as per the announcement dated 25<sup>th</sup> November 2003. Bidding forms were sold from 2<sup>nd</sup> December to 8<sup>th</sup> December 2003. The bids were scheduled to be submitted on 16<sup>th</sup> December 2003 from 9.00-10.30 am. All bids were to be opened on 16<sup>th</sup> December 2003 at 11.30 am at the Conference Room No. 2 on the 4<sup>th</sup> floor at the Head Office Building of the Bank of Thailand. Each bidding participant was required to place a security of Baht 100 million by transferring money via the Baht Net System of

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commercial banks to the FIDF's account at the Bank of Thailand by 16<sup>th</sup> December 2003 before noon. In this bidding, no minimum price was set by the FIDF.

Again, the FIDF announced the sale of such land to the public via the website of the FIDF. The Plaintiff was interested in purchasing such land for construction of a residence since the land location is close to major transportation facilities and there was a city regulation restricting construction of high rise buildings within such zone. The Plaintiff thus authorized Mr. Somboon Kooptinanus to submit a bid for such land from the FIDF. The Plaintiff complied with the announcement of the FIDF in all aspects and placed a security bond for the bid at the value of Baht 100 million on 10<sup>th</sup> December 2003.

On the submission date, the FIDF Committee appointed the Committee on Bidding Receipt and the Committee on Opening of the Bid. The qualifications of the Plaintiff have been examined to ensure that she does not have any prohibited qualifications as stated by any law in respect of the purchase of such land. After the review by the Committee, the Plaintiff was then approved to submit a bid. There were four persons (including the Plaintiff) purchasing the bidding forms and submitting the bids. The FIDF Committee disqualified one participant. The remaining three participants' bid were opened and disclosed as follows: The Plaintiff, represented by Mr. Somboon Kooptinanus as authorized person offered a price of Baht 772 million; Nobel Development Public Company Limited, represented by Mr. Keerati Katasuk as authorized person offered a price of Baht 750 million; and Land & House Public Company Limited, represented by Mr. Weerapong Muthanon as authorized person, offered a price of Baht 730 million.

On 16<sup>th</sup> December 2003, one day after the opening of the bid, the FIDF Committee held a meeting to consider and approve the Plaintiff's bid and on that day announced that the Plaintiff bid was selected.

On 17<sup>th</sup> December 2003, the FIDF, represented by Mrs. Sawangchit Jaiwat as the Fund Manager, entered into an agreement for sale and purchase of such land with the Plaintiff, represented by Mr. Somboon Kooptinanus as authorized person. In this regard, the Plaintiff made the first payment representing 50 percent of the offer price (after deduction of a security of Baht 100 million), totaling Baht 336 million. All remaining payment of

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Baht 336 was subsequently paid to the FIDF on 26<sup>th</sup> December 2003 pursuant to the conditions specified by FIDF.

On 30<sup>th</sup> December 2003, the FIDF, represented by Mr. Rungrueng Kok-khuntod and/or Mr. Suporn Deephan proceeded with the registration of the transfer of land ownership, together with the delivery of such land to the Plaintiff, represented by Mr. Somboon Kooptinanus as authorized person.

Regarding the registration of the transfer of land ownership, on 29<sup>th</sup> December 2003, the Plaintiff's husband, Dr. Thaksin Shinawatra, signed the letter of consent for the Plaintiff to accept the transfer of such land at the Land Department.. Together with such consent form, Dr. Thaksin has attached a copy of his identity card which is his official identity card as the Prime Minister. Such documents were given to Mr. Somboon Kooptinanus to be used as required by officials for the registration of the transfer of land ownership. The Plaintiff's husband, Dr. Thaksin Shinawatra, did not sign such consent in the capacity as the Prime Minister. Before signing the letter of consent, it had been checked that the status of the Plaintiff's husband as the Prime Minister was not regarded as a government official having the power and duties to supervise, control, examine or take legal actions as to the FIDF.

As described above, the agreement for sale and purchase of land between the FIDF and the Plaintiff, as well as payment for land and registration of the transfer of land ownership were made legally in accordance with the laws, in good faith and with fair consideration. The FIDF proceeded with the sale of such land pursuant to its power and duties within the scope of the FIDF's objectives; i.e. the Bank of Thailand Act B.E. 2485 (1942) prescribes that the FIDF, by its Fund Manager, shall have the power to sell land (the first paragraph (1) of Section 29 (octo)) under the policy and general control of the FIDF Committee under item (1) and (2) of Section 29 (tres). Since the FIDF is a juristic person under Section 29 (ter), with separate identity from the Ministry of Finance and the Bank of Thailand. Thus, the "FIDF Committee" has the power and duties to supervise, control, monitor, examine or take legal actions as to the FIDF as prescribed in Section 29 (tres) thereof.

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Therefore, the FIDF Committee has within its power and bylaws, sold such land to the Plaintiff, and did not suffer or incur any damages therefrom. The Plaintiff shall present evidence to the Court during the hearing.

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4.1 During the period from 10<sup>th</sup> January to 28<sup>th</sup> January 2007, the Defendant being the competent official under the law had unduly performed his duties as follow:

After the Defendant was appointed by the Democratic Reform Council to perform duties under the Announcement No.30, the Defendant as Chairman of the AEC acted out of malice against the Plaintiff and her husband Dr. Thaksin Shinawatra by making statements to the general public via newspapers, magazines, radio and television medias that:

*“the Plaintiff’s entering into the agreement for purchase of the land from the FIDF was a joint offence in violation of Section 100 of the Organic Act on Counter Corruption B.E. 2542 (1999), thereby causing damage to the state”.*

Further, the Defendant has forced and threatened the FIDF, to file the complaint against the Plaintiff and her husband with respect to the sale and purchase of such land. At the time the Defendant made such public statement, there was no examination and investigation into facts and legal issues, neither collection nor finding of evidence, no resolution of the AEC that the Plaintiff and her husband committed any offence. Furthermore, at that time, neither an accusation nor a complaint has been made or claimed by the FIDF against the Plaintiff and her husband.

