

Abstract

This thesis is aimed to study and analyze problems on lease of immovable property for residing purpose. According to the study, lease of immovable property for residing purpose is based on the laws governing lease of lease of immovable property under the CIVIL AND COMMERCIAL CODE and other Acts which are unable to provide enough protection and fairness to the lessee whose position can be deemed as consumer as well. This is because there is no specific law on protection of lessees of immovable property for residing purpose. There are so many problems on this lease:

(1) Formation of contract and enforcement under the contract. According to Section 538 of the CIVIL AND COMMERCIAL CODE, lease of immovable property is not enforceable by action unless there is some written evidence signed by the party liable. In the contrary, according to the laws of USA, Germany, England, and France, the lease can be executed verbally and still be enforceable. Thai law has a problem as written evidence is required for enforcing the lease by action. This means that in case of no written evidence is made, the lessee is unable to file a lawsuit against the lessor while the lessor is able to file a lawsuit against the lessee by just relying on title to the leased property basis. Therefore, it can be said that foreign laws provide better protection than that of Thai laws;

(2) Obligations of the parties. Thai laws provide no measure to control increase of rental by the lessor under lease of immovable property for residing purpose. As a result, the lessor is able to increase high rental unreasonably and unfairly as he want. Therefore, there should be measure to control increase of rental by the lessor. According to foreign laws on lease e.g. the laws of USA, if the lessor increase rental illegally, the lessor can be sued by the lessee. Thailand should also have this kind of measure to protect the lessee and the lessor for the sake of fairness of both parties;

(3) The problem on the right of the lessor to terminate lease of immovable property for residing purpose contract with indefinite period. In this relation, Thai law allows either party to terminate this kind of lease by complying with Section 566 of the CIVIL AND COMMERCIAL CODE. This means that there is no security for the lessee if he entering into lease contract with indefinite period. According to the laws of Germany, if the lessor shall terminate a lease contract

having no term of contract, he is required not only to inform the lessee in advance but also have enough necessity. This means that Germany has more protection than that of Thai laws;

(4) In case of short term lease contract which is needed to be renewed many times. In this case, if termination of the contract can be done more difficult, it is good to the lessee as the lessor always prefer to execute a short term lease. Therefore, there should be a measure to prevent the lessor from terminate lease contract easily. According to the laws of England, the lessor is required to have a legitimate ground as stipulated by the laws if he shall terminate lease of immovable property contract for residing purpose. If the termination can be done more difficult, it means more protection for the lessee; and

(5) Termination of lease contract due to death of the lessee. According to the laws of Thailand, if the lessee dies, the lease contract shall be terminated and an heir of the lessee is unable to keep on staying in the leased property. This means the heir suffer from such termination as he is unable to keep on staying in the leased property although he has been jointly stayed in the leased property with the lessee all the times. According to the laws of France, USA, England, and Germany, if the lessee dies, the right of lease shall vested in his heir and the lease contract won't be terminated automatically as the lease contract will still be effective. This means that foreign laws provide a better protection than that of the laws of Thailand as the lessee's dependent is able to keep on staying in the leased property. In this relation, due to the aforementioned problems, the author proposes to amend some section of the CIVIL AND COMMERCIAL CODE in order to provide a better protection to the lessee of immovable property for residing purpose.

As for the aforementioned problems, the author proposes the resolutions as follows:

(1) The problem on lease contract and enforcement thereof. To add the following as paragraph two of Section 538 of CIVIL AND COMMERCIAL CODE "lease of immovable property for residing purpose is not enforceable by action unless there is some written evidence signed by the party liable or unless earnest is given, or there is part performance";

(2) The problem on obligations of the parties. To add the following as paragraph two of Section 559 of CIVIL AND COMMERCIAL CODE: "The lessor has the right to increase rental at the rate of 3% per year under a lease of immovable property for residing purpose with indefinite

period only if the lessor has a reasonable ground so as to be fair to both parties unless there is most reasonable ground".To add the following as paragraph three:"both parties can agree on prohibition of rental increase";

