

[Title]

Requirements for the Principle of Changed Circumstances

[Deciding Court]

Supreme Court

[Date of Decision]

1 July 1997

[Case No.]

Case No. 255 (o) of 1996

[Case Name]

Claim for Declaration of Existence of Golf Club Membership

[Source]

*Minshu* Vol. 51 No. 6: 2452

[Party Names]

XX Final Appellants: Kazuhiro Sato and 19 Ors.

Vs.

Y Final Appellee: Pine Hills Golf Corporation

[Summary of Facts]

In this case, XX (Plaintiffs, Intermediate Appellees, Final Appellants) demanded as against Y (Defendant, Intermediate Appellant, Final Appellee), the owner of a golf course, a declaration of the existence of their golf club memberships. The golf course in this case was established by A in 1973. XX became members of the golf course by entering into membership contracts with A between 1971 and 1972, or by receiving the transfer of memberships from existing members with A's approval. B received the transfer of the business of the relevant golf course from A in 1987, and succeeded to the rights and obligations in relation to the members.

Due to the construction defects at the outset as well as a long spell of rainy weather, the golf course suffered slope slippage on a large scale. Since operations became impossible, the course was closed at the end of May 1990. Also in May and June 1990, the Prefecture of Hyogo required measures to prevent damage due to natural disaster. B then invested approximately 13 billion yen (13,000,000,000 yen) in construction to improve the golf course, including the construction of a club house. Y, who received the transfer of the golf course, took over the obligation to pay those expenses. (The name of the golf course was also changed after the construction, and its reputation seemed to have been restored.) Citing the massive expenses incurred for the restorative construction of the golf course, Y demanded that the members, XX, either maintain their membership by making an additional 10 million yen (10,000,000 yen) deposit, or withdraw from membership by receiving the refund of their deposits (approximately 500,000 yen). XX then filed this suit demanding declarations of the existence of their memberships.

The details of the rights of members were the following: (1) Preferential rights to utilize the golf course; (2) The right to demand the refund of their deposit after the duration of the measure; and (3) The right to transfer their memberships to third parties. Of the above, (1) was the only right that was at issue. Y asserted that XX did not hold the right under (1), in accordance with the application of the principle of changed circumstances, or the legal principle of the abuse of rights. The main dispute was whether or not the principle of changed circumstances would be upheld.

The court at first instance allowed XX's claims, however the lower court denied XX's claims. The lower court pointed out the fact that the construction to improve the course, which was kept to a minimum, was necessary and inevitable in order to prevent disaster, that B could not have predicted the necessity of such large scale construction, and that XX were refusing to incur an economic burden beyond what XX already incurred (approximately 500,000 yen). Based on the above, the lower court ruled that it would be "proper to find that" to allow XX's claims would be "extremely unfair from the standpoint of good faith and fairness (the principle of changed circumstances would apply)." Accordingly, XX filed a final appeal. The reasons for final appeal were critical of the decision by the lower court which ruled that there was neither foreseeability for, nor reasons for attributing the change to, the relevant party, and made the judgment described above in relation to B, who was assigned status under the contract, instead of A, who had been the party to the membership contracts at the time they were entered into, and that the construction had been carried out to the extent minimally necessary for the prevention of disaster.

[Summary of Decision]

Lower court's decision revoked; own judgment substituted.

"In order for the principle of changed circumstances to apply, the change in circumstances after the conclusion of the contract must be unforeseeable for the parties. In addition, the change must occur for reasons not attributable to the parties. Also, the existence of foreseeability and the reasons for attribution described above should be judged in relation to the parties to the contract at the time the contract was entered into, if there was a transfer of status under the contract. The lower court explained the lack of foreseeability only in relation to B, without adding any examination of foreseeability and reasons for attribution in relation to A, who was the party to the contract at the time the contract was entered into, and reached the conclusion that the principle of changed circumstances should be applied to this case. The decision by the lower court is unacceptable, even on this point alone."

"Turning to a further examination of the case, with respect to the principle of changed circumstances, generally speaking, in terms of operating the business of a golf course, which involves the construction of a golf course by modifying the natural landscape, in the absence of special circumstances, we cannot say that slope slippage is unforeseeable, and further, cannot state that there was no reason for attribution with regard to the above. Certainly, we could not deny the possibility of accidents in the future, regardless of whether caused by natural phenomena or human causes, with respect to a facility constructed by human intervention in the natural landscape. This is because it cannot be said that the need to take disaster prevention measures to avoid such risks is entirely unforeseeable in character."

“Turning to the case before us, ... the relevant golf course was constructed by modifying the natural landscape, and it was clear that A was aware of that fact. With regard to the application of the principle of changed circumstances, since there was no assertion or proof of existence of special circumstances with respect to the relevant company in this case, we cannot conclude that the company could not have foreseen the occurrence of slope slippage at the golf course or that there were no reasons for attribution.”

The Supreme Court ruled as described above, and denied the application of the principle of changed circumstances. Furthermore, the Supreme Court revoked the part of the lower court’s decision dismissing XX’s claims by applying the principle described above, ruled that the decision by the court at first instance, which allowed XX’s claims, was correct, and dismissed Y’s appeal to the lower court.