to legally protect", the plaintiff' possesses the standing concerning the action to quash.

Though the judgment of the Supreme Court of this case was regarded as something appropriate following the prescriptions of Article 9 Paragraph 2 of the Administrative Litigation Act, therefore from now on, the reconsideration concerning the essential problem about the presence of the standing of a plaintiff, namely the issue between the limit of the "legally protected interest" theory and the possibility of the theory as "interest worthy to legally protect", will be an important problem.

3. Law of Property and Obligations

City's Co.Ltd. v. Kanda et al.
Supreme Court 2nd P.B., January 13, 2006
Case No. (ju) 1518 of 2004
60 (1) Minshu 1; 219 Saiko Saibansho Saibanshu Minji 1; 1403 Saibansho Jiho 2; 1926 Hanrei Jiho 17; 1205 Hanrei Taimuzu 99; 1223 Kinyu Shoji Horei 10; 1243 Kinyu Shoji Hanrei 20; 1778 Kinyu Homu Jiho 101

Summary:

(1) A part of the provisions of Article 15 (2) of the Ordinance for Enforcement of the Money-Lending Business Regulation Act, that provides that the moneylender may specify the loan contract concerning the repaid debts with the contract number or other information, instead of stating the matters listed in Article 18 (1) Item 1 to Item 3 of the Money-Lending Business Regulation Act, should be construed to be null and void as an illegal provision that goes beyond the bounds of the mandate of the above-mentioned Act.

(2) Even if a contract for a pecuniary loan which provides that the debtor shall repay the principal in installments with the agreed interest, the rate of which exceeds the upper limit provided by the Interest Rate Restriction Act, also has a specially agreed acceleration clause that the debtor will automatically lose the benefit of time in the event of a delay in payment of the principal or agreed interest, concerning the

part that requires that the debtor will lose the benefit of time in the event of a failure to pay the part of interest that exceeds the limit under the above-mentioned Act, such a special agreement is contrary to the purport of Article 1 (1) of the above-mentioned Act and therefore is null and void.

(3) In the case mentioned above, if the debtor, under a specially agreed acceleration clause as mentioned above, has paid the amount of money that exceeds the statutory upper limit of interest, the payment of the part of interest in excess cannot be regarded as the "amount of money voluntarily paid as interest" prescribed in Article 43 (1) of the Money-Lending Business Regulation Act, unless there are special circumstances where the debtor cannot be regarded as having made a mistake that he would lose the benefit of time unless he paid the agreed interest that exceeded the upper limit together with the agreed principal.

Reference

Interest Rate Restriction Act, Article 1 (1) and Article 4 (1); Money-Lending Business Regulation Act, Article 43 (1), (3) and Article 18 (1); Ordinance for Enforcement of the Money-Lending Business Regulation Act, Article 15; Civil Code, Article 136

Facts:

(1) X is a moneylender registered under Article 3 of the Money-Lending Business Regulation Act (hereinafter: the "Act").

(2) X lent 3 million yen to Y1 (*male, one person*) under the loan term (hereinafter: the "Loan") where the rate of interest was 29% per annum, the rate for delay damages was 29.2% per annum (both of them exceeding the upper limit of the Interest Rate Regulation Act (hereinafter: the "Interest Act")) and that Y1 was to pay 50,000 yen as principal with accrued interest on an installment plan (60 times in total) on the 20th day of each month from August 2000 to July 2005. This contract had a special agreement on acceleration: in the case of a delay in payment of the principal or interest, Y1 would automatically lose the benefit of time and must immediately pay X the principal and accrued interest as a lump sum (hereinafter: the Special Agreement on Acceleration).

(3) Y2 (*male, one person*) provided X with a joint and several guarantee for Y1's debts arising from the Loan.
(4) Each payment, X handed immediately to Y1 a receipt as a document provided by Article 18 (1) of The Act. According to Article 15 (2) of the Ordinance for Enforcement of the Money-Lending Business Regulation Act (hereinafter: the "Ordinance"), the contract number is entered in each receipt instead of the date of the contract required to be stated under Article 18 (1) Item 2 of the Act.
(5) In this case, X claims that Article 43 (1) or (3) of the Act shall apply to each of Y1's repayments, and the portion of payment that exceeds the upper limit on interest or liquidated damages provided by Article 1 (1) or Article 4 (1) of the Interest Act should be construed to be a valid repayment of debts, and the demands of Ys to pay the outstanding principal of the Loan, 1,894,369 yen, and delay damages.
(6) The court of second instance fully upheld X's claim by reason that Article 43 (1) or (3) of the Act shall apply to each of Y1's repayments.

Opinion:

Quashed and Remanded.

(1) Article 15 (2) of the Ordinance provides as follows: "When making a document to be provided under Article18 (1) of the Act, the moneylender may specify the loan contract concerning the repaid debts with the contract number or other information, instead of stating the matters listed in Items 1 to 3 of the said paragraph and those listed in Items 2 and 3 of the preceding paragraph." The part of this provision that stipulates that the moneylender may specify the loan contract concerning the repaid debts with the contract number or other information, instead of stating the matters listed in Article 18 (1) Item 1 to Item 3 of the Act should be construed to be null and void as an illegal provision that goes beyond the bounds of the mandate given by the Act to the Cabinet Office Ordinance, since it means that a part of the items mentioned on any statutory matters is substituted for other items.
(2) If the Special Agreement on Acceleration is effective as it is literally understood, Appellant Y1 would, in the event of a failure to pay, by the due date, the agreed interest that contains the part of interest in

