3. Law of Civil Procedure and Bankruptcy

X v. Y
Supreme Court 2nd P.B, January 18, 2019
Case No. (*Ju*) 2177 of 2017
1 (1) Minshu 73

Summary:

The litigation proceedings of a judgment rendered by a foreign court that became final and binding without an opportunity to file an appeal being given to the litigants due to actual failure to notify them of the content of the judgment or substantial failure to give them an opportunity to know the content of the judgment, although it was possible to notify them of the content of the judgment, are contrary to the public policy as prescribed in Article 118, item (iii) of the Code of Civil Procedure.

Reference:

Articles 118, item (iii) of the Code of Civil Procedure and Article 22, item (vi) and Article 24 of the Civil Execution Act

Facts:

Under the civil procedure system of the State of California, a judgment is entered by the court and, in principle, one of the parties to a suit serves a notice of entry of judgment to the other party, and the period for filing an appeal to the court of second instance against a judgment expires when 180 days have passed from the date of entry of the judgment, at the latest.

In March 2013, X filed an action seeking damages against Y and several other persons, as the defendants, with the Superior Court of Orange County of the State of California, U.S. (hereinafter referred to as the "Foreign Court").

Y appeared by appointing an attorney as counsel but the attorney resigned by obtaining permission from the Foreign Court in the process of the litigation proceedings. Y failed to appear on a subsequent date and

thus, default was entered on the grounds of negligence in producing progress in litigation proceedings, in response to the request of X.

In March 2015, the Foreign Court rendered a default judgment (hereinafter referred to as the "Foreign Judgment") under the California Code of Civil Procedure ordering Y to pay approximately 275,500 U.S. dollars, in response to X's motion, and the Foreign Judgment was entered by the Foreign Court.

In March 2015, X's counsel attorney sent a notice of entry of judgment with a copy of the judgment document attached thereto in relation to the Foreign Judgment to an erroneous address, by ordinary mail. The abovementioned notice cannot be said to have reached Y.

Y neither filed an appeal to the court of second instance within the time frame for filing an appeal to the court of second instance, which is 180 days from the date of entry of the Foreign Judgment, nor other appeals within the prescribed period, and thus the Foreign Judgment became final and binding.

The court of prior instance determined as summarized below and held that the claims made by X should be dismissed. Service of a judgment to the defeated party constitutes part of the legal norm that regulates the court system of Japan by securing, in terms of procedures, the right to file an appeal against the determination made by the court; it also constitutes part of the public policy as prescribed in Article 118, item (iii) of the Code of Civil Procedure. Since the Foreign Judgment became final and binding without the judgment being served to Y, its litigation proceedings are contrary to the public policy as prescribed in that item.

Opinion:

Reversed and Remanded

In order to have a judgment rendered by a foreign court (hereinafter referred to as a "foreign judgment") be found valid in Japan pursuant to Article 118, Civil Procedure Law, it is required that the content of the judgment and the litigation proceedings are not contrary to the public policy in Japan. Even if the litigation proceedings of a foreign judgment include elements which are based on a system that is not adopted in Japan, such mere inclusion cannot immediately lead to a conclusion that the abovementioned requirement is not satisfied. However, if such elements

are found to be incompatible with the fundamental principle or fundamental idea of the legal order in Japan, the litigation proceedings of a foreign judgment should be found to be contrary to the public policy as prescribed in item (iii) of that Article (Judgment of the Second Petty Bench of the Supreme Court of July 11, 1997, 1993 (O) 1762, Minshu Vol. 51, No. 6, at 2573).

…As the requirement for a foreign judgment to be found valid in Japan pursuant to Article 118, Civil Procedure Law, it is provided that the defeated defendant has been "served with the requisite summons or order for the commencement of litigation" (item (ii) of that Article), but no such clear provision has been stipulated with respect to the service of a judgment.

