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Commercial and Civil Code of Thailand

CHAPTER II

EFFECT OF OBLIGATIONS

PART I

Non-Performance

Section 203. If a time for performance is neither fixed nor to be inferred from the circumstances, the creditor may demand the performance forthwith, and the debtor may perform his part forthwith.

If a time is fixed, it is to be presumed, in case of doubt, that the creditor may not demand the performance before that time; the debtor, however, may perform earlier.

Section 204. If the debtor does not perform after warning given by the creditor after maturity, he is in default through the warning.

If a time by calendar is fixed for the performance, the debtor is in default without warning if he does not perform at the fixed time. The same rule applies if a notice is required to precede the performance, and the time is fixed in such manner that it may be reckoned by the calendar from the time of notice.

Section 205. The debtor is not in default so long as the performance is not effected in consequence of a circumstance of a circumstance for which he is not responsible.

Section 206. In obligations arising from an unlawful act, the debtor is in default from the time when he committed it.

Section 207. a creditor is in default if, without legal ground, he does not accept the performance tendered to him.

Section 208. The performance must be actually tendered to the creditor in the manner which it is to be effected.

But if the creditor has declared to the debtor that he will not accept performance, or if for effecting the performance an act of the creditor is necessary, it is sufficient for the debtor to give him notice that all preparations for performance have been made and that it is for him to accept it. In such cases the notice by the debtor is equivalent to a tender.

Section 209. If a time certain is fixed for the act to be done by the creditor, tender is required only if the creditor does the act in due time.

Section 210. If the debtor is bound to perform his part only upon counter performance by the creditor, the creditor is in default if, though prepared to accept the performance tendered, he does not offer the required counter-performance.

Section 211. A creditor is not in default if the debtor is not in a position to effect the performance at the time of tender, or, in the case provided by Section 209, at the time fixed for the act of the creditor.

Section 212. If the time of performance is not fixed, or if the debtor is entitled to perform before the fixed time, the creditor is not in default by reason of the fact that he is temporarily prevented from accepting the tendered performance, unless the debtor has given him notice of this intended performance a reasonable time beforehand.

Section 213. If a debtor fails to perform his obligation, the creditor may make a demand to the Court for compulsory performance, except where the nature of the obligation does not permit it.

When the nature of an obligation does not permit of compulsory performance, if the subject of the obligation is the doing of an act, the creditor may apply to the court to have it done by a third person at the debtor's expense; but if the subject of the obligation is doing of a juristic act, a judgment may be substituted for a declaration of intention by the debtor.

As to an obligation whose subject is the performance from an act, the creditor may demand the removal of what has been done at the expense of the debtor and have proper measures adopted for the future.

The provisions of the foregoing paragraphs do not affect the right to claim damages.

Section 214. Subject to the provisions of Section 733, the creditor is entitled to have his obligation performed out of the whole of the property of his debtor including any money and other property due to the debtor by third person.

Section 215. When the debtor does not perform the obligation in accordance with the true intent and purpose of the same, the creditor may claim compensation for any damages caused thereby.

Section 216. If by a reason of default, the performance becomes useless to the creditor, he may refuse to accept it and claim compensation for non-performance.

Section 217. A debtor is responsible for all negligence during his default. He is also responsible for impossibility of performance arising accidentally during the default, unless the injury would have arisen even if he had performed in due time.

Section 218. When the performance becomes impossible in consequence of a circumstance for which the debtor is responsible, the debtor shall compensate the creditor for any damage arising from the non-performance.

In case of partial impossibility the creditor may, by declining the still possible part of the performance, demand compensation for non-performance of the entire obligation, if the still possible part of performance is useless to him.

Section 219. The debtor is relieved from his obligation to perform if the performance becomes impossible in consequence of a circumstance, for which he is not responsible, occurring after the creation of the obligation.

If the debtor, after the creation of the obligation, becomes unable to perform, it is equivalent to a circumstance rendering the performance impossible.

Section 220. A debtor is responsible for the fault of his agent, and of person whom he employs in performing his obligation, to the same extent as for his own fault. In such case the provisions of Section 373 have no application.

Section 221. A money debt bearing interest ceases to bear interest during the default of the creditor.