With respect to the Defendant’s accusation against the Plaintiff and her husband, Dr. Thaksin Shinawatra as mentioned above, the Defendant in the capacity as Chairman of the AEC knew well that according to Section 100 of the Organic Act on Counter Corruption B.E. 2542 (1999), an accusation against the Plaintiff and her husband shall be initiated by the injured party under Sections 66, 67 and 69 of the said Act.

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According to the Announcement and Regulations attached to the Plaintiff as Exhibit 2 and Exhibit 4, no provisions of law or provisions of such Announcement and Regulations empowers the Defendant as Chairman and Member of the AEC to investigate into any person or the Plaintiff and her husband for fact finding without initiation nor request from the relevant party

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The Defendant has special malice intent against the Plaintiff and her husband by demanding the FIDF, to file a complaint against the Plaintiff and her husband even though the FIDF did not agree to do so. The filing made later by the FIDF was not voluntary. The FIDF was of the opinion that the sale and purchase of such land was legitimate and did not cause any damage to the FIDF. Also that the content in the form of accusation and complaint against the Plaintiff and her husband sent to the FIDF was inaccurate, therefore, the FIDF did not proceed with the filing as per the Defendant's intention.

However, the Defendant unduly performed the duties by forcing the FIDF to fill in such form of accusation and complaint as per the facts provided by the Defendant. Even though the FIDF did not wish to comply with such demand by the Defendant, the Defendant forced and threatened that if the FIDF would not make an accusation and complaint against the Plaintiff and her husband, as demanded by the Defendant, the Defendant would take criminal action against the FIDF and would inform the government and the Council for Democratic Reform to take action against the FIDF. As a government official, the Defendant shall not force or threaten anyone to follow his demand. Such threat caused the FIDF officials to be afraid of criminal action as well as they might have to face other disciplinary action if they did not comply with the Defendant's demand even if they did not agree so. Details of the Defendant forcing the FIDF to make an accusation and complaint against the Plaintiff shall be further submitted for review by the Court during the hearing.

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4.2 During the period from 30<sup>th</sup> January 2007 to 2<sup>nd</sup> February 2007, the Defendant, as investigation officer; with official duties has unduly performed his duties. The Defendant as the chairman of the AEC Chairman has made a statement to the general public via newspapers, magazines, radio and television media that:

*“The AEC was very confident about the Ratchadapisek Land deal since the investigation clearly showed that both Dr. Thaksin and Khunying Pojamarn Shinawatra committed an offence under Section 100 of the Organic Act on Counter Corruption B.E. 2542 (1999) which is prohibiting any politician or his/her spouse to enter into any agreement with a government agency. This case was therefore subject to Section 31 of the Criminal Code, which is the provision leading to the forfeiture of assets which were acquired unduly and illegitimately. In my personal opinion, this case could be compared with the case of a thief stealing other people’s property. Once we arrest such thief, all assets stolen shall be seized and forfeited. In this case, the AEC would proceed until the matters reach the Supreme Court’s Criminal Division for Persons Holding Political Positions. However, the outcome of this case depends on the Court’s judgment. In the investigation, my personal opinion is that the AEC was confident and was not afraid of a counterclaim in case of seizure of land. The AEC would explain the results to other persons who are involved in this matter but it will need more time.”*

Thereafter, during the period mentioned above, the Defendant has made various statements to the general public via reporters from newspapers, magazines, radio and television medias that:

*“the forfeiture of the land owned by Khunying Pojaman Shinawatra can be done under Section 33 of the Criminal Code which states that any property used in any illegal action shall be forfeited by the state.*

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*The AEC may file a complaint requesting the Court to forfeit such property and it will be the Court's decision whether to forfeit such property. Mr. Nopadol Pattama, the lawyer for the Shinawatrass's family, said that the Defendant was biased, but the Defendant insisted that he never had been biased."*

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The Defendant, being the Chairman of the AEC and also a senior judge, should know well that the accusation against any person of committing a criminal offence before the completion of the hearing of all evidence and witnesses could not be done. The Defendant himself knew well that the Constitution of the Kingdom of Thailand prescribing that in a criminal case, the accused person shall be entitled to a fair investigation and a fair trial. It is the rule of law that in any criminal case, before issuing a final judgment indicating who the offender is, such person shall not be treated as if he/she is an offender.

The Defendant's statements that the Plaintiff and her husband committed an offence under law as aforesaid, were in violation of Clauses 9, 10, 11, and 12 of the Regulations attached to the Complaint as Exhibit 4, in conjunction with Section 3 of the (Interim) Constitution of the Kingdom of Thailand B.E. 2549 (2006). The Defendant thus unduly performed his duties with the intention to cause damage to the Plaintiff. His action as the Chairman of AEC was unfair and biased against the Plaintiff. The Defendant acted out of malice against the Plaintiff and her husband with an ill intention and also made various defamatory statements. The Plaintiff filed a complaint against the Defendant on the charge of defamation in Black Case No. 1634/2550 between Khunying Pojaman Shinawatra as the Plaintiff and Mr. Nam Yimyam and others as the Defendants. Such case is pending consideration of this Court.