

## 5. Law of Civil Procedure and Bankruptcy

**X v. Y**

Supreme Court 2nd P.B., July 18, 2008

Case No. (kyo) 21 of 2008

62 (7) MINSHU 2013; 1464 SAIBANSHO JIHO 2; 2021 HANREI JIHO 41; 1280

HANREI TAIMUZU 118; 1853 KINYU HOMU JIJOH 66

### Summary

Where in a district court a suit is filed which is subject to a summary court located within its jurisdiction and the defendant files a petition of transfer to the summary court, a judgment to dismiss the petition shall be exercised from the viewpoint of whether it is appropriate to conduct a trial and make a judicial decision in a district court in light of the details of the facts of the case widely in view of the purpose of the provision of Art. 16 Para. (2) of the Code of Civil Procedure, and is left to the reasonable discretion of a district court. This does not differ even in the case where a summary court is given its jurisdiction by an agreement of an exclusive jurisdiction.

### Reference

The Code of Civil Procedure Art. 11 and Art. 16

### Facts:

X had taken out a loan from Y, a financial operator, and had continued to pay back his debt, but he filed a suit seeking the principal which had been overpaid, ¥6,643,639, based on the right to demand restitution for unjust enrichment and the interest prescribed in the first sentence of Art. 704 of Civil Code in the Osaka District Court which had jurisdiction over the area where X has resided, insisting that X had paid too much money when appropriated and calculated within the limits of the Interest Rate Restriction Act and Y had known that the receipt of the money had had no legal cause.

Y filed a petition for transfer of this lawsuit to the Osaka Summary Court based on Art. 16 Para. (1) of the Code of Civil Procedure, insisting that under the contractual documents of the loan for consumption, which X has pointed out, a clause had been found respectively saying that "About a procedural act, we agree to make the Osaka Summary Court the court of the exclusive jurisdiction by the agreement" and that an agreement to make the Osaka Summary Court the exclusive jurisdiction had been concluded.

On the other hand, X disputed the conclusion and the effect of the agreement of the exclusive jurisdiction on each contract of loan for consumption, and stated his opinion that Y's petition of transfer should be dismissed because the presence of the forfeiture of benefit of time and the presence of the particular circumstances denying the bad faith, etc. would be expected to become points at issue in this lawsuit, and therefore it would not be reasonable to judge the case in the summary court

The first trial at the Osaka District Court acknowledged the conclusion of the agreement of the exclusive jurisdiction on each contract and its effect in this lawsuit, and ordered the dismissal of the Y's petition of transfer, holding that his petition had no reason because as to this lawsuit it was reasonable to conduct a trial and make a judicial decision carefully in the district court based on Art. 16 Para. (2) of the Code of Civil Procedure (hereinafter referred to as "processing by itself"), on the grounds that this lawsuit needed very complex processing about the appropriation of the money which X had overpaid and it was expected that there would be considerable difficulty in the judgment, and that the value of the subject matter of this lawsuit far exceeded the amount of the claims for which the summary court had its jurisdiction.

Y filed an immediate appeal against this order. The second trial at the Osaka High Court ordered the reversal of this order and transferred this lawsuit to the Osaka Summary Court, based on Art. 16 Para. (1) of the Code of Civil Procedure, holding that the case where it was reasonable for a district court to conduct a processing by itself when a summary court had the exclusive jurisdiction by an agreement should be restricted to the case where there would be circumstances under which a decision of transfer caused a substantial delay in the suit or harmed an equity between the parties when a petition of transfer to the exclusive jurisdiction court by the

agreement was filed, and that the suit should be transferred to the exclusive jurisdiction court by the agreement if there was no such circumstance, but that this lawsuit would not be so complex and difficult as to be inappropriate for a trial in a summary court and the trial would not necessarily be protracted, in light of the situation that there were similar judicial precedents rendered by the Supreme Court concerning the expected points at issue in this lawsuit and that the trials of the similar cases in the summary courts also had been fixed.

X filed an appeal with permission. The grounds of the appeal were, (1) that the original decision was inconsistent with the precedents rendered by the Fukuoka High Court, October 27, 1970, 21 (9=10) KAMINSHU 1416 and the Osaka High Court, June 27, 2006, Case No. (ra) 439 of 2006 as the court in charge of an appeal against a ruling in the case where there is no precedent rendered by the Supreme Court, and (2) that the original decision involved a material matter concerning the construction of “when it finds it appropriate” prescribed in Art. 16 Para. (2) of the Code of Civil Procedure (see Art. 337 of the said law).

### **Opinion:**

The original decision was quashed and Y’s appeal against the District Court order was dismissed.

The Provision of Art. 16 Para. (2) of the Code of Civil Procedure is based on the purposes of emphasizing the interests of the parties to get a trial and a judicial decision in a district court and respecting a judgment of the district court when it judges it appropriate to conduct a trial and make a judicial decision in the district court in light of the details of the facts of the case even where a suit filed in the district court is subject to a summary court located within its jurisdiction, on the grounds that a summary court has a characteristic to solve disputes promptly by applying simplified proceedings concerning a small and slight civil procedure (see Art. 33 of the Court Act and Art. 270 of the Code of Civil Procedure) and that the qualifications for the appointment of judges of the summary court is more flexible than that of judges (see Art. 42, Art. 44 and Art. 45 of the Court Act) and so on, and therefore it shall be interpreted that a judgment of the appropriateness of processing by itself is left to the reasonable discretion of a district court. So, even where in a district court a suit is filed which is

subject to a summary court located within its jurisdiction and the defendant files a petition of transfer to the summary court, whether to transfer the lawsuit to a summary court or not should be judged from the viewpoint of not only avoiding a substantial delay in the suit or ensuring equity between the parties (see Art. 17 of Code of Civil Procedure), but also whether it is appropriate to conduct a trial and make a judicial decision in a district court in light of the details of the facts of the case widely in view of the purpose of the provision of Art. 16 Para. (2) of the Code of Civil Procedure, and therefore a judgment to dismiss the petition of transfer to the summary court, in the same way as a judgment to conduct a processing by itself, shall be left to a reasonable discretion of the district court and not be against the law except in the presence of particular circumstances considered as a deviation from or an abuse of discretion. This does not differ even in the case where the summary court has its jurisdiction by an agreement of an exclusive jurisdiction (proviso to Art. 16 Para. (2)).

