

5. Law of Civil Procedure and Bankruptcy

X v. Y

Supreme Court 2nd P.B., January 23, 2006

Case No. (jyu) 1344 of 2005

60(1) MINSHU 228; 1923 HANREI JIHO 37; 1203 HANREI TAIMUZU 115;
1779 KINYU HOMU JIJOH 87; 1247 KINYU SHOJI HANREI 24

Summary:

1. A bankrupt person can pay arbitrarily to a bankruptcy claim out of his after-acquired assets and exempted assets during a bankruptcy proceeding.
2. To say that payment for loans which a member of a Local Government Officials Mutual Aid Association owed to the association out of retirement benefits which belong to after-acquired assets and exempted assets by means of the Act of Local Government Officials etc. Mutual Aid Association Art. 115 Para.2 during his bankruptcy proceeding is at his own discretion, it is necessary that he pay the above loan in the above way at his free discretion, recognizing that he is not forced to pay to a bankruptcy claim from his after-acquired assets and exempted assets after a bankruptcy declaration.

Reference:

Previous Bankruptcy Act Art. 6 and Art. 16; Bankruptcy Act Art. 34 and Art. 100; Act of Local Government Officials etc. Mutual Aid Association Art. 115 Para. 2

Facts:

X was a local government official and borrowed in total 12,000,000 yen from Y (Tokushima Mutual Aid Associations for Municipal Personnel). X was declared bankrupt at Tokushima District Court in June 10, 2002, 10 AM and a trustee in the bankruptcy was elected. And then X retired from his job on December 31, 2002.

The salary payment agency of X paid ① to the trustee in bankruptcy 4,603,800 yen which correspond to a fourth of the value equal to retirement benefits, 18,415,200 yen that would have been paid if X had retired at the time of the bankruptcy declaration as the property which belongs to the bankrupt estate, ② to Y 4,310,293 yen equal to the balance of the loan out of retirement benefits that should have been paid to X based on the Act of Local Government Officials etc. Mutual Aid Association Art. 115 Para. 2, and ③ to X the rest of which deducted from the above 4,603,800 yen and 4,310,293 yen from retirement benefits.

By the way, X did not come to an agreement with Y or the salary payment agency about paying the rest of the loans out of the retirement benefits by means of the Act of Local Government Officials etc. Mutual Aid Association Art.115 Para.2 when he paid.

Therefore X sued Y for the restitution of the unjust enrichment of paid-up money.

Opinion:

Jokoku-appeal dismissed.

(1) Previous Bankruptcy Act (before Law No.75, 2004), which is applied to the bankrupt case of X, fixes the bankrupt estate to the estate at the time of the bankruptcy declaration (Art. 6), stipulates that a bankruptcy creditor cannot exercise his bankruptcy claim without a bankruptcy proceeding (Art. 16) and provides a bankrupt person with economical rehabilitation and life security; therefore one should interpret that a bankruptcy creditor cannot execute a compulsory claim on the after-acquired assets and exempted assets of a debtor based on the bankruptcy claim during a bankruptcy proceeding, but a bankrupt person is not prevented from paying freely to a bankruptcy claim out of his after-acquired assets and exempted assets at his free discretion. On the other hand, a debtor's after-acquired assets and exempted assets are originally to be used for the economical rehabilitation and life security of the bankrupt person and a bankrupt person is not forced to pay to a bankruptcy claim out of his after-acquired assets and exempted assets during a bankruptcy proceeding, so one should interpret strictly whether a bankrupt person pays freely and cannot say that it is a free payment if there is any compulsory element.

Then the way of payment of the Act of Local Government Officials

etc. Mutual Aid Association is only that the salary payment agency of the member acts for payment of the member's debt to the association and when the member is declared bankrupt, one cannot interpret that for the association the position which it is able to receive payment to the bankruptcy claim of the association out of the retirement benefits which is a member's after-acquired assets and exempted assets with the way of payment of the Act of Local Government Officials etc. Mutual Aid Association based on the Act of Local Government Officials etc. Mutual Aid Association Art. 115 Para. 2 is provided (see Supreme Court 1st P.B., July 19, 1990, Case No. (o) 1083 of 1987, 44 (5) MINSHU 837).

(2) Therefore, to say that payment for the member's loans to the association out of retirement benefits which belong to after-acquired assets and exempted assets by means of the Act of Local Government Officials etc. Mutual Aid Association during his bankruptcy proceeding is freely chosen by him, one should interpret that it is necessary that he pay the above loan in the above way at his free discretion, recognizing that he is not forced to pay to the bankruptcy claim from his after-acquired assets and exempted assets after the bankruptcy declaration."

Editorial Note:

There is an academic argument about whether a bankrupt person can pay freely to a bankruptcy claim out of his after-acquired assets and exempted assets. The positive opinion reasons that the will of a bankrupt person should be respected when he gives up a benefit of fixation doctrine himself. The negative opinion diverges into two. One argues that abandonment to the bankrupt estate out of his after-acquired assets and exempted assets at his own will is admitted, but payment to a bankruptcy creditor individually is not admitted. This reasons that abandonment to the bankrupt estate is admitted because it does not harm the egalitarian principle of creditors between bankruptcy creditors, but payment to a bankruptcy creditor individually is against the egalitarian principle of creditors because it gives a particular bankruptcy creditor preferred satisfaction. The other argues that not only individual payment to a bankruptcy creditor out of a bankrupt person's after-acquired assets and exempted assets but also abandonment to the bankrupt estate is not admitted. This reasons that a bankrupt person may be pressured to pay actually out of procedure

and even abandonment to the bankrupt estate.

This judgment admits in principle arbitrary payment to a bankruptcy claim by a bankrupt person out of his after-acquired assets and exempted assets, but says that the freeness should be decided strictly. In the future, it will become problematical in practice on which case free payment is admitted.

6. Criminal Law and Procedure

X v. Japan

Supreme Court 1st P.B., May 16, 2006

Case No. (a) 1348 of 2006

60 KEISHU 5

Summary:

Decision ruling that in the case where the defendant produced and possessed a magnetic optical disc that falls under the categories of child pornography and of obscenities, as a backup disk for the production of compact discs for sale, such acts of the defendant were found to have been committed for the purpose of selling child pornography as prescribed in Article 7, para.2 of the Act for Punishing Acts Related to Child Prostitution and Child Pornography and for Protecting Children (prior to the revision by Act No. 106 of 2004) and for the “purpose of sale” as prescribed in the second sentence of Article 175 of the Penal Code.

Reference:

Act for Punishing Acts Related to Child Prostitution and Child Pornography and for Protecting Children (prior to the revision by Act No. 106 of 2004) Article 7, para.2
Penal Code Article 175

Facts:

In the case where the defendant produced a magnetic optical disc that falls under the categories of child pornography and of obscenities, as