Furthermore, taking into account that it is obvious that the rules of procedures concerning the service of a judgment document as mentioned above are different for each country or jurisdiction, it cannot be immediately construed that the foreign judgment is contrary to the public policy as prescribed in Article 118, item (iii), Civil Procedure Law by the mere failure of serving a judgment document in the litigation proceedings of a foreign judgment.

Yet, the Civil Procedure Law of Japan can be construed to be securing the act of giving an opportunity to file an appeal against a judgment by notifying the litigants of the content of the judgment or substantially giving them an opportunity to know the content of the judgment, except in the case where there are circumstances where the abovementioned principle serving methods cannot be used, as an important procedure constituting the basis of the legal order in litigations.

Accordingly, if a foreign judgment becomes final and binding without an opportunity to file an appeal being given due to actual failure of notifying the litigants of the content of the judgment or substantial failure of giving them an opportunity to know the content of the judgment although it was possible to notify them of the content of the judgment, the litigation proceedings of such foreign judgment can be said to be incompatible with the fundamental principle or fundamental idea of the legal order in Japan and contrary to the public policy as prescribed in Article 118, item (iii), Civil Procedure Law.

The court of prior instance made the determination by finding the

litigation proceedings of the Foreign Judgment to be contrary to the public policy as prescribed in Article 118, item (iii), Civil Procedure Law without examining whether or not Y was given an opportunity to file an appeal by being notified of the content of the Foreign Judgment or substantially being given an opportunity to know the content of the Foreign Judgment under the circumstances suggesting that it was possible to notify Y of the content of the Foreign Judgment, based on views different from those described above. Such a determination made by the court of prior instance contains illegality that obviously affects the judgment. The counsel's arguments claiming this intent are well-grounded, and thus, the judgment in prior instance should inevitably be quashed. This case should be remanded to the court of prior instance to be further examined.

Editorial Note:

Article118, Civil Procedure Law is the requirement that should be met for a foreign judgment to be valid in Japan. As one requirement for recognition, this article provides that the content of the judgment and the litigation proceedings are not contrary to public policy in Japan, Article 118, item (iii), Civil Procedure Law. The purpose of the item is to prevent the recognition of the foreign judgement from harming the basis of the legal order in Japan.

1. Controversies regarding Article 118, item (iii), Civil Procedure Law before this Judgment

The content of the judgment and the litigation proceedings should not be contrary to public policy in Japan, in order for the judgment to be recognized. The Supreme Court has already clarified the standard for the matter whether the content of the foreign judgment is contrary to public policy in Japan or not. According to the standard, ① if the content of a foreign judgment includes elements which are based on a system that is not adopted in Japan, such mere inclusion cannot immediately lead to a conclusion that the abovementioned requirement is not satisfied, ② if such elements are found to be incompatible with the fundamental principle or fundamental idea of the legal order in Japan, the foreign judgment should be found to be contrary to the public policy (refer to Supreme Court, 2nd P.B., decision of March 23, 2007, MINSHU Vol. 61, No. 2, at 619).

On the other hand, "the litigation proceedings are contrary to public policy" means that the litigation proceedings which provide a basis for a foreign judgement are contrary to the judicial system, the fundamental principle or fundamental idea of the legal order in Japan. However, before this Judgment, there was no precedent which clarified the standard for the matter whether the litigation proceedings of a foreign judgment were contrary to public policy in Japan or not. This Judgment for the first time as a Supreme Court expresses that the standard for the matter whether the litigation proceedings of a foreign judgment are contrary to public policy in Japan or not is the same as the standard for the matter relating to the content of a foreign judgment, quoting the precedent regarding the foreign judgment approving of punitive damages (Supreme Court, 2nd P.B., judgment of September11, 1997, Minshu Vol. 51, No. 6, at 2573).