Section 222. The claim of damages is for compensation for all such damage as usually arises from non performance.

The creditor may demand compensation even for such damage as has arisen from special circumstances, if the party concerned foresaw or ought to have foreseen such circumstances.

Section 223. If any fault of the injured party has continued in causing the injury, the obligation to compensate the injured party and the extent of the compensation to be made depends upon the circumstances, especially upon how far the injury has been caused chiefly by the one or the other party.

This applies also even if the fault of the injured party consisted only in an omission to call the attention of the debtor to the danger of an unusually serious injury which the debtor neither knew nor ought to have known, or in an omission to avert or mitigate the injury. The provisions of Section 220 apply *mutatis mutandis*.

Section 224. A money debt bears interest during default seven and half percent per annum. If the creditor can demand higher interest on any other legitimate ground, this shall continue to be paid.

Interest for default shall not be paid upon interest.

Proof of further damage is admissible.

Section 225. If the debtor is bound to make compensation for the value of an object which has perished during the default, or which cannot be delivered for a reason which has arisen during the default, the creditor may demand interest on the amount to be paid as compensation, from the time which serves as the basis for the estimate of the value. The same rule applies if the debtor is bound to make compensation for the diminution in value of an object which has deteriorated during the default.

PART II

Subrogation

Section 226. A person is subrogated to the rights of a creditor is entitled to exercise in his own name all the rights which the creditor had in respect of the obligation including any security for it.

By real subrogation, a property is substituted for another property in the same juristic position as the previous one.

Section 227. When a creditor has received as compensation for damage the full value of the thing or right which is the subject of the obligation, the debtor is, by operation of law, subrogated into the position of the creditor with regard to such thing or right.

Section 228. If, in consequence of the circumstance which makes the performance impossible, the debtor acquires a substitute or a claim for compensation for the object owed, the creditor may demand delivery of the substitute received or may himself claim for compensation.

If the creditor has a claim for compensation on account of non-performance, the compensation to be made to him is diminished, if he exercises the right specified in the foregoing paragraph, by the value of the substitute received or of the claim for compensation.

Section 229 Subrogation takes place by operation of law, and ensues to the benefit of the following persons:

- (1) The person who, being himself a creditor, pays another creditor who has priority to him owing to such other creditor having a preferential right, pledge or mortgage.
- (2) The person who, when acquires an immovable property, uses the purchase price in paying off the persons who have mortgages thereon.
- (3) The person who, being bound with other or for others to pay a debt and was interested in paying the same, has paid it.

Section 230 If the creditor levies compulsory execution upon an object belonging to the debtor, any person who through the execution, incurs danger of losing a right in the object, is entitled to satisfy the creditor. The same right belongs to the possessor of a thing if he incurs danger of losing possession through the execution.

If a third person satisfies the creditor he is subrogated of the claim of the latter. Such claim may not be enforced to the detriment of the creditor.

Section 231 If properties mortgaged, pledged or otherwise subject to a preferential right, are insured, the mortgage, pledge or other preferential right extends to the claim against the insurer.

In case of immovable property, the insurer shall not pay the indemnity to the assured until he has given notice of his intention to do so to the mortgagee or other preferred creditor, and has not within one month from such notice received any objection to the payment, provided always that the insurer knew or ought to have known of the mortgage or other preferential rights; however, any right registered in the Land Registry is deemed to be known to the insurer. The same rule shall apply to mortgage of movables allowed by law.

In case of movable property, the insurer may pay the indemnity to the assured directly, unless he knew or ought to have known of the pledge or other preferential right.

The insurer is not liable to the creditor if the insured property is restored or a substitute for it is provided.

The same rule shall apply mutatis mutandis in case of expropriation as well as in case of indemnity due to the owner of the property for destruction or damage.

Section 232 If under the foregoing section a sum of money is being substituted for the property destroyed or damaged, such sum shall in no case be delivered to the mortgagee, pledgee or other preferred creditor before the obligation secured is due, and if the parties cannot come to an agreement with the debtor, each of them is entitled to demand that the said sum be deposited at the Deposit Office their common benefit unless the debtor gives proper security.

