stances, we can say that the aforementioned errors in the judgment of prior instance for its evaluation of evidence never affect the judgment.
…omission…
(2) In consequence, with regard to the Act committed under the strong influence of hallucinations and delusions due to schizophrenia, we must say that it is difficult to determine, only because of the existence of the circumstances pointed out by the judgment of prior instance, that at the time of the Act, the accused did not completely lack the ability to discern right from wrong or the ability to behave according to such discernment but was only in the state of having diminished capacity.

Editorial Note:

This judgment is very important because the Supreme Court supported traditional case law theory. Moreover, this will be applied to layman's court (Saibanin).

7. Commercial Law

X v. Y
Supreme Court 2nd P.B., February 22, 2008
Case No. (ju) 528 of 2008
62 (2) Minshu 576; 2003 Hanrei Jiho 144

Summary:

In this case, X filed the principal action to claim the cancellation of registration for the settlement of a mortgage. Y challenged X's claim, arguing principally that Y had the claim of a loan against X as a secured bond and secondarily that X jointly and severally guaranteed the debts of a third party against Y. The Supreme Court held that Y's claim of a loan against X applies to the commercial claim. It also held that Y's claim ran out of the statute of limitations, because 5 years had already passed from the time for performance.

Reference:

Art. 5 of the Corporation Law
Art. 4 para. 1 of the Commercial Law
Art. 503 of the Commercial Law

Facts:

Y (defendant of the principal action=plaintiff of the counterclaim, appellee of the principal action=appellant of the counterclaim, appellee at the court of the last resort) was a limited corporation which intended to gather sand and buy it. After the Japanese corporation law of 2005 became effective, Y continued to exist as a stock corporation. X (plaintiff of the principal action=defendant of the counterclaim, appellant of the principal action= appellee of the counterclaim, appellant at the court of the last resort) and A, who is a representative director of Y, have been friends since they were elementary school students. They have been also associated with each other through the activities of societies of commerce and industry.

X's real estate was placed on the mortgage, which was registered. The reason for the settlement of a mortgage was a loan of Y against X on May 7, 1991. The day of settlement of the mortgage was July 26, 1994. The claim amounts were 50 million yen. The debtor is X and mortgagee is Y.

In the principal action, X claimed against Y the cancellation of registration for the settlement of a mortgage on the basis of ownership of the real estate. In the counterclaim, Y principally claimed that he loaned 100 million yen to X on May 7, 1991, and asked X to pay 94,984,440 yen as the rest of original principal and delay damages. Y also secondarily claimed that Y loaned 100 million yen to B on May 7, 1991, and that X jointly and severally guaranteed the debts of B against Y, and asked X to pay 94,984,440 yen. Y argued that the secured bond of the mortgage was a bond of claims in the counterclaim. In the first oral proceeding held on November 1, 2005, X argued that the bond of claims in the counterclaim had already run out of the statute of limitations of 5 years stipulated by Art. 522 of the commercial law. X invoked the prescription.

The Fukuoka High Court found that Y personally had lent X money at his request, emphasizing that X is A's best friend. It held that there was

room to think that Y mercifully had loaned money to X irrespective of Y's business and that Art. 522 of the commercial law should not be applied to the claims of Y against X. The Fukuoka High Court dismissed X's claim of the principal action and partly approved Y's claim of the counterclaim. X appealed to the Supreme Court against the decision.

Opinion:

Reversed and remanded.

The action by corporations presumed to be a commercial transaction and those who argue that the action by the corporation is not a commercial transaction have to show that the action was not engaged in the business of the corporation or is not related with it, because the actions by the corporation as a business and for business shall be commercial transactions (Art. 5 of the corporation law), and a corporation applies to a merchant in the commercial law as one who engages in the commercial transactions in business in its own name (Art. 4 para.1), and its action is presumed to be engaged for its business (Art. 503 para. 2).

According to the above-mentioned facts, the loan against X is presumed to be a commercial transaction, because it was done by Y, which is a corporation. Surely, as Fukuoka High District Court explained, there is room to think that the loan was based on the mercy of A to X, which cannot show that the loan of 100 million yen was not related with Y's businesses, and it is obvious that there is no other circumstance to suggest this.

Therefore, the claim of the loan is that raised by the commercial transaction and should be applied to Art. 522 of the commercial law.

Editorial Note:

In this case, whether the loan of money by the corporation applies to a commercial transaction became a point of issue. The Supreme Court held that, because corporations shall be a merchant in the commercial law (Art. 4 para. 1 of the commercial law) and their transactions are presumed to be engaged in for business (Art. 503 para. 2 of the commercial law), the action by the corporation was presumed to be a commercial transaction and that those who challenge this should show that the action by the corporation was not related with its businesses.

Under the current corporation law and commercial law, as to whether corporations apply to a merchant, many academic theories think that corporations apply to a merchant (Art. 4 para. 1 of the commercial law) irrespective of the purposes of businesses, because Art. 5 of the corporation law stipulates that corporations are engaged in the commercial transactions in business. The corporation law includes the provisions of the same contents as the provisions between Part 1 Chapter 4 and chapter 7 of the commercial law, which should be substantially applied to corporations. The provisions of the commercial transaction law which are applied to commercial transactions are also applied to the action by the corporation, which are regarded as a commercial transaction by Art. 5 of the corporation law. Therefore, when these provisions are applied to a corporation, it need not be regarded as a merchant. However, a corporation should be regarded as a merchant when the provisions of the commercial transaction law which are applied to merchants are applied to corporations.

If a corporation is regarded as a merchant, is Art. 503 para. 2 of the commercial law applied to the external actions by corporations? In other words, originally, are there actions by corporations other than the actions as a business or for business?

Many academic theories explain that there is no room for application of Art. 503 para. 2 of the commercial law to the actions by corporations, because a corporation is an innate merchant and its actions are always considered to be engaged in for business. Some dominant theories think that there is room for the application of Art. 503 para. 2 of the commercial law to the actions by corporations, because a corporation can live and act as a general social person, such when making as charitable donations. Some decisions made by courts after World War II approved the application of Art. 503 para. 2 of the commercial law to the actions by corporations and others denied it.

In this case, the Supreme Court significantly clarified that Art. 503 para. 2 of the commercial law was also applied to the actions by corporations, because it can be said that this problem has been practically settled.