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Commercial and Civil Code of Thailand

CHAPTER V

EXTINCTION OF OBLIGATION

PART I

Performance

Section 314. Performance of an obligation may be made by any third person, unless its nature does not admit of it, or the parties concerned have declared a contrary intention.

A person who has no interest in the performance, cannot make performance against the will of the debtor.

Section 315. Performance must be made to the creditor or a person having authority to receive performance on his behalf. A performance made to a person who has no authority to receive is valid if the creditor ratifies it.

Section 316. If performance is made to the apparent possessor of an obligation, it is valid only if the person making performance acted in good faith.

Section 317. Except in the case mentioned in the foregoing section, a performance made to a person who is not entitled to receive it, is valid only to the extent to which the creditor has been enriched thereby.

Section 318. A person who holds a receipt is deemed to have a right to receive performance; but this does not apply, if the person making performance knows that such right does not exist or is ignorant thereof by reason of his negligence.

Section 319. When a third debtor who has been ordered by a Court to refrain from making performance, has made the same to his own creditor, the seizing creditor may, in so far as he has sustained damage, demand another performance from the third debtor.

The provisions of the foregoing paragraph do not prevent the third debtor from exercising the right to recourse against his own creditor.

Section 320. The creditor cannot be compelled to receive part performance or any other performance than that which due to him.

Section 321. An obligation is extinguished if the creditor accepts in lieu of performance another performance than agreed upon.

If the debtor, for the purpose of satisfying the creditor, assumes a new obligation towards him, is not to be presumed, in case of doubt, that he assumes the obligation in lieu of performance.

If performance is made by making, transferring, or endorsing a bill or warrant, the obligation is extinguished only if such bill or warrant is paid.

Section 322. If a thing, a claim against a third person or any other right is given in lieu of performance, the debtor shall be liable for defect and for eviction in the same manner as the seller.

Section 323. If the subject of an obligation is the delivery of a specific thing, the person making performance must deliver the thing in connection in which it is at the same time when delivery is to be made.

The debtor must, until he delivers it, keep the thing with such care as a person of ordinary prudence would take of his own property.

Section 324. When there is no special declaration of intention as to the place of performance, if a specific thing is to be delivered, the delivery is to be made at the place where the thing was at the time when the obligation arose; other kinds of performance must be made at the place of the creditor's present domicile.

Section 325. When there is no declaration of intention as to the expenses of performance, such expenses are to be borne by the debtor; if, however, because of the creditor's transfer of his domicile or any other act of his the expenses are increased, such increase must be borne by the creditor.

Section 326. The person making performance is entitled to a receipt from the person who receives performance, and if the performance is wholly performed, he is entitled to have the document embodying the obligation surrendered to him or cancelled. If such document is declared to be lost, he is entitled to have the extinction of the obligation mentioned in the receipt or in a separate document.

If the obligation is partly performed or if the document gives the creditor any other right, the debtor is only entitled to a receipt and to have the performance noted in the document.

Section 327. In case of interest or other periodical performance, if the creditor gives a receipt for one term without any reservation, it is presumed that he has received performance for the previous terms.

If he gives receipt for the capital, it is presumed that he has received the interest.

If the document embodying the obligation has been surrendered, it is presumed that the obligation has been extinguished.

Section 328. If a debtor is bound to the creditor to do similar acts of performance by virtue of several obligations, and if the performance effected by him is insufficient for the

discharge of all debts, that debt is discharged which he specifies on effecting the performance.

If the debtor makes no specification, then that debt which is due is first discharged; among several debts due that one is first discharged which affords the creditor least security; among several equal secured debts the one most burdensome to the debtor; among several equally burdensome debts the oldest debt; and where several are equally old every debt proportionately.

Section 329. If the debtor, besides the principal performance, has to pay interest and costs, the value of an act of performance sufficient to discharge the whole debt is applied first to the costs, then to the interest, and lastly to the principal performance.

Section 330. By proper tender of performance a discharge is effected, from the time of the tender, from all responsibilities arising out of non-performance.

Section 331. If the creditor refuses or is unable to accept performance, the person performing may be discharged from the obligation by depositing for the creditor's benefit the thing forming the subject of the obligation. The same applies, if the person performing without fault on his part, cannot ascertain the right or identity of the creditor.

Section 332. If the debtor is bound to perform only after the counter-performance has been effected by the creditor, he may make the right of the creditor to receive the thing deposited dependent upon counter-performance by the creditor.

Section 333. A deposit must be made to the deposit office or the place where the obligation is to be performed.

If there are no special provisions by law or regulations as to the deposit offices, the Court must, on application of the person performing, designate a deposit office and appoint a custodian of the thing deposited.

