

whether the said CPA can be regarded as a person who has used another principal's act as his/her own tool to commit a crime. In the law of precedent, such a person is judged as a co-conspirator. According to the fact finding in the original instance, recognizing the false entry, *X* not only expressed a "clean opinion," but also cooperated with the accounting procedure for the cover-ups and provided a virtual guarantee that this procedure can endure audit. And, *X* gave out advice in structuring a scheme for the cover-ups. Thus, since *X* played an active and crucial role, not a passive role such as ignoring the false entry, the court seems to have regarded *X* as a co-conspirator.

## 6. Commercial Law

### **X v. Y**

Supreme Court 3rd P.B., March 16, 2010

Case No. (ju) 1154 of 2010

2078 HANREI JIHO 155; 1323 HANREI TAIMUZU 114;

1346 KINYU SHOUJIHANREI 38

#### **Summary:**

This is the case where the retirement benefits for ex-director which were approved at the shareholder's meeting had been paid in the form of a pension for years.

The company (defendant, appellee) decided to discontinue the pension benefits for the retired directors because of the deteriorating management and financial condition, and abolished the internal rule of the pension benefits at the director's meeting after collecting the majority of the ex-directors' agreements. In the course of the treatment, the company unilaterally suspended the pension payments for the ex-director (plaintiff, appellant) who did not agree with the amendment. The case is whether the company can cut out the benefits even for the director who disagreed. In this regard, the Supreme Court held that the company cannot extinguish the retired pension benefits claim without having the counterparty's consent.

**Reference:**

Art. 361 para.1 of the Company Law

**Facts:**

X (plaintiff, appellant) had been in a position of the executive director at Y Bank (defendant, appellee) from June 1990 until June 29, 1999. Y Bank decided to present a retirement benefits payment to X at the shareholders meeting held on June 29, 1999. The amount and conditions were entrusted to the board of directors meeting. At that time, there were internal rules for calculating retirement benefits plan at Y Bank. Based on this rules, X's retirements benefits were decided as 56,380,000 yen for the lump-sum retirement payment and 133,000 yen per month pension payments from March 2001 for 20 years. Y bank paid the lump-sum payment, and had paid the pensions to X from March 2001 until April 2004.

Y bank accounted for a substantial ordinary loss in 1997 and 1998, and the loss climbed to about 314 billion yen due to the disposition of the bad debts. In 1999, Y Bank received 400 billion yen as a public fund support. Also, Y Bank's parent company received the business improvement order from the FSA. From these situations, Y Bank decided to suspend payments of the retirement pension and asked for the consent of all the ex-directors including X. Y Bank received agreement from most of them. Then, Y Bank abolished the internal rule for pension payments and suspended the payment for all the ex-directors.

This is the case in which X, who did not agree with the abolition and cannot accept Y Bank's unilateral suspension, has sued Y Bank for the payment of unpaid pension benefits from May 2004 until April 2007 and the delay damages.

The first trial upheld X's claims, but in the counterclaim, the high court dismissed X's claims, holding Y Bank's claims as follows: "Y Bank's retirement pension contracts had not been expected to be dealt with individually; rather, collective uniform treatments under the rules had been expected for fairness among all the directors. Accordingly, Y Bank could be able to change the rules unilaterally and the effects would be extended to all directors including those who do not agree to the changes."

X appealed against this holding.

**Opinion:**

The original decision is quashed, and the case is remanded to the Tokyo High Court.

Pension retirement benefits for Y Bank's directors can be understood as the considerations for their past duties as the directors, so they are regarded as the remuneration in the sense of Article 361 para.1 of the Company Law.

Even if the retirement pension benefits have been paid according to the internal rules, the retired directors do not necessarily get the pension benefits receivables from his/her retirement as their natural rights. Their pension benefits receivables are fixed and become their claims only after Y Bank's shareholders meeting approved the payments individually. The existence of a pension benefits plan and its established calculation standards in Y Bank cannot be regarded as the manifestation of required uniform treatment. In brief, collective, uniform treatment for all the retired directors is not necessarily required according to the internal rules.

In this case, X, the retired director got the pension benefits receivables from the individual approval on Y Bank's shareholders meeting. And if so, his claim has to be confirmed individually even if there would be some changes in the circumstances; such as socioeconomic change, unfairness among retired directors due to the change of rules during the long-term benefit period. Accordingly, the effects of the abolition of internal rule cannot be put on the retired director who already has the claims on pension benefits payments without his/her consent.

**Editorial Note:**

The case is whether the company can cut out the retirement pension benefits payment for directors unilaterally under the pretext of collective uniform handling. There were similar cases in labor law dealing with the pro and con on the suspensions of employees' retirement benefits pension payments, but this case is meaningful in that the case is the first Supreme Court decision for directors in this context.

The practice to pay retirement benefits to directors is common in Japan. According to the effect of the old Supreme Court ruling, usually, there are internal rules for the director's retirement benefits in each com-

pany. However, the benefits should be construed invalid if there would be no description on the articles of incorporation and no resolution at the shareholders meeting, even if there were written internal rules and the practices in the company. In the payment practice, as there is a desire to hide the individual benefit amounts for each director, the board of directors get the discretionary decision right on the benefits by the resolution of the shareholders, and the board of directors, in accordance with the delegation, usually determined the description of the benefits. This custom has been duly recognized by the Supreme Court, and academic society has also construed it as a legitimate method. In this sense, if the amount of retirement benefits payment were specifically determined at the board of directors which is duly delegated by the shareholders resolution, the contract can be understood as established properly, and both parties shall be bound by the contract. Then, it is considered that the company cannot change or abolish the contract unilaterally. This conclusion was also endorsed by the Supreme Court in this case.

However, since the payment period of pension benefits is long by its nature, there may be some risks. These risks can be avoided if there is a pension suspension clause in the internal rules. If there were such a provision, or if not, were the implied agreement among both parties recognized in Y Bank (in Japan, there is a doctrine of “implied agreement”), the judicial decision might be a different one. This point will be carefully verified again and tried at the Tokyo High Court.

## 7. Labor Law

### **X v. IBM Japan, Ltd. (Company split)**

Supreme Court, 2nd P.B., July 22, 2010

Case No. (ju) 1704 of 2008

1010 RODO HANREI 5

#### **Summary:**

This is a decision by the Supreme Court on the case where workers under labor contracts which succeeded to the split-off entity when their