tered there to be registered once more abroad. For this reason, X can not claim to register his name [in Japan] so long as the car registration remains in Germany.

...

'10. Conclusion'

'Given all of this, the claims of the appellant are well-founded as to the recovery of the car, the yearly payment of one million yen (¥1,000,000) from July 24, 1995 until delivery, and compensation of two million yen (¥2,000,000) in case the execution of the delivery became impossible; the rest of the claims have no grounds and must therefore be dismissed. The original judgment, which rejected all the claims of the appellant, is unfounded and is to be reversed.'

Judge Kiro Kito (presiding)
Judge Yasuo Hirota
Judge Tamio Hirota

Breach of Contract for Securities Transactions in Foreign Securities Markets — Applicable Law — Proprietary Aspect of Warrants Represented by Immobilized Securities Held through Indirect Holding Systems

Sendai High Court, Akita Branch, Judgment, October 4, 2000; Kin'yu Shoji Hanrei (1106) 47 [2001].

Investor v. World Nichiei Securities Corp.

The appellant (X), a Japanese investor, entered a brokerage contract with the appellee (Y), a Japanese securities company, for her trading in foreign securities markets. Based on this contract, X purchased from Y warrants denominated in U.S. dollars on several occasions ("the sales contracts") and then made several opposite transactions with respect to part of the warrants. After losing approximately one hundred million yen in her warrant trading, X brought an action against Y, claiming the return of the money she had already paid as restitution resulting from the termination of the sales contracts. X alleged that under the sales contracts Y had an obligation to deliver individual certificates representing the warrants to her in accordance with Article 341-14 of the Japanese Commercial Code[1] and that she terminated the contracts because of Y's failure to deliver them.

Yamagata District Court (Sakata Branch) dismissed the action[2]. X appealed.

Held: "The appeal shall be dismissed. The costs shall be borne by the appellant."

Upon the grounds stated below:

I. Choice of law

"Before we decide on the issues in this case, we must ask whether the governing law is the law of Japan or that of Belgium, where the Euroclear, which is recognized as a depository of the securities of the disputed warrants, is located. Since X's claim in this case is a contractual one based upon X's termination of contract because of Y's breach of contract, the governing law is primarily to be decided by the intention of the contracting parties (Paragraph 1 of Article 7 of the *Horei*[3]). In the case before us, it is reasonable to consider that X and Y, at least by implication, had the intention that the governing law should be Japanese law for the following reasons. Their brokerage contract contains a clause that the method of custody with respect to the foreign securities should comply with the laws and practices of the country where the trading or other transactions is conducted. The place where the trading contracts were concluded and the payments for the trading were made is Japan, where both X's residence and Y's headquarters are located, and all the issuers of the disputed warrants in this case are Japanese companies..."

II. Whether the warrant certificates that represent the disputed warrants were issued and delivered.

1. "...Y used the settlement system of the Euroclear for the sales contracts..... ...One global certificate (...), which represents the rights for the entire warrants in kind, was issued by the issuers and deposited in the Euroclear.....Y purchased a certain kind and certain number of warrants necessary to perform the sales contracts from other participants (securities companies) in the settlement system or form its customers other than X. Y ordered the Euroclear to complete the account transfer for the settlement..."

2. ".....According to the commingled or general deposit theory concerning the

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(1) Article 341-14 (Transfer of warrant right) of the Commercial Code, Law No. 48 of 1899, provides as follows:

"1. In cases where warrant right certificates are issued, the transfer of a warrant right shall be made by delivery of the warrant right certificate."

(2) Yamagata District Court, Sakata Branch, Judgment, November 11, 1999; Kin'yu Shoji Hanrei (1098) 45 [2000]. The grounds the district court stated are almost the same as the ones the high court gave.

