to the conclusion that, even if the accused cannot receive the documents served to the temporary living quarters, he/she should accept the disadvantage derived from it. Consequently, it is appropriate to construe that the service by registered mail to the temporary living quarters executed by the court of second instance is valid.

Therefore, according to Article 414 and Article 386, para. 1, item 3, and the proviso of Article 181, para. 1 of the Code of Criminal Procedure, the decision has been rendered in the form of the main text by the unanimous consent of the Justices.

Editorial Note:

Article 54 of the Code of Criminal Procedure says about the delivery service of documents by registered mail, that the provisions of the Code of Civil Procedure, except the ones for registered mail of public announcements, can be applied unless there are some special provisions of delivery service of documents. Article 62, para. 1 of the Rules of Criminal Procedure says that the accused should report his/her own address by document in order to receive documents and according to Article 63, para. 1, the accused who fails to report his/her own address by document is subject to registered mail. There are two important points about this judgment. One point is whether according to Article 54 of Code of Criminal Procedure, the Article 107 of Code of Civil Procedure can be applied. The other is whether registered mail for the accused whose address is uncertain is possible. The Supreme Court has always taken the positive stance about both discussion points. This judgment can be said to reconfirm the Supreme Court's traditional opinions.

7. Commercial Law

Bull-Dog Sauce C. Ltd. v. U.S. Steal-Partners
Supreme Court 2nd P.B., August 7, 2007
Case No. (kyo) 30 of 2007
61 (5) Minshu 2205; 1983 Hnrei Jiho 56

Summary:

In this case, the corporation which had been taken over by the investment foundation would allocate the warrants (which are called "Shinkabu yoyakuken") to its shareholders without charge as a defense tactics. Because of the special resolution on the warrants issuance in the general meeting, the foundation argued that the resolution, as a grossly unfair warrants issuance, was contrary to the principle of shareholder equality and applied to Art. 247 (1) and (2) of the Corporation Law in Japan. The Supreme Court held that the warrants issuance plan was neither contrary to the aims of the principle of shareholder equality nor applied to the violation to the law and the article of association (Art. 247 (1) of the Corporation Law). In addition, it also held that the warrants issuance without charge did not apply to a grossly unfair issuance (Art. 247 (2) of the Corporation Law).

Reference:

Art. 247 (1) and (2) of the Corporation Law

Facts:

Bull-Dog Sauce Co. Ltd. (Y, debtor), which is engaged in the production and sale of the sauce and the other flavorings, is listed on the second section in Tokyo Stock Exchange. U.S. Steal-Partners (X, creditor) is an investment foundation whose purpose is to invest in Japanese corporations, and hold all equities of the limited liability companies (Z), which was established under Delaware Corporation Law in the United States. On May 18, 2007, Z announced that it would take over the shares issued by Y in order to acquire all of the outstanding Y shares. Since the board of directors of Y considered that the takeover bid might decrease the value of Y and impair the interests of Y as well as the common interests of its shareholders, it decided to be oppose the takeover bid. The following measures were brought to the general meeting of Y held on May 24, 2007.

(1) The amendment of the article of association that the matters concerning a certain warrants issuance without charge shall be brought to the special resolution.

(2) Y would issue the warrants without charge under the condition

that the special resolution would be approved.

Measure (1) was approved by 88.7% of the voting rights of the shareholders present at the general meeting, and measure (2) by 83.4%.

The warrants issuance plan without charge approved in the general meeting was that the warrants shall be allocated to the shareholders of record as of July 10, 2007 at the rate of three Shinkabu yoyakuken per one share. If a shareholder exerted one Shinkabu yoyakuken, Y would grant him or her one common share, although the persons involved in X, including Z, shall not exert Shinkabu yoyakuken, as a non-qualified person. On June 24, 2007, the board of directors decided to obtain the warrants in exchange for the payment of 396 yen per one Shinkabu yoyakuken held by the persons involved in X.

On June 13, 2007, X alleged that the resolution, as a grossly unfair warrants issuance plan, was contrary to the principle of shareholder equality and applied to Art. 247 (1) and (2) of the Corporation Law in Japan and appealed the preliminary injunction in order to enjoin the warrants issuance.