PART III

Exercising debtor's claims

Section 233 If, to the prejudice of the creditor, the debtor refuses or neglects to exercise a claim the creditor may, in order to protect his obligation, exercise such claim in his own name or behalf of the debtor, except those which are purely personal to the debtor.

Section 234 The creditor who exercises a claim belonging to his debtor must summon the debtor to appear in the action.

Section 235 A creditor may exercise a claim belonging to the debtor for the whole amount due to the debtor, without regard to the amount due to him. But the defendant may satisfy the creditor by paying the amount due to him alone, provided that if the original debtor has joined as a plaintiff he may proceed to judgment for the balance.

In any case the creditor cannot obtain more than what is due to him.

Section 236 The defendant may set up against the creditor all defences which he may have against the debtor, excepting those which arose after the entry of the action.

PART IV

Cancellation of fraudulent acts

Section 237. The creditor is entitled to claim cancellation by the Court of any juristic act done by the debtor with knowledge that it would prejudice his creditor; but this does not apply if the person enriched by such act did not know, at the time of the act, or the facts which could make it prejudicial to the creditor, provided, however, that in case of gratuitous act the knowledge on the part of the debtor alone is sufficient.

The provisions of the foregoing paragraph do not apply to a juristic act whose subject is not a property right.

Section 238. The cancellation under the foregoing section cannot affect the right of a third person acquired in good faith.

The foregoing paragraph does not apply if the right is acquired gratuitously.

Section 239. Cancellation operates in favour of all the creditors.

Section 240. A claim for cancellation cannot be brought later than one year from the time when the creditor knew of the cause of cancellation, or later than ten years since the act was done.

PART V Right of Retention

Section 241. If the possessor of a property belonging to another has an obligation in his favour relating to the property possessed, he may retain the property until the obligation is performed; but this does not apply, if the obligation is not yet due.

The provisions of the forgoing paragraph do not apply, if the possession began by an unlawful act.

Section 242. The right of retention does not exist if it is incompatible with the obligation assumed by the creditor, or with the instructions given by the debtor before or at the time of delivery of the property or if it is against public order.

Section 243. In case of insolvency of the debtor, the creditor has the right of retention even if his claim is not yet due. If the insolvency has occurred or become known to the creditor after the delivery of the property, he can exercise the right of retention even if an obligation previously assumed by him or the instruction given by the debtor, opposes it.

Section 244. The holder of a right of retention may exercise his right against the whole of the property retained until the obligation is wholly performed.

Section 245. The holder of a right of retention may take the fruits of the property retained and appropriate them to the performance of the obligation in preference to other creditors.

Such fruits must first be appropriated to the interest on the obligation, and if there is any surplus must be appropriated to the principal.

Section 246. The holder of a right of retention is bound to take such appropriate care of the property retained as might be expected from him in his situation.

The holder of a right of retention cannot use or let the property retained or give it as security, without the consent of the debtor; but this does not apply to such use as is necessary for the preservation of the property.

If the holder of a right of retention acts contrary to any provision of the foregoing paragraphs, the debtor may claim the extinction of the right.

Section 247. If the holder of a right of retention incurs necessary expenses in respect to the property retained he may require the owner to reimburse him.

Section 248. Subject to the provisions of Section 193/27, the exercise of a right of retention does not prevent the running of prescription against the obligation.

Section 249. The debtor may claim the extinction of the right of retention on giving proper security.

Section 250. A right of retention is extinguished by the loss of possession of the property; but this does not apply to the case where the property retained is let or pledged with the consent of the debtor.

PART VI Preferential Rights

Section 251. A holder of a preferential right has, according to the provisions of this Code or other laws, a right as to the property of his debtor to receive therefrom performance of an obligation due to him in preference to other creditors.

Section 252. The provisions of Section 244 apply correspondingly to preferential rights.

1. General Preferential Rights

Section 253. A person in whose favour an obligation exist based upon any of the following grounds has a preferential right in the whole property of the debtor:

- (1) Expenses for the common benefit
- (2) Funeral expenses
- (3) Taxes and duties, and money to which an employee entitled for the service rendered to the debtor who is his employer.
- (4) Supplies of daily necessities.

Section 254. The preferential right on account of expenses for the common benefit is for expenses incurred for the common benefit of all the creditors in regard to preservation, liquidation or distribution of the debtor's property.

