

judicial process like this case, the Court should not explain the meaning of the Saiban-in system as a positioner concerned with this institution and a promoter, but serve as an institutional evaluator and a referee standing in a more objective position.

In addition, it is important to point that the constitutionality of the citizens' participation system in the judicial procedure based on the Saiban-in Act does not mean that other constitutional problems accompanying a Saiban-in system, for instance, a Saiban-in's confidentiality of information, or, freedom of the press in informing the public of details of a criminal trial in which the Saiban-ins participate, are solved.

2. Law of Property and Obligations

X v. Y

Date of the judgment 2011.03.24

Case number 2009 (Ju) No. 1679

65 (2) MINSHU 903; 1528 SAIBANSYO JIHO 15;
2128 HANREI JIHO 33; 1356 HANREI TAIMUZU 81;

Summary:

1. A special provision on a deduction of certain amount of money from the security deposit, which is attached to a lease contract for a residential building categorized as a consumer contract, cannot immediately be regarded as impairing the interest of the lessee unilaterally against the principle of good faith; however, if the amount of the deduction from the security deposit set forth therein is judged to be too high in light of the amount normally expected as the maintenance expenses for any wear and tear of the building that would be caused from the normal use by a lessee according to the socially accepted standards or that would necessarily be caused due to aging; the amount of the rent; whether or not key money or any other lump-sum money has been paid and received, and the amount of such money if there is any, such special provision impairs the interest of the lessee, a consumer, unilaterally against the principle of good faith, and

it is void under Article 10 of the Consumer Contract Act, unless there are special circumstances such as where the amount of the rent is considerably lower than the standard rent for a similar type of building located in the vicinity of the building in question.

2. Where a special provision on a deduction from the security deposit is attached to a lease contract for a residential building that is categorized as a consumer contract, given the following factual circumstances indicated in the judgment, the amount of such deduction from the security deposit cannot be judged to be too high, and the special provision cannot be declared to be void under Article 10 of the Consumer Contract Act: (1) the special provision stipulates that a certain amount in proportion to the length of the lease, namely starting from 180,000 yen up to 340,000 yen, shall be deducted from the security deposit, and the amount to be deducted is within a range between slightly below double and slightly over 3.5 times the amount of the monthly rent; and (2) the lessee does not have the obligation to pay key money or any other lump-sum money, except for a renewal fee equivalent to the amount of one month's rent which is payable upon the renewal of the lease contract.

References:

Article 10 of the Consumer Contract Act, Article 619, paragraph (2) of the Civil Code

Facts:

(1) On August 21, 2006, X concluded a lease contract with Y to lease a condominium unit located in Kyoto City (hereinafter referred to as the "Building") for two years, a monthly rent of 96,000 yen (hereinafter referred to as the "Contract"). The Contract (hereinafter referred to as the "Written Contract") includes the following clauses. (a) X shall, upon the conclusion of the Contract, pay 400,000 yen to Y as a security deposit (hereinafter referred to as the "Security Deposit"). (b) Payment of rent, compensation for damage, and any other obligation payable arising from the Contract shall be secured by the Security Deposit. (c) When X surrenders the Building, Y shall deduct the certain amount from the Security Deposit, which varies up to the length of contract (from conclusion of contract through the surrender of the premise). If X has any

unpaid rent or any other obligation payable, he shall be refunded after deducting the amount equivalent to such obligation. (d) When X surrenders the Building to Y, he shall restore it to the original state as of the commencement of the Contract; provided, however, that any wear and tear of the Building that would be caused from the normal use by a lessee according to the socially accepted standards or that would be caused due to aging (hereinafter collectively referred to as “normal wear and tear, etc.”) shall be covered by the Security Deposit, and X shall not have the obligation of restoration from such wear and tear, etc. (e) X shall, upon the renewal of the Contract, pay 96,000 yen to Y as a renewal fee.

(2) On August 21, 2006, X paid 400,000 yen to Y as the Security Deposit pursuant to the Written Contract. X has not paid any lump-sum money other than the Security Deposit. The Contract was terminated on April 30, 2008, and X surrendered the Building to Y on the same day. On May 13, 2008, Y deducted 210,000 yen from the Security Deposit pursuant to the written Contract, and refunded the remaining amount, which is 190,000 yen, to X.

(3) X seeks from Y a refund of 210,000 yen, which is a part of the security deposit paid at the conclusion of the contract but that has not been refunded yet, and also he seeks for delay damages accrued thereon. Y argues that the contract includes a special provision to the effect that Y shall deduct a certain amount from the security deposit and obtain such amount, whereas X challenges the validity of this special provision, alleging that it is void under Article 10 of the Consumer Contract Act.

(4) The court of prior instance and the court of second instance dismissed X’s claim, holding that the Special Provision cannot be declared void under Article 10 of the Consumer Contract Act.

Opinion:

Judgment of the First Petty Bench, dismissed

(1) “A special provision on a deduction from the security deposit which is attached to a lease contract for a residential building, unless the parties to the contract otherwise agree on the purpose thereof, is intended to have the lessee also bear the maintenance expenses for any normal wear and tear, etc. According to the Written Contract, it is clear that the Special Provision is also intended as such. From the nature of a lease

contract, wear and tear of the leased property is expected to necessarily be caused, and the lessee, unless specially provided, shall not be liable to restore the property to the original state by repairing any normal wear and tear, etc., nor shall he/she be liable to bear the maintenance expenses for such wear and tear, etc. Thus, the Special Provision aggravates the duties of the lessee, a consumer, beyond those under the voluntary provisions.” So it fulfills the former clause of the Consumer Contract Act.