**Editorial Note:**

(1) A summary court or a district court shall have jurisdiction in the first instance; the former has it over the litigation for claims where the value of the subject matter of litigation does not exceed ¥1,400,000 (except for claims pertaining to administrative case litigation), the latter has it over the litigation for other claims (Art. 33 Para. (1) Item (1) and Art. 24 Item (1) of the Court Act). On the other hand, the parties may determine a court with jurisdiction by an agreement only in the first instance (Art. 11 Para. (1) of the Code of Civil Procedure). For this reason, one can reach an agreement not only about a territorial jurisdiction but also to make a summary court a court with jurisdiction of a case which is subject to a district court, and also to do the reverse. Also, the agreement of jurisdiction shall not become effective unless it is made with respect to an action based on certain legal relationships and made in writing (Para. (2) of the said Article). An agreement of jurisdiction has two types: one is an agreement of exclusive jurisdiction which excludes the jurisdiction of a court other than the agreed court; the other is an agreement of additional jurisdiction which accepts the jurisdiction of an agreed court as well as courts with statutory jurisdiction. In this case, a clause of making the Osaka Summary Court the court of the exclusive jurisdiction by the agreement is explicitly

addressed under the contractual documents of loan for consumption.

(2) The court, when it finds that the whole or part of a suit is not subject to its jurisdiction, upon petition or by its own authority, shall transfer the suit to a court with jurisdiction (Art. 16 Para. (1) of the said law). But a district court, even where a suit is subject to a summary court located within its jurisdiction, notwithstanding the provision of the preceding paragraph, upon petition or by its own authority, may conduct a trial and make a judicial decision by itself with regard to the whole or part of the suit, when it finds it appropriate (main clause of Para. (2) of the said Article). However, where the suit is subject to the exclusive jurisdiction of such a summary court, the district court may not conduct a trial and make a judicial decision by itself and must transfer the lawsuit to the summary court (proviso of the said Paragraph); nevertheless the said exclusive jurisdiction does not include the one determined by an agreement between the parties, and, after all, the district court may conduct a trial and make a judicial decision by itself when it finds it appropriate (parentheses of proviso of the said Paragraph).

Art. 16 Para. (2) of the Code of Civil Procedure is a provision which is introduced by an Act Revising the Code of Civil Procedure in 1948 (old code before the Act Revising the Code of Civil Procedure in 1996: Art. 30 Para. (2)). The purpose of this provision is to make a special provision about the transfer of a case in view of the fact that court proceedings of summary courts are made simplified and prompt (see Art. 270 and the following Articles of the Code of Civil Procedure). A district court may judge the appropriateness of processing by itself in consideration of the details of the facts, simplicity or complexity of the expected allegations and evidence, the convenience of the parties or examination of evidence, and so on. The existing theory quotes as “it finds it appropriate”; (1) where the parties have no objection; (2) where the case is so complex that it is appropriate to conduct a trial and make a judicial decision carefully in a district court; (3) where a related case was or is now pending in the district court, etc. And the judgment of the appropriateness is indeed discretionary, but it must be judged not in an arbitrary manner but in an evenhanded fashion. By the way, because the parentheses of the proviso of Art. 16 Para. (2) of the said law were not prescribed before the Act Revising the Code of Civil Procedure in 1996, there was a confrontation of theories, but under the

current law it is provided explicitly that an exclusive jurisdiction does not include the one by an agreement.

(3) By the way, Art. 18 of the Code of Civil Procedure provides that “[a] summary court, even where a suit is subject to its jurisdiction, upon petition or by its own authority, may transfer the whole or part of the suit to the district court that has jurisdiction over the location of such a summary court when it finds it appropriate” and this provision is inextricably linked to Art. 16 Para. (2) of the said law. On the other hand, Art. 17 of the said law provides that “[t]he court of first instance, even where a suit is subject to its jurisdiction, upon petition or by its own authority, may transfer the whole or part of the suit to another court with jurisdiction, when it finds it necessary in order to avoid substantial delay in the suit or ensure equity between the parties, while taking into consideration the domicile of each party and witness to be examined, the location of any subject of an observation to be used and any other circumstances concerned” and this provision has a purpose of allowing a court of first instance to transfer a case to another court with jurisdiction in order to protect the interests of the parties and to maintain a public interest where courts with jurisdiction are competing. Moreover, Art. 19 of the said law provides a mandatory transfer. However the provisions of the preceding three Articles shall not apply where a suit is subject to the exclusive jurisdiction of the court before which it is pending; nevertheless the exclusive jurisdiction does not include the one determined by an agreement between the parties (Art. 20 Para. (1) of the said law), hence we can compare this provision to the said proviso of Art. 16 Para. (2).

## 6. Criminal Law and Procedure

### **X v. Japan**

Supreme Court 2nd P.B.,

April 25, 2008

2006 (A) No. 876

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