The depositor must without delay give notice of the deposit to the creditor.

Section 334. The debtor has the right to withdraw the thing deposited. If he withdraws it, the deposit is deemed never to have been made.

The right of withdrawal is barred:

- (1) If the debtor declares to the deposit office that he waives his right of withdrawal.
- (2) If the creditor declares his acceptance to the deposit office.
- (3) If the deposit has been ordered or confirmed by the Court and the fact is notified to the deposit office.

Section 335. The right of withdrawal is not subject to judicial attachment.

If bankruptcy proceedings are instituted against the property of the debtor, the right of withdrawal cannot be exercised during the bankruptcy proceedings.

Section 336. If the thing forming the subject of performance is not suitable for deposit, or if in regard to the thing there is an apprehension that it may perish or be destroyed or damaged, the person performing may, with the permission of the Court, sell it at auction and deposit the proceeds. The same applies, if the keeping of the thing would be unreasonably expensive.

Section 337. The auction is not permissible until after the creditor has been warned of it. The warning may be dispensed with if the thing is liable to deterioration, and there is danger in delaying the auction.

The debtor shall without delay notify the creditor of the auction; if the debtor fails to do so, he is liable for compensation.

The warning and the notice may be dispensed with if they are impracticable.

The time and place of the auction, with a general description of the thing, shall be publicly advertised.

Section 338. The cost of the deposit or of the auction shall be borne by the creditor, unless the deposit be withdrawn by the debtor.

Section 339. The right of the creditor to the deposit is extinguished after the lapse of ten years since receipt of notice of the deposit.

After the right of the creditor is extinguished the debtor is entitled to withdraw even if he has waived the right of withdrawal.

PART II

Release

Section 340. If the creditor declares to the debtor an intention to release the obligation, it is extinguished.

When an obligation has been evidenced by writing, the release must also be in writing or the document embodying the obligation be surrendered to the debtor or cancelled.

PART III

Set-off

Section 341. If two persons are bound to each other by obligations whose subject is of the same kind and both of which are due, either debtor may be discharged from his obligation by set-off to the extent to which the amounts of the obligations correspond, unless the nature of one of the obligations does not admit of it.

The provisions of the foregoing paragraph do not apply, if the parties have declared a contrary intention; but such intention cannot be set up against a third person acting in good faith.

Section 342. Set-off is made by a declaration of intention by one party to another. A condition or time commencement or ending cannot be added to such declaration.

The declaration of intention mentioned in the foregoing paragraph relates back in its effect to the time when both obligations could first have been set-off.

Section 343. A set-off may be made even though the place of performance of the two obligations is different; but the party who makes the set-off must indemnify the other party for any damage caused thereby.

Section 344. A claim against which there is a defense may not be set-off. Prescription does not exclude set-off, if the claim barred by prescription was not barred at the time at which it could have been set-off against the other claim.

Section 345. If an obligation arises from an unlawful act, the debtor cannot avail himself of a set-off against the creditor.

Section 346. If a claim is not subject to judicial attachment, it is not subject to set-off.

Section 347. A third debtor who has received from the Court an order of prohibition of payment cannot set up against the seizing creditor an obligation subsequently acquired by him.

Section 348. If either party has several claims suitable for set-off, the party making the set-off may specify the claims which are to be set-off against each other. If the set-off is declared without such specification, or if the other party objects without delay, provisions of Section 328 paragraph 2 apply *mutatis mutandis*.

If the party making the set-off owes the other party interest and costs in addition to the principal performance, the provisions of Section 329 apply *mutatis mutandis*.

PART IV

Novation

Section 349. When the parties concerned have concluded a contract changing the essential elements of an obligation, such obligation is extinguished by novation.

If a conditional obligation is made unconditional, or a condition is added to an unconditional obligation, or if a condition is changed, it is regarded as a change of an essential element of such obligation.

A novation by a change of the creditor is governed by the provisions of this Code concerning transfer of claims.

Section 350. A novation by a change of the debtor may be effected by a contract between the creditor and the new debtor, but this cannot be done against the will of the original debtor.

Section 351. If the obligation resulting from a novation does not come into existence, or is annulled, because of an illegality in its ground or because of some reason unknown to the parties, the original obligation is not extinguished.

Section 352. The parties to a novation may, to the extent of the subject of the original obligation, transfer a right of pledge or mortgage given as security for it to the new obligation; but if such security was given by a third person, his consent is necessary.

PART V

Merger

Section 353. If rights and liabilities in an obligation become vested in the same person, the obligation is extinguished, except when it has become the subject of the right of a third person, or when a bill has been re-indorsed according Section 917 paragraph 3.