If any such expense was not incurred for the benefit of all the creditors, the preferential right only exist against those creditors for whose benefit it was incurred.

Section 255. The preferential right on account of funeral expenses is for such funeral expenses as are accordant to the station in life of the debtor.

Section 256. The preferential right on account of taxes and rates is for all land, property or other taxes or local rates due from the debtor for the current year and the preceding year.

Section 257. The preferential right on account of money, to which an employee is entitled for services rendered to the debtor who is his employer, is for basic pay, overtime pay, holiday pay, holiday overtime pay, severance pay, special severance pay, and other money to which the employee is entitled for services rendered to, for four months back not exceeding one hundred thousand baht for each employee.

Section 258. The preferential right on account of supplies of the daily necessities is for supplies for six months back of food, drink, light, firewood and charcoal, necessary for the living of the debtor, of members of his family, who live with him and whom he is bound to support, and of his servants.

2. Special Preferential Rights

(a) PREFERENTIAL RIGHTS IN MOVABLES

Section 259. A person in whose favour an obligation exists based upon any of the following grounds has a preferential right in particular movables of the debtor:

- (1) Hiring of an immovable.
- (2) Lodging in an inn.
- (3) Carriage of passengers or goods.
- (4) Preservation of movables.
- (5) Sale of movables.
- (6) Supply of seeds, young plants or maure.
- (7) Agricultural or industrial services.

Section 260. The preferential right on account of the hiring of an immovable is for the hire of the immovable and for other obligations of the hired arising from the relation of hiring, and is in the movables of the hirer which are in or on the immovable.

Section 261. The preferential right of the letter of land is in such movables as have been brought by the hirer upon the land hired or into buildings subservient to the use of such land, in such movables as are destined for the use of such land and in such fruits of the land as are in the possession of the hirer.

The preferential right of the letter or a building is in such movables as have been brought into the building by the hirer.

Section 262. If a hirer of immovable property is transferred or sublet, the preferential right of the original letter extends to the movables brought by the transferee or sub-hirer into the property. The same applies to the money which the transferor or the sub-letter is to receive from the transferee or sub-hirer.

Section 263. In case of a general liquidation of the property of the hirer, the preferential right of the letter is only for the rent and other obligations of the last preceding, the current and the next following rent period and for such damages as have arisen during the last preceding and the current rent period.

Section 264. If the letter has received security money, he has a preferential right only with regard to that part of his claim which is not covered by the security money.

Section 265. The preferential right on account of lodging in an inn is for what is due to the proprietor for lodging and other services afforded to the traveler or guest in satisfaction of his needs, including disbursements, and is in the luggage or other property of the traveler or guest which is in the inn, hotel or other such place.

Section 266. The letter of an immovable property or the proprietor of an inn, hotel or other such place may enforce his preferential right in the same manner as a pledgee. The provisions of this Code concerning Enforcement of Pledge apply mutatis mutandis.

Section 267. The preferential right on account of carriage is for charges for the carriage of a passenger or goods and for accessory expenses, and is in all goods and luggage in the hands of the carrier.

Section 268. The letter of an immovable, the proprietor of an inn, or the carrier may enforce his preferential right against movables belonging to a third person in the case contemplated in the preceding eight sections, unless he knew in due time that they belong to the third person.

If such movables have been stolen or lost the provisions of the law concerning recovery of possession shall apply.

Sections 269. The preferential right on account of the preservation of a movable is for the expense of the preservation of movable, and is in such movable.

The preferential right exists also for necessary expenses incurred for the purpose of having a right relating to a movable preserved, acknowledged or enforced.

Section 270. The preferential right on account of the sale of a movable is for the price and interest thereon, and is in such movable.

Section 271. The preferential right on account of the supply of seeds, young plants or manure is for the price of seeds, young plants or manure and interest thereon, and is in the fruits which have grown on the land for which those things have been used within one year after their use.

Section 272. The preferential right on account of agricultural and industrial services is as to the person who rendered agricultural service for wages for one year back, and as to a person who rendered industrial services for wages for three months back, and is in the fruits or manufactured things produced by his service.