Tokyo district court and Tokyo high court rejected this appeal. X immediately appealed to the Supreme Court against the decision.

In this case, the main point at issue is whether the warrants issuance can be permissible.

Opinion:

Claim dismissed on the merit.

The principle of shareholder equality requires corporations to treat equally their shareholders in response to the content and number of shares. Since the interests of individual shareholders are usually based on the existence and development of the corporation, when the acquisition of managerial control by the specific shareholders may decrease the corporation's value and impair the interests of corporations as well as the common interests of their shareholders, the unequal treatment of shareholders should not be considered to violate the aims of the principle of shareholder equality unless it is contrary to the idea of equity and lacks adequacy. The shareholders to whom the interests are returned should finally decide whether the acquisition of the managerial control by the specific shareholders may decrease the corporation value and impair the interests

of corporations as well as the common interests of their shareholders.

In this case, because the above-mentioned measures were approved by 83.4% of all voting rights, it can be said that, in the general meeting, the existing shareholders other than the persons involved in X concluded that the acquisition of the managerial control by the specific shareholders might decrease the corporation value and impair the interests of corporations as well as the common interests of their shareholders.

Under the provisions concerning the acquisition of Y shares, the persons involved in X can receive the considerations paid for the acquisition of their warrants. According to the resolution of the board of directors in Y, if the warrants were not exerted, the persons involved in X ask Y to transfer the warrants and then can receive the considerations, which can be equivalent to the value of the warrants, because they were evaluated based on the value of the takeover bid. Considering these facts, the court concluded that the warrants issuance without charge in this case was neither contrary to the idea of equity nor lacks adequacy.

Editorial Note:

In this case, the warrants conditioned on their discriminative exertion were issued without charge as a defense tactics by the target corporations. It is the first time that the Supreme Court clearly held that the warrants issuance without charge does not breach the requirements stipulated in Art. 247 of the Corporation Law in Japan and therefore are not contrary to the principle of shareholder equality. The principle of shareholder equality has been usually expected to play an important role in protecting minority shareholders from the abuse of majority rule. The Supreme Court indicated in what case the warrants issuance without charge approved by the special resolution in the general meeting can not be contrary to the principle of shareholder equality.

The Supreme Court, considering the needs and adequacy for the warrants issuance without charge, concluded that the issuance was not contrary to the aims of the principle of shareholder equality. It took into consideration whether the acquisition of the managerial control may decrease the corporation's value and impair the interests of corporations as well as the common interests of their shareholders. However it is not easy to specify what may actually decrease the corporation's value and impair the

interests of corporations as well as the common interests of their shareholders. Therefore, the Supreme Court held that the warrants issuance in question is valid not from the perspective of whether the bidder is a green-mailer but from the procedural perspective of the special resolution by the general meeting.

The Supreme Court examined whether the purchase of the warrants held by the persons involved in X was adequate as defense tactics or not. Surely, it must be noted that the target corporations should make an effort to ensure the property of their shareholders when they take the measures to defend themselves from takeovers. However, if the extensive payment of the considerations to the bidders were allowed without any restrictions, it may inadequately encourage the "green-mail". I think that, under the specific condition of the approval of the defense tactics by the special resolution in the general meeting (more than 80% of all voting rights), the payment of the considerations to the bidders can be adequate.

This year, many Japanese corporations will have to decide whether they should introduce defense tactics and actually implement them in the general meeting. The target corporation should deliberately issue the warrants without charge as a defense tactics, considering the decision made in this case.

8. Labor Law

X v. Chief of Fujisawa Labor Office (Injury of Carpenter)
Supreme Court 1st P.B., June 28, 2007
Case No. (Gyo Hi) 145 of 2005
940 RODO HANREI 11

Summary:

Jyokoku appeal was dismissed.

The case where a carpenter who engages in carpentry offered by a construction company without having his own work place is not considered as a worker defined both by the Labor Standards Act and the Workers' Accident Compensation Insurance Law.