5. Law of Civil Procedure and Bankruptcy

Supreme Court 3rd P.B., January 22, 2002
Kanetakakosan v. Hirayama Co.
Case No. (*o*) 512 of 1998. 1776 HANREIJIHO 67.

About the range of a notice of a suit.

Reference:

Code of Civil, Procedure Art. 46.

Facts:

The complainant (X) is a corporation which carries out the manufacture and sale of furniture, and the defendant (Y) is a corporation which manages a hotel. Y formed a plan to manage a karaoke box and concluded with Builder A the store construction contract in October, 1994. On the other hand, X received and supplied orders from A and Y about goods, such as furniture for karaoke boxes. However, since A and Y have not paid for them, X brought a lawsuit in quest of price payment on September 18, 1995 against A. However, since A claimed that Y ordered the goods, X carried out the notice of a suit to Y on January 27, 1996. However, although Y received notice of a suit, it did not participate in a lawsuit. The court judged that Y ordered goods and X lost the case. Then, X raised the petition in quest of the price of goods to Y. In the first trial, since Y was absent, the claims of X were all admitted. In the second trial, since the effect of the former judgment attained to Y, it was not admitted that Y claimed that the buyer was A by the court. Then, Y filed an appeal to a higher court.

Opinion:

Reversed and remanded.

"The meaning of the Code of Civil Procedure Art. 53 para. 6. and Art. 46. that notice of a suit's effect reaches also to those who did not participate in having received a notice of a suit is restricted when those who received notice of a suit have an interest in law result of the lawsuit

provided by the Code of Civil Procedure Art. 42. The case where it has an interest in law means the case where judgment may affect the legal status or legal profits on participating in the people's civil law, or public law (Supreme Court First P.B. January 30, 2001, 55-1 MINSHU 30). Moreover, the effect of the Code of Civil Procedure Art. 46. attains to not only the judgment about the existence or nonexistence of the right included by the judgment but the judgment about the existence or nonexistence of the right which will be the authorization and the requisite for the fact shown in the judgment as the premise (Supreme Court First P.B. October 22 1970, 24-11 MINSHU 1583). However, the authorization or law judgment with which the judgment about the existence or nonexistence of the right which will be the authorization and the requisite for the fact shown in ratio decidendi is the authorization and law judgment applicable to the main facts required in order to give a decision, and other facts or points of argument indicated are not included. Ratio decidendi means the portion which clarifies the judgment process which results in the conclusion of judgment, and is because the authorization and law judgment concerning main facts are required and enough. However, the existence of a duty in which Y pays the sale price of goods to X is not decided by the result of the goods sale price claimed by a lawsuit to A of X in a former lawsuit. Moreover, since the former judgment does not affect the legal status or legal profits of Y, it cannot be said that Y had an interest in law in the result of a former lawsuit. Therefore, Y does not have the interest in law about the result of a former lawsuit. As a conclusion, though Y receives a former a notice of suit, the effect of the former judgment does not attain to Y."

Editorial Note:

A notice of a suit means notifying the facts under lawsuit on trial from a party in a court to those who can participate in the trial (the Code of Civil Procedure Art. 53). By the notice of a suit, those who received the notice can gain an opportunity to participate in a trial and to protect their own profits and notifying people also can expect the participation in a trial of those who receive a notice. The main purpose of a notice of a suit is to exert a participating effect (the Code of Civil Procedure Art. 46) on those who received the notice, when the notifying people

lose a case. When a notice of a suit is received, can those who receive the notice have a different opinion from the former found facts of a trial and legal judgment in the next trial? In theory, when a notice of a suit was carried out, it should not have been understood as a participating effect attaining to those who receive a notice extensively, but those who received the notice needed to participate, and it was claimed that a participating effect reached only about the point at issue is saying what can be fully asserted. The judicial precedent was judged when a participating effect was not produced in a former trial about the point at issue which is not important (Tokyo High Court, June 25, 1985. 1160 HANREIJIHO 93).

This judgment limited the range which a participating effect attains to the main facts of resulting in judgment, and it is judged that a participating effect does not attain to the authorization or legal judgment concerning other facts that were indicated.