(b) PREFERENTIAL RIGHTS IN IMMOVABLES

Section 273. A person in whose favor an obligation exists based upon any of the following grounds has a preferential right in a particular immovable of the debtor:

- (1) Preservation of an immovable
- (2) Work done upon an immovable
- (3) Sale of an immovable

Section 274. The preferential right on account of the preservation of an immovable is for the expense of preservation of an immovable, and is in such immovable.

In case of the foregoing paragraph the provisions of Section 269 paragraph 2 apply correspondingly.

Section 275. The preferential right on account of work done upon an immovable is for charges for the work done upon an immovable of the debtor by a builder an architect or a contractor, and is in such immovable.

This preferential right exist only if there is a present increase of the value of such immovable due to such work, and is only in such increased value.

Section 276. The preferential right on account of the sale of an immovable is for the price and interest thereon, and is in such immovable.

3. Rank of Preferential Rights

Section 277. When general preferential rights conflict, the rank of their precedence is according to the order in Section 253.

When a preferential right conflicts with a special preferential right, the latter takes precedence, but the preferential rights on account of expenses for the common benefit takes precedence as against all creditors who are benefited thereby.

Section 278. When preferential rights in the same movable conflict, the rank of their precedence is as follows

- (1) The preferential right on account of the hiring of an immovable, of lodging in an inn and of carriage.
- (2) The preferential right on account of the preservation of a movable, but if there are several persons entitled as preserves, a later preserves takes precedence of an earlier one.
- (3) The preferential right on account of the sale of a movable, of the supply of seeds, young plants or manure, and of agriculture and industrial services.

If a person who has a preferential right of the first rank knew at the time when he acquired his obligation that other persons have preferential rights of the second or third rank, he cannot exercise his right of precedence against them. The same applies as against a person who has preserved a thing for the benefit of a person having a preferential right of the first rank.

As to fruits, a person who rendered agricultural services has the first rank, a supplier of seeds, young plants or manure the second, and the letter of the land third.

Section 279. When special preferential rights in the same immovable conflict, the rank of their precedence is according to the order in Section 273.

In successive sales have been made of the same immovable, the rank of precedence of the seller as between themselves is according to the priority of the sales.

Section 280. When several persons have preferential rights of the same rank in the same thing, each is to receive performance in proportion to the amount of his obligation.

4. Effect of Preferential rights

Section 281. A preferential right in a movable cannot be exercised after the debtor has delivered the thing to a third person who has acquired it from him.

Section 282. When a preferential right conflicts with a pledge of a movable, the pledgee has the same rights as the holder of a preferential right of the first rank mentioned in Section 278.

Section 283. A person who has a general preferential right must receive performance first out of the movable property of the debtor, and only in case that is insufficient he can receive performance out of immovables.

As to immovables, he must receive performance first out of such immovables as are not subject to a special security.

If a person who has a general preferential right negligently omits to intervene in a distribution according to the provisions of the foregoing two paragraphs, he cannot exercise his preferential right against a third person whose right is registered, to the extent of what he would have received through such intervention.

The provisions of the foregoing three paragraphs do not apply, if the proceeds of an immovable are to be distributed before those of other property, or if the proceeds of an immovable which is the subject of a special security are to be distributed before the proceeds of other immovables.

Section 284. A general preferential right, even though not registered in respect to an immovable, may be set up against any creditor who has no special security, but this does not apply against a third person who made registration.

Section 285. A preferential right on account of the preservation of an immovable retains its effect by being registered immediately after the act of preservation is completed.

Section 286. A preferential right on account of work done upon an immovable retains its effect by a provisional estimate of the cost being registered before the work has begun. If, however, the costs of the work exceeds the provisional estimate, there is no preferential right for the excess.

The increase of value of an immovable arising from the work done upon it is to be estimated by experts appointed by the Court at the time of the intervention in the distribution.

Section 287. A preferential right registered in accordance with the provisions of the preceding two sections can be exercised in preference to a mortgage.

Section 288. A preferential right on account of the sale of an immovable retains its effect by registering at the same time with the contract of sale the fact that the price or the interest thereon has not been paid.

Section 289. As to the effect of a preferential right, in addition to provisions of Sections 281 to 288 inclusive, the provisions as to Mortgage apply correspondingly.