(3) Paragraph 1 of Article 7 of the *Horei* [Application of Laws (General) Act (1898 Law No. 10)], literally provides as follows: The intention of the parties shall determine what country's law will govern the creation and effect of a juristic act.

deposit contracts provided in the Civil Code, each warrant holder (depositor of securities) can be interpreted to have a corresponding co-ownership interest in the global certificate on which the entire warrants commingled. This interpretation can give a proprietary protection to each holder.... The global certificate in this case satisfies the requirements of Article 341-8 [sic][4] of the Commercial Code (the required particulars to be included in the warrant certificates)...On the foregoing discussions we conclude that the global certificate is recognized to be issued as a warrant certificate, which represents the disputed warrants in this case."

3. "...When Y purchased the necessary warrants from other participants (securities companies) of the settlement system, Y ordered the Euroclear to complete the account transfer for the settlement. This act of Y is interpreted as transfer of possession by way of order (Civil Code Article 184)[5] over the warrant certificates representing the warrant transferred. As a result of "delivery" (Commercial Code Article 341.14 (1)) by such a transfer of possession by way of order, Y acquired possession (indirect and collective) of the global certificate from X [sic][6], acquired co-ownership interests in the warrants as much as the amount of the disputed warrants, and was thus transferred these warrants..."

4. "X agreed with Y as follows...in accordance with the brokerage contract: X deposits her foreign securities to Y in a commingled fund and Y redeposits the equivalent securities in a depository. With respect to the securities deposited with Y, X receives from Y the deposit receipt or report by way of a monthly statement in lieu of the deposit receipt. Based on this legal relationship, Y delivered to X the receipt or monthly report concerning the warrants contemplated in the sales contracts in question. This act of Y is interpreted as possession by agreement (Civil Code Article 184)[7], with respect to the certificates representing the warrants in question. Y transferred the possession (indirect and collective) of the global certificate to X together with the co-ownership interests of the corresponding sum of the

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(4) To be precise, Article 341-13 provides for the particulars that must be included in the warrant certificates, in which the pertinent part of Article 341-8 is quoted.

(5) Article 183 of the Civil Code (Law No.89 of 1896) provides: When a principal who has possession through an agent orders such agent thenceforth to possess the thing for a third party, and the third party has consented thereto, such third party acquires the possessory rights in the thing.

(6) Here, the Court referred to the plaintiff ("X"). However, this may correctly be read as "other participants in the Euroclear System" because according to the facts of the case, Y (the seller) cannot logically have acquired possession from X (the purchaser).

(7) Article 184 of the Civil Code provides: When the agent has declared his intention that a thing in his possession shall thereafter be held on behalf of his principal, the principal shall thereby acquire the possessory right.

warrants in question, and thus transferred these warrants."

III. Conclusion

"As the foregoing discussions in [II] made clear, "Y 'delivered' to X the certificates representing the disputed warrants, and thus transferred these warrants.

Therefore Y performed its obligation in accordance with the sales contracts, ...and X's assertion concerning the termination of the sales contracts must be denied."

Judge Sadao Ono
Judge Michiaki Sato
Judge Hiromi Saito

Divorce — Recognition of Foreign Judgment — Family Registration (*Koseki*)

Yokohama District Court, Judgment, March 30, 1999; H..J. (1696) 120 [2000]

Husband v. Wife

A Japanese man (X) and a Korean woman (Y) were married according to Korean legal proceedings in the Republic of Korea (South Korea). They began to live together in Japan the next year. About three years later Y fled back to South Korea because of domestic violence inflicted on her, although it was almost time for her to deliver a child. A boy (A) was born to her in South Korea. The next month X went there to meet her and implore her to come back home, to which Y agreed and returned to Japan with A. After their resettlement in Japan, however, they faced financial difficulties. Despite this, X showed no intention of obtaining work. Rather he forced Y to work and she reluctantly found employment for a while at a snack bar. Y then fled from X again, this time with A, to seek the protection of a public facility for women in danger. They stayed there for a while and then returned to South Korea. After two years X once again went to South Korea from where he took A back to Japan. Y pleaded for a divorce to the Seoul Family Court. The Court took a shinpan procedure for divorce with due process, but X failed to respond to all summons for an appearance and all mail sent to him was returned. The Court then sent a notice of the proceeding by publication of the summons (constructive service), and then granted a divorce judgment. Y registered their divorce at the registration office in South Korea. After four years Y asked