

Minshu, February 21, 2003, Volume 57, No. 2, Page 95.

[Keyword]

Insurance Agent, Casualty Insurance Agreement, Insurance Premium, Bank Deposit, Demand for Repayment.

[Summary of Judgment]

In this case the court held that, under the facts of this case, this bank deposit in the savings account opened by the insurance agent in order to deposit insurance premiums for the benefit of the insurance company belongs to the insurance agent and not to the insurance company because the source of this bank deposit were the funds which originally belonged to the insurance agent.

[Case Name]

Supreme Court 2nd Petty Bench Judgment February 21, 2003 (Minshu, Volume 57, No.2, Page 95.)

[Name of Parties]

Fuji Fire and Marine Insurance Company Limited v Otaru Commerce Credit Union

[Summary of the Facts]

Yano Construction Co. Ltd, which was an insurance agent for the plaintiff Fuji Fire and Marine Insurance Co. Ltd., held a bank deposit in an ordinary savings account opened with the defendant Otaru Commerce Credit Union under the account name of "Fuji Fire and Marine Insurance Company (Co. Ltd.) Agent Yano Construction Co. Ltd. A," and had deposited insurance premiums collected on behalf of the plaintiff and its interest, three million four hundred and twenty two thousand nine hundred and three yen (3,422,903 yen). However the bill of exchange drawn by Yano Construction was dishonored and the defendant set off the bank deposit with Yano Construction's debt. The plaintiff alleged that the bank deposit belongs to the plaintiff and requested the defendant for repayment of the bank deposit. Yano Construction, on behalf of the plaintiff, concluded executed insurance agreements with the customers, received insurance premiums from them (issuing a receipt under the name of the plaintiff), keeping them in a safe or a collection envelope that are exclusively used for such purpose in order to clearly separate the money received as insurance premiums from other money. Once deposited that money into the savings account at issue, and, at around 20th day of every month, it the refund of the entire insurance premiums corresponding to the previous month deposited in the savings account and transferred the money to the plaintiff after deducting the agency fee as described in the invoice for insurance premiums sent from the plaintiff to the defendant in advance. Yano Construction used to possess the passbook and the seal for the savings account; however, it was delivered to the plaintiff after the bill of exchange drawn by Yano Construction was first dishonored. Further, the insurance agent age

agreement provided that “the insurance premium received by the insurance agent shall be kept clearly separated from the own assets of the insurance agent and shall not be used for any other purposes until it is paid to the insurance company.”

[Holding]

The case shall be reversed and the judgment of the first instance shall be revoked.

The appellee’s claim is dismissed.

The appellee shall pay the appellant three million seven hundred forty two thousand eight hundred ninety four yen (3,742,894 yen) as well as the interest of 5 percent per year against such amount for the period from December 22, 1998 through the date of the full payment.

The entire expenses of litigation as well as the expenses for the above decision shall be borne by the appellee.

[Reasoning]

...2 The lower court held that the bank deposit belongs to the appellee and that all claims of the appellee shall be upheld. The detail are as follows:

“There is no prejudice to the financial institution caused by who the depositor is and in light of protecting the interest of the person who provided the funds for the deposit, such provider shall be treated as the depositor who is entitled to be repaid by the deposit bank .

In this case it can be said that there is a special circumstance to hold that the appellee is the owner of the insurance premiums received by the insurance agent although the appellee does not have the possession thereof, by taking into consideration that (i) the insurance agent kept the insurance premiums received from the insured on behalf of the appellee separated from other money in a safe or a collection envelope that is exclusively used for such purpose, (ii) the funds for the bank deposit is the insurance premium stated above and its accrued interest, (iii) the insurance agent does not hold any independent interest, substantially or financially, in the ownership of the insurance premiums; (iv) the appellee has an interest, substantially and financially, in the ownership of the insurance premiums because the appellee bears the risk of not finally receiving the insurance premiums after the insurance agent received the insurance premiums from the customers. Even if it can not be said so, taking the above mentioned factors into consideration, the court should hold that the provider of the funds of the deposit is the appellee.