(2) “Where a special provision on a deduction from the security deposit is attached to a lease contract and the amount of money to be obtained by the lessor is clearly specified in the written contract, the lessee concludes the contract while clearly recognizing the amount of the deduction from the security deposit in addition to the amount of the rent, and in such case, the parties clearly agree to the lessee’s bearing the burden of payment of the deduction from the security deposit.” So “a special provision on a deduction from the security deposit cannot be regarded as doubly imposing the maintenance expenses on the lessee. Furthermore, from the perspective of preventing a dispute over the necessity of maintenance of any normal wear and tear, etc. or the amount thereof, it is not always unreasonable to fix the amount of money, which is to be obtained by the lessor and used as the maintenance expenses, at a specific amount. In this context, a special provision on a deduction from the security deposit cannot immediately be regarded as impairing the interest of the lessee unilaterally against the principle of good faith.” Also “where the amount of a deduction from the security deposit is too high for the purpose of the special provision on a deduction from the security deposit, it is often the case that the lessee is presumably forced to bear an unfair burden unilaterally, because of the inferiority in the quality and quantity of the information available to the lessee as well as in the lessee’s bargaining power as compared to the lessor. In consequence, where a special provision on a deduction from the security deposit is attached to a lease contract for a residential building that is categorized as a consumer contract, and the amount of the deduction from the security deposit set forth therein is judged to be too high in light of the amount normally expected as the maintenance expenses for any normal wear and tear, etc. that would be caused to the building; the amount of the rent; whether or not key money or any other lump-sum money has been paid and received,

and the amount of such money if there is any, it is reasonable to construe that such special provision impairs the interest of the lessee, a consumer, unilaterally against the principle of good faith, and it is void under Article 10 of the Consumer Contract Act, unless there are special circumstances”

(3) “In this case, the Special Provision stipulates that 180,000 yen to 340,000 yen shall be deducted from the Security Deposit. In light of matters such as the number of years of the contract, the location of the Building, and the area of the proprietary space, the amount of the Deduction from the Security Deposit cannot be deemed to be far beyond the amount normally expected as the maintenance expenses for any normal wear and tear, etc. that would be caused to the Building. In addition, the amount of the Deduction from the Security Deposit is within the range between slightly below double and slightly over 3.5 times the amount of the monthly rent in proportion to the number of years passed, and what is more, X does not have the obligation to pay key money or any other lump-sum money, except for a renewal fee equivalent to the amount of one month’s rent which is payable upon the renewal of the Contract. Given these circumstances, the amount of the Deduction from the Security Deposit cannot be judged to be too high, and the Special Provision cannot be declared to be void under Article 10 of the Consumer Contract Act.”

Editorial:

The residential lease contract, especially in the western part of Japan, commonly includes the special provision which allows the lessor to deduct a certain amount from the security deposit paid by the lessee at the time of evacuating. Such a contract provides the different amount deductible depending on how long the lessor has lived on the premise until his or her evacuation. The longer the lessee has lived there, the larger the amount deductible becomes. It has been generally believed that this contract term has the following purposes: 1. To cover the maintenance expenses for the normal wear and tear caused by the ordinary use of the lessee; 2. To compensate the monthly rent which the lessor might expect if the lessee does not evacuate the said premises before the agreed term; 3. To collect down payment; 4. To fill the key money which is not refundable.

The lower courts recognize that the main purpose of this provision is mainly as per above # 1, while they also admit the others. Although some

academics have questioned the reasonableness of this provision, there had been no remarkable theoretical study either to uphold or nullify this provision before the Consumer Contract Act was enacted in 2001. As the lower courts have given different judgments on its legitimacy of the provision under the Act since 2001, the academic debate has developed. This is the first decision by the Supreme Court concerning the legitimacy of the provision.

There are two points in the decision. First, the Court finds that the provision satisfies the requirement of aggregation of consumer's duty in the first paragraph of Article 10 of the Consumer Contract Act, because it imposes on the lessee the burden of the maintenance expenses for any natural wear and tear in the contract which the lessee should not bear unless otherwise agreed under the Civil Code. Secondly, the court finds that the provision doesn't satisfy the requirement "impaired[ing] the principle of good faith" in the second paragraph of article 10, because, as long as the amount to be deducted from the security deposit is clearly stated to the contracting parties, they reasonably realize the deduction as another form of the rent, unless triple of good faith and be nullified under Article 10 due to the high amount to be deducted from the security deposit is judged to be too high. Under this decision, there exists the only a limited number of cases where such provision could be found to impair the principal amount of deduction, given the fact that the court finds it reasonable to deduct approximately 3.5 times as much as the monthly rent in this case.

The decision has its English text at the website of the Supreme Court. The Summary and Opinion in this Note are the extracts from it and the Facts are summarized with reference to it. For more details, please see their website:

<http://www.courts.go.jp/english/judgments/text/2011.03.24-2009.-Ju.-No..1679.html>

3. Family Law

X v. Y