

Keishu, March 12, 2003, Volume 57, No. 3, Page 322.

[Keyword]

Bank Transfer by Error, Ordinary Savings Agreement, Demand for Repayment, Notice Obligation, Fraud.

[Summary of the Judgment]

In this case the court held that the person who made a demand for repayment of a bank deposit while knowing that there was a bank transfer made into its bank account by error and received the repayment will be guilty of fraud.

[Case Name]

Supreme Court March 12, 2003 Judgment (Keishu, Volume 57, Number 3, Page 322.)

[Name of Parties]

State v. Takashi Irifune

[Summary of the Facts]

A collecting agency working on the collection of fees for a certified tax accountant made a bank transfer of some collected fees, approximately seven hundred and fifty thousand yen (750,000 yen), to the defendant's savings account opened with Senshu Bank Ltd. misled by the erroneous information provided by the accountant's wife. The defendant, while having no idea of the reason for such deposit, requested repayment of the bank deposit in order to use it to repay its debt.

[Holding]

Appeal dismissed.

Litigation expenses for this instance shall be borne by the defendant.

[Reasoning]

“...2 Although there was no legal relationship which could be used as a legal basis for the bank transfer between the person who requested the bank transfer and the defendant who was the recipient, an ordinary savings deposit agreement for the transferred amount was formed as a consequence of such bank transfer between the defendant who was the recipient and the bank which received the bank transfer, and the defendant obtains an bank deposit in the amount equivalent to the transferred amount. (cf. Sup.Ct.1992 (o) April 26,1996, P.B.II Judgment No.413; Minshu, Vol. 50, No.5, Page 1267)

However on the other hand, according to the record, a process called “kumimodoshi,” which restores the status of the bank accounts to the status before the bank transfer, when is requested with the consent of the recipient of the bank transfer, exist in the banking practice, even if the deposit into the recipient's account is completed, when there is a request from the person who made a bank transfer to a wrong account. Even in the case where the recipient notifies the bank of erroneous bank transfer, the bank takes certain steps such as: while verifying its own process for crediting the account, making inquiries to the bank which received the bank transfer and, through such bank, and to the person who requested the bank transfer as to whether there was any mistake in the bank transfer.

Such steps conform to the objectives of the ordinary savings rules and the bank transfer rules, etc., are beneficial for maintaining safe bank transfer system, and are necessary in order to avoid the

bank to be involved in disputes between the person who requested the bank transfer and the recipient of the bank transfer. They are also important for the society because they would prevent unnecessary disputes among the parties involved such as the person who requested the bank transfer and the recipient of the bank transfer. Therefore, whether the bank deposit repayment of which was requested was based on an erroneous bank transfer or not is important information for the bank in order to decide whether or not it should immediately repay the bank deposit. From the recipient's perspective, has the duty to act in good faith, as a person who has continuing deposit transactions with the bank under ordinary deposit transaction agreement, and to notify the bank of the erroneous bank transfer when it came to the knowledge of it in order to allow the bank to take the steps stated above. Such notice obligation is self explanatory under reason of the social standars because the recipient of an erroneous bank transfer shall by himself return it to the person who requested the bank transfer and has no actual right to definitively treat the amount transferred by the error as his own. Thus, a demand for repayment of bank deposit made by the recipient who knew of the erroneous bank transfer while pretending as if he did not, is an act of deceit which is an factor in the criminal offence of fraud, and a mistake on the existence of erroneous bank transfer, is a mistake which is also a factor in the criminal offence of fraud and the recipient shall be charged for such an offence when the recipient receives the repayment of the bank deposit from the mistaken bank receptionist.

Based on the above findings, the defendant that did not tell the bank receptionist at the time he made a demand for repayment about the erroneous bank transfer to his bank account although he knew it, and received cash from the receptionist, can be charged for the criminal offence of fraud, and the original judgment which held the defendant guilty is affirmed.”