excess, necessarily lose the benefit of time on the payment of the principal and have to immediately pay all the outstanding principal and interest thereon, and would also have to pay delay damages on the outstanding principal at a rate of 29.2% per annum. Such a consequence goes against the purport of Article 1 (1) of the Interest Act and therefore cannot be accepted, because Appellant Y1 would be forced to pay the part of interest in excess in order to avoid losing the benefit of time, despite the fact that he is originally not liable to pay it under the said paragraph. Thus, the Special Agreement on Acceleration, on the part that the Appellant Y1 will lose the benefit of time in the event of a failure to pay even only the part of interest in excess by the due date, is contrary to the purport of the said paragraph and therefore null and void. It is appropriate to construe that even in the event of failure to pay the part of interest in excess, the Appellant Y1 will not lose the benefit of time only if he pays the agreed principal and the upper limit of interest by the due date, and he will lose the benefit of time only when he fails to make such a payment.

(3) Although, legally, the Special Agreement on Acceleration is partially null and void as mentioned above, and so the debtor will not lose the benefit of time even if he fails to pay the part of interest in excess, the existence of such an agreement usually gives to the debtor a mistake that unless he pays by the due date that agreed interest that contains the part of interest in excess with the agreed principal, he would lose the benefit of time and must immediately pay all the outstanding principal and interest thereon. As a result, in order to avoid such a disadvantage, the debtor would be forced to pay the interest in excess.

Consequently, it is appropriate to construe that when, under the Special Agreement on Acceleration, the debtor paid, as interest, the amount of money that exceeds the statutory upper limit of interest, he cannot be deemed to have paid the interest in excess voluntarily, unless there are special circumstances where such a misunderstanding has never occurred.

Editorial Note:

Article 43 (1) of the Act before the amendment in 2006 provided that, if the amount of money paid as agreed interest by a debtor under a pecu-

niary loan contract made in the money-lending business of a moneylender registered under Article 3 of the Act exceeded the upper limit provided by Article 1(1) of the Interest Act, as an exception, regardless of Article 1(1) of the Interest Act, the payment of a part of interest in excess should be construed to be a valid payment when the debtor had made the payment voluntarily and the moneylender had provided for the debtor documents satisfying the requirements provided by Article 17(1) and Article 18(1) of the Act. This institution is understood as a carrot-and-stick policy that imposes regulations on a moneylender in exchange for certain good treatment in order to prevent the illegal activity of an underground moneylender. However, considering the purport and purpose of the Act, that is to say, providing for necessary regulations for a money-lending business in order to ensure the appropriate operation of the money-lending business and protecting the interests of parties in need of funds (Article1 of the Act), the Supreme Court, concerning the conditions under which to apply Article 43(1) of the Act, adopted the strict position not only on the interpretation of items mentioned with regard to the document that is provided by Article 18(1), but also on the judgment concerning the voluntariness of the payment of interest in excess in this case. Before this decision, recently, the Supreme Court has taken a strict attitude towards moneylender (Supreme Court, 3rdP. B., july19, 2005, 58(8) MINSHU2225; 1883 HANREIJIHOU 62; 1172 HANREITAIMUZU 135, introduced in 25 WASEDA BULLETIN OF COMPARATIVE LAW 81). And after this decision, in this year, decisions that adopted a strict position against moneylenders were passed by the Supreme Court in succession. This course of decisions might have had an influence on the legislation. In December 20, 2006, the Act was amended. The composition of the Legislature, that takes a certain tolerant attitude adopting a system based on a carrot-and-stick policy and the Supreme Court, that takes a strict attitude toward moneylenders may be changing. On the amendment of the Act, refer to "LEGISLATIONS AND TREATIES 3. Law of Property and Obligations" of this annual report. And the decision of the Supreme Court has an English text to which reference was made when the above translation was drafted on the Homepage of the Supreme Court with a proviso that the translation is provisional and subject to revision. Since the above is a part of the decision translated for this annual report and the brief explanation of the case, please refer to the

homepage (http://www.corts.go.jp./saikosai/) for the details of this decision.

4. Family Law

X v. Director of Shinagawa Ward
Supreme Court 2nd P.B., March 23, 2007
Case No. (kyo) 47 of 2006
61 (2) MINSHU 619; 1967 HANREI JIHO 36; 1239 HANREI TAIMUZU 120

Summary:

A woman who carries and bears a child, under the construction of the existing Civil Code, should be construed as the mother of the child; a woman who does not carry and bear the one cannot have the mother-child relationship regardless of her donation of an egg.

The judgment of a foreign court which allows the people who do not have a legitimate mother-child relationship under the existing Civil Code to have it is invalid in Japan on the ground that it is contrary to public policy under the Code of Civil Procedure, Art. 118 (3).

Reference:

Civil Code, Article 772, Paragraph 1; Code of Civil Procedure, Article 118 (3)

Facts:

X1 and X2 (hereinafter referred to "X" for both X1 and X2) are a Japanese husband and wife. They had the birth of two children as their own legitimate offspring registered to the Director of Shinagawa Ward (hereinafter referred to "Y"), whom an American woman A, living in Nevada, had conceived by in vitro fertilization of her ovum with the X's sperm and eggs. However, Y rejected it on the ground that there is no fact of X2's bearing them: the fact of the birth on her own.

X filed an application to Tokyo Family Court for the birth of the children registered to Y; the court rejected it (Tokyo Family Court, November