At least, the Court should have given a more detailed account of this issue.

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2. Law of Property and Obligations

The meaning of voluntary payment in Article 43 of the Loan Business Regulation Act.

Decision by the Second Petty Bench of the Supreme Court on January 22, 1990. Case No (*o*) 1531 of 1987. A case claiming for a declaration of the nonexistence of the debt. 44 *Minshū* 332.

[Reference: Loan Business Regulation Act, Article 43(1)(3); Interest Regulation Act, Articles 1 and 4.]

[Facts]

X (plaintiff, *koso* respondent, *jokoku* appellant) borrowed 2 million yen from Y (defendant, *koso* appellant, *jokoku* respondent), who lent money as a regular business practice, on January 10, 1984. According to their agreement, the rate of interest was 54.7% annually, the rate of delinquency charges was 73%, the due date of repayment was not fixed, and the amount of monthly repayment was 100,000 yen. Y issued to X a contract document as prescribed by Article 17 of the Loan Business Regulation Act (hereinafter referred to as the Loan Act). Until October 7, 1985, X had repaid to Y the principal, interest and delinquency charges in accordance with the terms of the contract. Y issued to X a receipt prescribed by Article 18 of the Loan Act at every repayment. The contracted rates of interest and delinquency charges exceeded the maximum provided

by the Interest Regulation Act, and, according to precedent, the amount paid in excess, which then amounted to 670,000 yen was to be applied to the outstanding principal. Afterwards, X repaid to Y 750,000 yen for the outstanding principal and delinquency charges. X sued Y for a declaration of the nonexistence of the debt, which, according to X's claim, was extinguished by the repayment. In opposition to X's claim, Y defended that the exceeding interest and delinquency charges paid voluntarily by X was not applied to the outstanding principal but deemed to be a valid payment of the interest and delinquency charges obligation on account of the application of the Article 43 of the Loan Act. In the first instance, the Osaka District Court allowed X's claim. Then Y filed a *koso* appeal. In the second instance, the Osaka High Court allowed Y's claim. Then X filed a *jokoku* appeal.

[Opinions of the Court]

Jokoku appeal dismissed.

It goes without saying that the detailed provisions prescribed on a contract document or a receipt must conform to the purpose of the Act in order to apply Article 43(1) or (3) of the Loan Act, which provides that the payment of money by a debtor shall be deemed to be a valid payment of the interest or delinquency charges obligation. Furthermore the meaning of the voluntary payment of interest or delinquency charges in Article 43(1) or (3) of the Loan Act is that a debtor makes the payment voluntarily on the basis of his recognition that the payment is applied to the interest or delinquency charges but it is not necessary that, before paying, the debtor recognizes that the amount of money paid exceeds the legal maximum of interest or delinquency charges prescribed by Article 1(1) or 4(1) of the Interest Regulation Act or that the contract of the exceeding interest or delinquency charges is null.

[Comment]

According to the Interest Regulation Act, the annual interest rates shall not exceed 20% for a principal of less than 100,000 yen, 18% for between 100,000 and 1 million yen, and 15% for 1 million

