

[Title]

Statutory Liens arising through Use of Vessel under *Commercial Code* Article 704(2) and Statutory Liens under the *Civil Code*

[Deciding Court]

Supreme Court

[Date of Decision]

5 February 2002

[Case No.]

Case No. 10 (Kyo) of 2001

[Case Name]

Appeal with Permission against Decision to Dismiss Execution Appeal against Decision to Partially Deny Petition for Public Auction

[Source]

Hanrei Jiho No. 1787: 157

[Party Names]

Complainant X Sanwa Dock Co., Ltd.

Vs.

Respondents Y1 Corporation for Advanced Transport Technology
Y2 Masui Shipping Company

[Summary of Facts]

(1) Y1 (Corporation for Advanced Transport Technology, Respondent) is engaged in business including, building vessels on a shared costs basis with shipping companies, having the shipping companies use the vessels, and transferring them in accordance with the *Act on the Corporation for Advanced Transport Technology* (hereinafter referred to as the “Joint Vessel Ownership Business”).

(2) In the Joint Vessel Ownership Business, Y1 jointly owned the vessel in this case with Y2 (Shipping Company M, Respondent), and their respective ownership ratios were 80% for Y1 and 20% for Y2.

(3) Y2 leased Y1’s share of the ownership from Y1, and placed the vessel in service for Y2’s shipping business.

(4) In each year between 1998 and 2000, X (S Co., Ltd., Complainant) contracted with Y2 to conduct periodic or interim inspections of the vessel in accordance with the *Act on Vessel Safety*, and to undertake necessary repairs at time of the inspections. X completed the work, and acquired the claims for the repair costs against Y2.

Under the facts described in (1) through (4) above, the lower court ruled that statutory liens for the preservation of movables, with the claims for the repair costs as the secured claims, were established with respect to the obligor, Y2's share of ownership of the vessel only, and were not established with respect to Y1's share of ownership. The lower court dismissed an appeal that X filed in response to the decision by the court at first instance, which denied X's petition for a public auction of Y1's share of the ownership.

In response, X interpreted statutory liens in vessel leasing as follows, and filed an appeal with permission.

1. Validity of statutory liens against vessel owners

Even if the relationship between Y2 and Y1 was that of a ship lease, as the lower court ruled, and Y2 acquired rights and obligations vis-à-vis third parties in matters related to the use of the vessel (Article 704(1) of the *Commercial Code*), the statutory liens which arose as a result of the use of the vessel are valid as against the owners of the vessel as well (Article 704(2) of the *Commercial Code*). The owners of the vessel are in the position of third party pledgors with respect to statutory liens...

2. Statutory liens

In this respect, X's claims for the repair costs between the years of 1998 and 2000 were "claims arising out of the use of the vessel," and statutory liens were established with respect to Y1's share of ownership in accordance with Article 704(2) of the *Commercial Code*. Moreover, the "statutory liens" prescribed in Article 704(2) of the *Commercial Code* are not limited to statutory liens under the *Commercial Code*, and include vessel statutory liens, statutory liens under the *Civil Code*, and statutory liens under special laws as well.

3. Knowledge of holders of statutory liens (omitted)

4. Conclusions (omitted)

[Summary of Decision]

Lower court's decision partially revoked; own judgment substituted. Appeal partially dismissed.

"The main text of Article 704(2) of the *Commercial Code* prescribes that statutory liens that arise as a result of the use of a vessel are valid as against the owner of the vessel, when a lessee of the vessel has placed the vessel in service at sea for the purpose of commercial transactions. The correct view is that these statutory liens include the statutory liens under the *Civil Code*. Indeed, with respect to statutory liens securing claims arising out of the matters related to the use of the vessel by the lessee under Article 704(1) of the *Commercial Code*, the main text of Article 704(2) of the *Commercial Code* allows the same effect, as if the lessee were the owner of the vessel, and attempts to protect the obligee. There is therefore, no reason to limit its application to the statutory liens and the like prescribed under Article 842 of the *Commercial Code*.

According to the facts described above, Y1's share of ownership of the vessel was leased to Y2, and Y2 placed the vessel in service for the purpose of its own shipping business. Therefore, the statutory liens for the preservation of movables, with the claims for the repair costs as the

secured claims, arose as a result of Y2's use of the vessel. It should be concluded, therefore, that these statutory liens are valid as against Y1 as well, in accordance with the main text of Article 704(2) of the *Commercial Code*.

It follows that the decision by the lower court, which ruled that the statutory liens described above were invalid as against Y1's share of ownership, was in violation of the legislation that clearly affected the decision. The part of the ruling with respect to the petition against Y1 in the decision by the lower court must be reversed. Furthermore, as ruled above, the decision by the court at first instance, which denied the petition for a public auction for Y1's share of ownership, was improper. The decision by the court at first instance is revoked with respect to that part, and the matter is remanded to the Kobe District Court."