2. The service of a judgment document and giving an opportunity to file an appeal against a judgment

In Japan, a judgment document shall be served on the parties, Article 255, Civil Procedure Law. The purpose of this Article is to give the defeated parties an opportunity to file an appeal against a judgment. The foreign judgement which lacks the service of the summons for the commencement of litigation is not valid in Japan in general, Article 118, item (ii), Civil Procedure Law. The purpose of this item is to protect the defeated defendant who was not given an opportunity to defend. However, unlike the service of the summons for the commencement of litigation, Article 118, Civil Procedure Law includes no express provisions about the service of a judgment document. Therefore, whether the foreign judgement in this case is contrary to public policy in Japan or not became a problem.

The court of prior instance noted that the foreign judgement in this case is contrary to public policy in Japan, because the service of a judgment document secures the party's right to file an appeal against a judgment and therefore it constitutes public policy in Japan. On the other hand, the Supreme Court noted that it cannot be immediately construed that the foreign judgment is contrary to the public policy as prescribed in Article 118, item (iii) of the Code of Civil Procedure by the mere failure of serving a judgment document, in consideration of Article 118, item (ii)

and the diversity in code of procedure regarding the service of a judgment document. Certainly, the right to file an appeal against a judgment is the fundamental right of the parties which is recognized in the system of Civil Procedure, however the service of a judgment document is just one way to give the defeated party an opportunity to file an appeal against a judgment. Therefore, the fact that this Judgment did not concern itself with whether there was the service of a judgment document or not makes sense.

In addition, this Judgment noted that we should be concerned whether an opportunity to be notified of the content of the foreign judgment or substantially an opportunity to know the content of the foreign judgment was given to the defeated party, pointing out that giving an opportunity to file an appeal, except in the case where there are circumstances where the abovementioned basic serving methods cannot be used, is an important procedure constituting the basis of the legal order in litigations. It is not clear that in what case the defeated party is considered on having been given an opportunity to know the content of the foreign judgment, however, the controversies regarding Article 118, item (ii), Civil Procedure Law could be helpful. It is said that in order for the service of the summons for the commencement of litigation to be valid, the service must be served in the way the defendant actually notices the commencement of litigation and can defend effectively (this is called the "knowability requirement"). And over the interpretation of this requirement, there is the conflict between the opinion which says that this requirement should be examined case-by-case and the opinion which says that this requirement should be examined in the same way, taking into account the purpose of the system of service which requires a strict method. Because giving an opportunity to file an appeal is needed for due process of the defeated party, it is possible to refer to the above controversies in interpreting the requirement regarding "an opportunity to know the content of the foreign judgment" that this Judgment pointed out.

3. Importance of this Judgement and remaining problem

This Judgement is very important, because it clarifies for the first time as the Supreme Court the standard for the matter whether the litigation proceedings of a foreign judgment is contrary to public policy in Japan or not.

In addition, this Judgment does not reveal the way the prevailing party informs the defeated party of the content of the foreign judgement. For examples, the prevailing party may consider the method that he sends an E-mail which includes the content of the foreign judgement to the defeated party or his counsel, etc. However, about the validity of these ways to notify the content of the foreign judgement, we need to wait for the accumulation of court cases.

4. Commercial Law

X v. Y
Supreme Court 3rd P.B., December 24, 2019
Case No. (*Ju*) 1551 of 2018
1591 Kinyū Shōji Hanrei 16

Summary:

When a member with unlimited liability withdraws from a limited partnership company, accounting as between the member and the company is effected in accordance with the status of the assets of the company as of the time of the withdrawal (Article, paragraph (2) of the Companies Act). When, as a result of the accounting, the amount of loss to be borne by the member exceeds the value of the contribution made by the member, it is appropriate to consider that the member is liable to pay the excess amount to the company unless under special circumstances such as that the articles of incorporation of the company provide otherwise.

Reference:

Companies Act Article 611(2)

Facts:

The late P left a will that he shall succeed all his estate to the appellant Y who is the first son. The appellee X, who is the first daughter, claims that her reserve has been infringed and that Y's unjust enrichment should be