In addition, although the insurance agent possessed the passbook and the seal for the bank account and was able to control the savings account, it was the appellee who had the power to substantially control the savings account because the insurance agent was restricted under the agreement with the appellee

regarding the purpose of and the withdrawal from of the savings account and the insurance agent was merely delegated of the maintenance of the account for the appellee.

The court should hold that the bank deposit belongs to the appellee, based on the above findings that the provider of the funds of this bank deposit was the appellee and that he was the person who

substantially controlled the savings account.”

3. However, the decision of the lower court should be reversed. The reason for this decision is as follows:

Based on above findings, it is the insurance agent who opened the savings account by entering into an ordinary deposit agreement with the appellant which is a financial institution. Furthermore, it is difficult to construe that the account name “Fuji Fire and Marine Insurance Company (Co. Ltd.) Agent Yano Construction Co. Ltd. A” shows the appellee as the depositor and not the insurance agent, and there is nothing in the record that shows the fact that the appellee granted an authority to the insurance agent to enter into an ordinary deposit agreement with the appellant on its behalf.

The passbook and the seal for the bank account was in the possession of the insurance agent and the insurance agent was the only person who handled administrative works for the deposits into and the withdrawals from the savings account and it should be understood that, substantially and formally, the insurance agent was the person controlling the savings account.

Furthermore, when an authority is given under an agency agreement from the principal to the agent, the ownership rights of the goods received by the agent would be automatically transferred to the principal. However, regarding the money received by the agent, since the possession and the ownership of money can not be separated, the money belongs to the agent who is the recipient (possessor) and the agent merely owes an obligation against the principal to pay the same amount to the principal. Therefore, the ownership of the insurance premiums collected by the insurance agent from the insured as an agent of the appellee shall first belong to the insurance agent, and then the insurance agent bears the obligation to transfer the same amount to the appellee, and only when the appellee receives the payment of the money which the insurance agent have withdrawn from the appellant, Then the appellee obtains the ownership of the money, in the amount equivalent to that of the insurance premiums. Thus, it should be held that the funds of this bank deposit is the money owned by the insurance agent.

Therefore, under the facts of this case, this bank deposit shall belong not to the appellee but to the insurance agent. The facts that the insurance agent clearly separated this bank deposit from other assets of the insurance agent: that the purpose and the use of this bank deposit was restricted under an agreement between the insurance agent and the appellee, and that the savings account was exclusively used for temporarily keeping the funds to be delivered to the appellee, are not the factors that may affect the determination for the financial institution, i.e. the appellant, of the owner of this

bank deposit.

The Dissenting opinion of Judge Hiroshi Fukuda:

... the name of the savings account was “Fuji Fire and Marine Insurance Company (Co. Ltd.) Agent Yano Construction Co. Ltd. A” and it is not undoubtedly clear that such account name shows the insurance agent as the depositor and, since the word “agent” is used, it should rather be interpreted as showing that the appellee opened the savings account through the insurance agent who is its agent. The possession of the passbook and the seal for the savings account and the administration of the deposits into and the withdrawals from the savings account should be construed as the acts done by the insurance agent as an agent of the appellee.

I agree with the majority on the point that the insurance premiums received by the insurance agent from the insured first belong to the insurance agent. However, as stated above, the savings account is opened for the appellee and the obligation of the insurance agent to pay the insurance premiums to the appellee is completed by the deposit of the insurance premiums into the savings account. The transfer of funds made later by the insurance agent by withdrawing the funds from the savings account in accordance with the invoice for insurance premiums, sent to the insurance agent by the appellee, and transferring the funds after deducting the fee for the insurance agent, is merely the administrative works conducted by the insurance agent on behalf of the appellee which is just making bank transfers between the bank accounts both held by the appellee.

The lower court based its decision on the logic that the bank deposit belongs to the provider of the funds for such bank deposit; in holding that the appellee being the provider of the funds for this bank deposit was the owner of this bank deposit. Although I do not agree with the process of reaching this decision, I agree with the conclusion of the decision of the lower court which held that the request by the appellee for repayment of this bank deposit should be honored, because, as stated above, this savings account was opened by the appellee through the insurance agent acting as its agent.