yen or more; any interest obligation at rates over the maximum is void and null (Article 1(1)), and the annual delinquency charges rate shall not exceed over twice the maximum prescribed by Article 1(1) for each principal; any delinquency charges obligation at rate over twice the maximum prescribed by Article 1(1) is void and null (Article 4(1)). The Act provides that debtor cannot restitute the exceeding interest or delinquency charges paid by him voluntarily (Articles 1(2) and 4(2)). In spite of Articles 1(2) and 4(2), the Supreme Court held that the exceeding interest or delinquency charges paid by a debtor are to be applied to the outstanding principal according to Article 491 of the Civil Code (the decision by the Grand Bench of the Supreme Court on November 18, 1964, 18 *Minshū* 1864) and, furthermore, that when the exceeding interest or delinquency charges applied to the principal exceed the outstanding principal, the debtor can restitute the amount paid beyond the principal for unjust enrichment. (Decision by the Grand Bench of the Supreme Court on November 13, 1968, 22 *Minshū* 2526.) But, outside the court, a loan shark could lend money over the legal maximum rate without being subject to these precedents so long as the debtor does not bring an action against him. On the other hand, the Acceptance of Investment, Money Deposit, etc. Regulation Act (hereinafter referred to as the former Investment Act) provided that a lender shall be fined or jailed for contracting for or receiving interest payment (including delinquency charges payment) beyond a legal maximum, 109.5% per annum. But, Concerning the maximum interest rate, there is a wide gap between the fomer Investment Act and the Interest Regulation Act; the former was 109.5% annually and on the other hand, the latter is 15%–20% annually. Loan sharks could lend money at a rate between that wide gap, so-called "gray zone" without being punished and can collect from debtors by means of harassment. Therefore, in 1985 the former Investment Act was amended and the Loan Business Regulation Act was enacted. Both aimed at regulating lender in usurious consumer loan business. (See 5 Waseda Bulletin of Comparative Law 25, concerning the amendment of the former Investment Act and the enactment of the Loan Business Regulation Act.)

The objectives of those reforms are as follows: first, the main point of the Acceptance of Investment, Money Deposit, Interest, etc. Regulation Reform Act (hereinafter referred to as the Investment Reform Act) is that the rate ceiling sanctioned by fines or jail will be lowered as follows: (1) For the three years following the effective date of the Investment Reform Act, November 1, 1983, the maximum allowable interest shall be 73% annually; (2) After the three-year period mentioned above, the maximum rate shall be 54.75% annually until date determined by law; (3) After the date determined by law, the maximum rate shall be 40.004% annually. The date determined by law shall be fixed after consideration of economic and financial conditions, business activities of lenders, etc. five years after the effective date of the Investment Reform Act. The Diet fixed "the date determined by law" for November 1, 1991. Secondly, the main point of the Loan Act is that loan sharks are regulated by various means such as registration of lenders and restriction on debt collection practices. In order to secure the effectiveness of the business regulations, lenders in the usurious consumer loan business are subject to the various regulations of the Act, but in return the Act deprives the effectiveness of the precedents mentioned above; Article 43 of the Act, the so-called "deemed payment" clause, provides that, under certain requirements, the payment of the exceeding interest or delinquency charges shall be deemed to be a valid payment of the interest or delinquency charges obligation.

Three important requirements must be satisfied in order to apply this Article: ① the repayment of the exceeding interest or delinquency charges ② the voluntary repayment of interest or delinquency charges and ③ the issue of a contract document or a receipt prescribed by the Act. In case of repaying the exceeding interest or delinquency charges, the precedents mentioned above apply in principle but the Article 43 is an exception to the precedent under strict requirements.

The issues of this case are related to the requirements ① and ②. Concerning the requirement ①, whether it is sufficient for the requirement that a debtor makes the repayment on the basis of his recognition that money paid by him will be applied to the

interest or delinquency charges obligation or it is indispensable to the requirement that, before making the repayment, a debtor specifies that money paid by him will be applied to the interest or delinquency charges obligation. Concerning the requirement ②, whether it is sufficient for the requirement that a debtor makes the repayment of his own will or it is indispensable to the requirement that, before making the repayment, a debtor recognizes that money paid by him will be applied to the interest or delinquency charges obligation. Most authors insist that, in the light of the history of the Article 43, this Article is an exception to the precedent of the Interest Regulation Act, so that the requirements of the Article must be interpreted strictly. Nevertheless, in interpreting each requirement, the Supreme Court denies the latter opinions.

After November 1, 1991, the maximum rate sanctioned by fines or jail becomes 40.004% per annum so that the width of the so-called "gray zone" is far narrower than it was. But the "gray zone" will remain and, in practice, most loan sharks lend money at a rate between 30%–40%. This decision of the Supreme Court will let loan sharks lend money at a rate within the "gray zone". Many authors insist that the requirements of Article 43 must be interpreted strictly and, in order to regulate a lender in usurious consumer loan business, the Interest Regulation Act or the Investment Reform Act must be refomed without compromise to loan sharks.

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