It is appropriate that this judgment limited the range which a participating effect attains to, from the point of view of theory and the position of judicial precedent.

Osaka District Court, July 19, 2001

Sansho Sogo Shokuhin v. Kinki Osaka Lease

Case No. (*mo*) 90100 of 2001. 1776 HANREIJIHO 67.

About the security cancellation permission statement in the Civil Rehabilitation Law.

Reference:

Civil Rehabilitation Law, Art. 148, para. 1.

Facts:

X concluded the leasing contract with Y in March, 1998, and the contract was supposed to be canceled immediately, when X was stated to be in bankruptcy. However, X received sequestration from other companies in November in 1998, and X stated that he would start determination of the Civil Rehabilitation procedure to the court in December. On the other hand, Y canceled the leasing contract on December 24, 2000 based on the contract, and asked for being the return of the leased goods. Then,

since X paid the same amount of money as the dealings price to the court, he was asked for the repeal of the lien.

Opinion:

Appeal dismissed.

"When X received sequestration in real estate, the right to terminate a leasing contract occurs in Y, and Y canceled the leasing contract before the Civil Rehabilitation procedure start based on right to terminate, and, as a result, the right of use of X disappeared. On the other hand, although Y had the ownership restricted to movable property based on the leasing contract, since the contract was canceled, it will have perfect ownership without restriction by the right of use. Therefore, the movable estate in this trial is not already a Rehabilitation obligor's property at the time of a reproduction procedure start and X cannot state lien disappearance permission (Civil Rehabilitation Law, Art. 148 para. 1).

There is no reason for repealing of canceling a contract, when the user of a leased object receives an injunction in the Civil Rehabilitation procedure. In the Corporate Reorganization Law, the judicial precedent has judged the special contract to which it is supposed that a sales contract can be canceled to be invalid, when the fact that a buyer states a Civil Rehabilitation start arises (Supreme Court Third P.B. March 30, 1982. 36-3 MINSHU 484). However, in Corporate Reorganization Procedure, although lien execution is forbidden, in Civil Rehabilitation procedure, lien can be used as a right of exclusive preference. Therefore, the effect of the special contract about the effect of lien cannot be considered as identical in the Civil Rehabilitation procedure, and the Corporate Reorganization procedure."

Editorial Note:

This case was the first judgment about the lien repeal permission statement of a Civil Rehabilitation process. This judgment showed that it was the object of lien repeal about the right to a lease contractor's leased ocject and it was important for business that the judgment did not admit a leasing contract to be a rental contract, but admitted the leasing contract to be pure lien. Moreover, this judgment was the first judicial precedent effective concerning cancellation based on the special contract in the

Civil Rehabilitation procedure was judged. This judgment has judged the effect of release to be effective in consideration of the difference in the handling of lien in the Corporate Reorganization Law and the Civil Rehabilitation process. This view is very rational and does not become disadvantageous to a Rehabilitation obligor, therefore, this judgment will be legal business.

6. Criminal Law and Procedure

Supreme Court 1st P.B., July 1, 2002
Seki v. Japan
56 KEISHU 265

Act of arranging deals in stolen goods, etc. in which the victim of the theft of the particular goods is a party, constitutes a crime of arranging deals in stolen goods, etc. provided by article 256, paragraph 2 of the Penal Code (hereinafter *KEIHO*).

Reference:

KEIHO, Art. 256, para. 2.

Facts:

A company (hereinafter A) became a victim of theft concerning 181 promissory notes (the total value of which was 780 million yen). The defendant, Hideaki Seki (hereinafter X), together with an accomplice, Masayuki Hiyama, (hereinafter Y) was asked by an unknown man to arrange a deal between that man and another company (hereinafter B) which was a subsidiary of A, to sell 131 (the total value of which was approximately 550 million yen) of the 181 promissory notes originally stolen from A. X and Y knowingly (aware of the fact that these notes were those stolen from A) arranged a deal to sell the notes to B at the estimated price of 82.2 million yen.

When X and Y were charged with arranging deals in stolen