

agreed with the framework of (1) and (2) but explained that the allowance should be affirmed, and the defendant should be found guilty.

This judgment has very important meaning both from the view of criminal law and of copyrights law.

(on 9 December 2012)

9. Appropriation of Excess Payment to the Principal — In the Case of Multiple Debts

Judgment of the Second Petty Bench of the Supreme Court dated 18.01.2008 (MINSHU Vol.62, No. 1, p.28)

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Overview of the facts

(i) On September 3, 1990, X concluded a basic agreement I with consumer credit company Y, and based on that agreement, X borrowed and repaid money during the time up to July 19, 1995. When a calculation is made with the amount in excess of the limit appropriated to the principal, the amount of overpayment at that time comes to JPY 429,657 (α). (ii) On June 8, 1998, X concluded basic agreement II with Y, and based on that agreement, X borrowed and repaid money during the time up to July 7, 2005. When a calculation is made with the amount in excess of the limit appropriated to the principal, the amount of overpayment at that time comes to JPY 272,973 (β). (iii) X argued that (α) should of course be appropriated to the credit principal under basic agreement II and asked Y to restitute the JPY 687,802 (γ), which was the amount of overpayment calculated on that premise.

The first trial (April 19, 2006 Nagoya District Court judgment) judged that basic agreement I and basic agreement II are separate transactions; therefore, the right to claim restitution for the unjust enrichment that

arose for basic agreement I(α) had expired because the statute of limitations of 10 years had passed, and only restitution for the excess payment that arose under basic agreement II(β) was allowed. In response, the original decision (October 6, 2006 Nagoya High Court decision) stated that the two transactions in this case were substantially a unit, admitted X's arguments in relationship to the principal appropriation of the amount of excess payment, and ordered Y to make restitution of(γ).

Summary of the judgment: Reversed and remanded

"In a case in which a basic agreement that planned for credit and its repayment to be continually repeated between the same lender and borrower was concluded, and the appropriation of the amount exceeding the limit of repayment of debt related to transactions based on that agreement led to generation of an excess payment, but there was no other debt between the two parties at the time that the repayment that generated the excess payment, a new basic agreement related to monetary consumption borrowing and lending was subsequently concluded between the parties, and debt related to transactions based on that basic agreement was generated, unless there were exceptional circumstances, such as the existence of an agreement to appropriate the excess payment generated by transactions based on the first basic agreement to a new amount of borrowed debt, it is suitable to understand that the excess payment related to transactions based on the first basic agreement will not be appropriated to a debt related to transactions based on the second basic agreement."

Interpretation

1. In Japan, there are legislated interest regulations. For example, the upper limit on interest for a principal of JPY 1 million or more is 15% (Interest Restriction Law, Article 1). In the event an interest rate that exceeds the restriction has been stipulated, the excess portion becomes invalid. In the event that such interest was paid, it will be appropriated to the principal, provided that the principal exists. If there is no principal remaining, the excess payment will be restituted to the borrower as unjust enrichment. What happens when separate credit exists? The issue is whether the excess payment will be appropriated to that separate debt. Allowing appropriation will protect the borrower on various points.

Concerning this issue, resolutions from judicial precedents differ depending on whether a separate debt existed at the time the excess payment occurred or whether it was generated later.

2. (1) First, as for cases in which separate debt exists at the time an excess payment occurred, in principle, the appropriation will be affirmed ([i] Supreme Court Judgment, July 18, 2003, MINSHU Vol. 57, No. 7, p.895). The reason will be pointed out as, “It is considered ordinary for a borrower to want to reduce the total amount of borrowings and to not want a situation to arise in which multiple rights are generated.”

(2) In contrast, for cases in which a separate debt was generated after an excess payment occurred, in principle, the appropriation will be denied ([ii] Supreme Court Judgment, February 13, 2007, MINSHU Vol. 61, No. 1, p.182). One of the reasons that can be given for this is that ordinarily it is inconceivable that the borrower would designate the excess payment as un-generated second loan debt that should be appropriated. An exceptional case that would be allowed is when the intention to appropriate is recognized between the parties. An agreement between the parties is not only recognized when there is “special agreement related to appropriation” ([ii] obiter dicta on the judgment), but also when there is a certain relationship between debts. A certain relationship is a relationship where it is understood that repayment of the debt will be made for the entire borrowed amount ((iii) Supreme Court Judgment, June 7, 2007 MINSHU Vol. 61 No. 4, p.1537), a relationship in which it can be recognized that it is a single consecutive credit transaction ((iv) Supreme Court Judgment, July 19, 2007 MINSHU Vol. 61 No. 5, p.2175), etc. In contrast, in a case in which it cannot be recognized that there are circumstances such as continuation, etc. of credit that is the same as the basic agreement being concluded ((ii) decision), or in a case in which a relationship does not exist by which it can be evaluated that there is a de facto continuous credit transaction between two basic agreements ((v) this decision), appropriation will be denied.

3. Based on the aforementioned legal theory, there is a point of view that appropriation is grounded on intention. This is the same as the (i) decision related to separate existing debt. As a result, the fact that it can be inferred from the debtor’s intentions to reduce the total amount of borrowings, etc., that the debtor would designate repayment of other

amounts of borrowed debt serves as the grounds for appropriation.

However, this intention is fictitious and normative. If the actual intention is the issue, it is difficult to suppose the intention to appropriate new debt that does not yet exist. In addition, for existing debt as well, because the debtor continues to make repayment with no way of knowing that the debt has been eliminated due to the principal appropriation of the amount exceeding the limit, it is difficult to read in the fact of the designation of appropriation to separate debt, and it is impossible to be exact.

Against this backdrop of some judicial precedents allowing the intention to appropriate despite such difficulties, there is a principle of debtor protection indicated in the Interest Restriction Law. However, judicial precedents have not been thorough in that direction. If that direction is delved into thoroughly, a resolution will probably be reached of either recognizing intention in a more abstract and normative form by adhering to the tenor of the Interest Restriction Law or simply adopting the natural appropriation theory.

(on 11 January 2013)

10. Decision of the Supreme Court Clarifying that PTSD is Included in 'Injury' under the Penal Code

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For a case in which the defendant confined four female victims and during the period of their confinement assaulted and intimidated them, thereby causing PTSD (post-traumatic stress disorder), on July 24, 2012, the Supreme Court made a decision that such actions constituted a crime of confinement causing injury (Article 221 of the Penal Code). This decision was the first by the Supreme Court to clarify a judgment that PTSD is included in "injury" under the Penal Code.

Japan's Penal Code has several provisions for punishment in the event