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Catch me if you can: Cases of stock manipulation

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Last year, 23 people were alleged to have been involved in the manipulation of three separate stocks. The investigations and prosecutions in these cases are ongoing. In light of recent events, this article explains the crime of stock manipulation, discusses the seminal Supreme Court decision on the matter and identifies a potential new tool of enforcement for private citizens through the recently passed class action legislation.

The sale and purchase of listed stocks are regulated by the Securities and Exchange Act of 1992. Violations of the Act including stock price manipulation subject violators to criminal penalties under Section 296, which includes imprisonment for up to two years and fines of at least 500,000 baht or twice the value derived from the violations, whichever is higher.

Section 243 of the Act, in brief, prohibits: (1) misleading the general public into believing a stock's price or trading volume is "normal" when it is not; and (2) engaging in trading behaviours that affect a stock's price to lure the general public into buying or selling the stock. It defines stock manipulation in two distinct ways, in the following subsections:

1. No person, by colluding or agreeing with any other person, shall purchase or sell securities in concealment in order to mislead the general public to believe that such securities are purchased or sold in great volume or the price of such securities has changed or has not changed at any time or during any period of time that is not consistent with the normal market conditions; and

2. No person, either by himself or jointly with any other person, shall continuously trade securities that results in the purchase or sale of such securities that is not consistent with normal market conditions and such trading is made to lure the general public to purchase or sell such securities unless such trading is made in good faith to protect his or her rightful benefit.

In 1992, the Securities and Exchange Commission (SEC) lodged a criminal complaint under Section 243 against 12 individuals who sold and purchased shares of the Bangkok Bank of Commerce (BBC). The case reached the Supreme Court in 1996, presenting an opportunity to examine the relevant law in detail.

The trial court found that the following facts, presented by the prosecution, were proven:

Of the 12 defendants, six were blood relatives, three had the same address, and all 12 traded BBC shares from the same address.

The 12 defendants jointly traded BBC shares through six securities companies in great volume with prices that were not consistent with normal market conditions.

Prior to the alleged violations beginning on Oct 2, 1992, the share price peaked at 15.75 baht with average daily volume of 1.9 million shares. From Oct 2-29, the price reached 40.75 baht with daily volume of 14.2 million shares.

The 12 defendants transferred money among each other from January-October 1992.

Considering the irregularities in trading volumes, sale and purchase prices and the relationships among the defendants, it appeared clear that the defendants had manipulated the stock in violation of Section 243(1) or (2).

Surprisingly, the court dismissed the allegations and found in favour of the defendants, a decision the Supreme Court ultimately upheld. The court looked to the testimony of a key prosecution witness, an SEC official, who testified that trading "in concealment" in Section 243(1) was intended to mean the seller and purchaser had no real intent to trade the stock but rather issued sale and purchase orders to deceive others.

The court then looked to the defendants' testimony, in which they admitted to purchasing BBC stock. It ruled this was not trading in concealment regardless of whether they disclosed to the public they were engaged in jointly selling and purchasing the stock, and hence it was not a violation of Section 243(1).

Regarding the allegations under Section 243(2), many investors testified they had purchased BBC stock on their own initiative, hoping for a profit, and not due to the "lure" of any person. The court found this testimony convincing and concluded there was also no violation of Section 243(2). Rather than looking at the intent of the defendants to lure the victims, the court appears to have looked at whether the victims were actually lured by the defendants' trading behaviour.

It would therefore appear the sale and purchase of securities in the manner conducted by the defendants in this case would not amount to manipulation. We take the view that criminal stock manipulation can, and in most cases does, occur using real or apparently bona fide transactions. For instance, a group of manipulators can sell and/or purchase a stock with actual payments to manipulate the market and then later distribute the proceeds among themselves.

While groups of stock manipulators may now be held criminally liable and subject to imprisonment and fines, investors will soon be able to group together to privately protect their rights through a civil class action lawsuit. Violators will be faced with huge claims, as class action legislation has passed the third reading of the National Legislative Assembly and will soon take effect.

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