(3) The problem on the right of the lessor to terminate the lease of immovable property for residing purpose with indefinite period.To add the following as paragraph two of Section 566 of the CIVIL AND COMMERCIAL CODE "In case of lease of immovable property for residing purpose with indefinite period, the lessor has the right to terminate such lease contract only if he has enough necessity.Enough necessity means the lessee breaches material clause of the lease contract, or it is necessary for the lessor to use the leased property for his own or his family, or an appropriate value of the leased property will be barred and causing gross loss to the lessor or the like if the lease contract is not terminated";

(4) The problem on renewal of short term lease contract.To add the following as paragraph two of Section 570 of the CIVIL AND COMMERCIAL CODE"In case of expiry of a lease of immovable property for residing purpose having one period of lease or many periods of lease longer than three years onwards, the lease contract shall be in effective as indefinite period of lease unless otherwise agreed by the lessee.In this case, the lessee shall inform the lessor in advance not less than 30 days"; and

(5) The problem on termination of a lease contract due to death of the lessee.To add the following as Section 564/1 "A lease of immovable property for residing purpose is not terminated due to death of the lessee.The heir of the lessee staying in the leased property with the lessee has the right of subrogation of the lease.For the purpose of this Section, heir means spouse, persons who have been lived a marital life together for a period not less than five years, legitimate child, illegitimate child whom has been legitimated by his father, parents of the lessee staying with the lessee at the leased property.The heir as mentioned in paragraph two has the right to terminate the lease contract by informing the lessor in advance not less than 30 days or if there is the circumstance where the heir has no intention to keep on taking lease, the lease contract shall be terminated".

Nowadays, most of contracts for lease of immovable property for residing purpose are executed by just using standard contract having unfair clauses to the lessee as such standard contracts are prepared by the lessor. According to the study of Unfair Contract Terms Act 1997, this law can be deemed as the best law providing protection to the lessee of lease of immovable property for residing purpose. However, there is restriction of the law in term of enforcing as the lessee can be protected only when there is dispute under the lease contract and a lawsuit has been filed to the court so that the court shall have the power to consider and inspect terms and conditions therein for providing fairness to the lessee. This means such measure is just post-protection after damage to the lessee has been caused. In addition, most of the lessees suffered from unfair lease contract are the poor. Therefore, it is likely that no lawsuit will be made by such lessees due to cost of litigation and length of period for trial. Of course, the court has no chance to protect the lessees in this case.

According to the study of Consumer Protection Act 1979 as amended by the Consumer Protection Act (No. 2) 1998, the consumers are able to seek protection under his Act in term of fair contract. The Act provides important measure for protecting the consumers by empowering the Consumer Protection Board on Contract to control the contracts executed between business operator and consumer. However, the Board has not announced that lease of immovable property for residing purpose is controlled contract yet. The author hereby propose to include contract for lease of immovable property for residing purpose into the controlled contract under the Consumer Protection Act 1979 as amended by the Consumer Protection Act (No.2) 1998 since lease of immovable property for residing purpose should be announced as controlled contract business. As a result, the measure under the Act as stipulated in Sections 35 bis to 35 novem which control the determination of contract terms under standard contract can cover the contract for lease of immovable property for residing purpose. In this relation, minimum requirement stipulated by the Board are needed to be stated in the contract for the benefits to both parties. The author also proposes draft of standard contract for lease of immovable property for residing purpose in the thesis. This would cause fairness and equality to both parties. However, one important point is that the aforementioned will cover only the case where lessor is business operator of lease business.

In order to provide clearer protection on the lessee under lease of immovable property for residing purpose, the author is of the opinion that there should be an announcement of

specific law such as protection of lessees of immovable property for residing purpose Act B.E..... This Act would be an answer for resolving current problems as aforementioned efficiently and easily in stead of amending the existing CIVIL AND COMMERCIAL CODE. The Act should also govern all leases regardless of whether the lessor is a business operator of lease business or not. The author also proposes draft of protection of lessees of immovable property for residing purpose Act B.E..... in the thesis so as to provide a better protection to lessees in the future.