from illegally obtained evidence, and it is a question of the application of the so-called "fruits of the poisonous tree" theory. Since illegally obtained evidence was not excluded until this case, the Court has not previously spoken on this matter. Therefore this case may be important also from this standpoint. Considering the fact that the seizure of the psycho-stimulants was performed with the warrant which was issued during the judicial process, and was carried out by combining it with the execution of the warrant to search and seize against the defendant on another suspicion, that of larceny, which had been already issued before the arrest of the defendant, the Court admitted this evidence of psycho-stimulants. Though the Court did not argue this point decisively, the former might be considered from the viewpoint that the illegality of derivation evidence, or the relevance between the illegally obtained evidence and the derivative evidence dilutes for the reason that the warrant used to seize it issued through the judicial process, and the latter might be considered from a viewpoint similar to the theory of "the exception of inevitable discovery."

7. Commercial Law

X v. Janome Mishin
Tokyo High Court, March 27, 2003
Case No. (*ne*) 2835 of 2001
1172 KINYU SHOJI HANREI 2; 1133 HANREI TAIMUZU 271

Summary:

The court found that the directors of Janome (defendants) had breached their duties of care or loyalty, but there had not been any negligence in their business judgments, so they should not owe liability of compensation to their company.

Reference:

Commercial Code, Articles 266, para. 1. no.5 & 294.2 (295)

Facts:

1987, Kotani, who was a green mailer, targeted Janome Mishin ("Janome"), and he bought up the shares of Janome and became a big shareholder. Then, using a controlling power of a big shareholder, he became a director of Janome. He demanded that Janome purchase the shares he had, or burden his debt which he borrowed to buy the shares or give him something as a security. Janome purchased part of the shares (10 million units) at 35 billion yen. Further, he intimidated Janome into paying 30 billion yen, saying that he would sell the rest of the shares to a gangster and give him a "precaution" which had been prepared by the representative directors of Janome. After that, he demanded that Janome and Saitama Bank, which was the main bank of Janome, take over his debts, and so they did (over 170 billion yen was provided to Kotani. Part of this money was spent for the repurchase of Janome shares).

Xs were shareholders of Janome who had owned its shares from 6 months before. They alleged that the directors had breached their duties, and should owe liabilities to compensate damages to its company.

This case deals with following points:

① If the directors were liable for a set of payments and financing?
② If these transactions were a transaction of a conflict of interest because Kotani was a director of Janome?
③ If these transactions were an offer of illegal profit?
④ If bringing this case by a plaintiff who was privy to the financing was an abuse of right?

Opinion:

Claim dismissed on the merit.

① Duty of loyalty, duty of care

The payment and financing to Kotani were absolutely "too large", and the directors of Janome apparently breached their duties despite intimidation. Yet, the duty provided on 266, para 1. no.5, shall not be a strict liability but a liability on negligence. In this case, the directors did not act intentionally, and taking his cunning and violent intimidation into consideration, there was no choice for the directors as management at that time other than deciding the payment and financing. Therefore,

there was not any negligence on the part of those directors, so they shall not owe the liability of compensation for damages.

② Conflict of interest

In this case, the payment and financing were not transactions between Kotani and Janome. Therefore, he was not related to the transactions directly, and he did not carry out transactions of conflict of interest between Janome and certain directors (for example, 30 billion-yen financing under the intimidation were executed systematically like this. First, a *keiretsu* company—S Lease—of Saitama Bank, which was a main bank of Janome financed 30 billion-yen to a related company of Janome. Second, that related company financed another company—Nanatomi. Third, Nanatomi financed a company—Koshin—of which Kotani was a representative director. And Janome guaranteed the debt of S Lease, which meant that Janome substantially owed the debt).

③ An offer of illegal profit

These sets of transactions were made by Janome to repurchase its own shares which Kotani had taken over. So, Arts. 294.2 which provides that no company may give any property interest to any person on its own account or for the account of any of its subsidiaries in connection with the exercise of the rights of shareholders, does not apply to them. So these sets of transactions were not an offer of illegal profit.

④ Bringing this case and abuse of right

There was an issue about the point whether the plaintiff in this case personally had malicious intent. Surely, there was some doubt if the plaintiff in this case was proper in derivative suit or not, but this case was the case of a large amount of damages and it could not be said to be an abuse of right.

Editorial Note:

In this case, the directors were also victims of intimidation by Kotani. Given this point, Tokyo High Court found that the directors breached their duties of loyalty or duties of care but there was no negligence on their part. This decision about negligence is the most distinctive character of this case.