

ABSTRACT

Thesis Title : Promise of Lease of Immovable Property

Student's Name : Mr. Pornchai Leng-iw

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Advisory Committee :

1. Assoc. Prof. Jaral Lengvittaya Chairperson
2. Assoc. Prof. Dr. Poom Chokmoh
3. Asst. Prof. Aurawan Pojjananurat

A lease contract having an option for lessee to hold premises further after expiration of lease term, which is called "promise to lease", is not prohibited under Section 538 of the Civil and Commercial Code, even the whole duration of lease term is more than three years without having to be registered, according to the Supreme Court Judgment No. 626/2490 which is the first one giving principle of the "promise to lease".

Originally, the "promise to lease" was used in lease contract in order to comply with the intention of contract parties. But later, contract parties have fraudulently used the "promise to lease" as a tool to evade the lease registration under Section 538, causing the state lost income from lease registration fee. The problem is whether the "promise to lease" should be effective further or not.

From the result of the research , it was found that if the "promise to lease" benefits both parties and conforms with the theory of freedom of contract which is the basic theory of the Civil Law, it should be binding upon both parties. However, after taking circumstances of each case into consideration, if the "promise to lease"

is used to evade the lease registration under Section 538, such "promise to lease" should be deemed to be prohibited by Section 538.

The principle of the "promise to lease" has been made by the Court and continuously followed, which may be amended or altered in the future. So, the principle of the promise to lease of immovable property should be legislated clearly in the same manner as the promise to buy and to sell under Section 456 and the promise to give under Section 526. And the promise to lease of immovable property should be stipulated in the lease contract, in order to be a strong evidence enforceable and beneficial to the court in giving effect to such promise.