

[Title]

Payment made to Quasi-Holder of Claim (ATM Withdrawals using Stolen Passbook)

[Deciding Court]

Supreme Court

[Date of Decision]

8 April 2003

[Case No.]

Case No. 415 (ju) of 2002

[Case Name]

Claim for Return of Deposit Monies

[Source]

Minshu Vol. 57 No. 4: 337

[Party Names]

Appellant X: (Plaintiff, Intermediate Appellant) Anonymous

Vs

Appellee Y: (Defendant, Intermediate Appellee) Shinwa Bank Pty Ltd.

[Summary of Facts]

(1) On 16 October 1998 the depositor, X, opened a savings bank account at Branch N of Bank Y. At that time, X applied for the use of a cash card, giving the same numbers as the four digits of X's vehicle registration number as the personal identification number ("PIN") for the cash card before taking delivery of the same.

(2) Bank Y had installed automatic teller machines ("ATMs") which enabled depositors who had registered their PIN with Bank Y to make withdrawals from their deposits using either their bank passbook ("Passbook") or cash card if they entered their PIN at the ATMs. It should be noted that the PIN was not loaded into the magnetic strips of either the passbooks or cash cards.

(3) On the 22nd of November 1999 at around 9:30 pm, X parked X's car at a monthly parking lot located near X's home with the Passbook placed inside the car's dashboard. Between that time and 10:40 am of the following day on the 23rd, X's Passbook was stolen together with X's car. During the period between 8:52 am and 9:56 pm on the 24th, an unidentified person used the Passbook a total of 17 times (the "Withdrawals"), entering X's PIN and performing withdrawal procedures at ATMs in Branches A, B, and C of Bank Y, withdrawing a total of 8.01 million yen from these ATMs.

(4) On the morning of the 24th, X notified Branch N of Bank Y of the loss of X's Passbook. However, this took place after the withdrawals had been completed, and the notification code was entered into the computer on the same day at 10:53 am.

(5) In Bank Y's card regulations, there were provisions to the effect that withdrawals of deposits could be made via the cash card withdrawal method, and also exempting provisions to the effect that, as a general rule the Bank would not be liable where a withdrawal was made after the card's magnetic record had been used to verify the authenticity of the card used and a match between the entered PIN and the PIN given by the card holder. However, there were no provisions to the effect that withdrawals of deposits could be made via the automatic Passbook withdrawal method (the "Passbook Withdrawal" method) in either the savings deposit regulations or the card regulations, and also no exempting provisions in relation to such withdrawals. Furthermore, although X had used X's cash card at ATMs to make deposits, X had not made any withdrawals from ATMs using either the Passbook Withdrawal or cash card withdrawal methods, and so did not know that withdrawals could be made through the Passbook Withdrawal method.

(6) X commenced an action against Y seeking the return of the 8.01 million yen relating to the Withdrawals. On the basis of the above facts the court at first instance (see Fukuoka District Court, 18 April 2001, *Minshu* Vol. 57 No. 4: 347) and the intermediate appeal court (see Fukuoka High Court, 25 December 2001, *Minshu* Vol. 57 No. 4: 360) found that there were no grounds for X's claim for the return of the deposits as the Withdrawals had been effective under Article 478 of the *Civil Code*. Also, as the Withdrawals constituted performance in accordance with the main object of the obligations, the Courts also ruled that there were no grounds for X's claim for damages based upon non-performance of the obligations, and dismissed X's claims. X filed a final appeal.

[Decision]

Judgments of lower court reversed and Supreme Court's own judgement substituted (X's claims upheld)

“(1) It is proper to understand that Article 478 of the *Civil Code* has application even in relation to automatic withdrawals on deposits by unauthorised persons, and that application of this article is not to be denied because withdrawals were not conducted face-to-face.

The validity of payment to a quasi-holder of a claim shall be effective under Article 478 of the *Civil Code* in circumstances limited to where the party who performed such obligations acted without knowledge and without negligence. In order for the bank to have acted without negligence in regards to payments on deposits made to a quasi-holder of a claim by an automatic withdrawal method, the bank will be required not only to have had operated the ATM correctly at the time of the withdrawals, but also to have done its utmost in relation to the establishment and management of the automatic machine system to satisfy the bank's duty of care to eliminate withdrawals by unauthorised persons, including indicating clearly to depositors that deposits can be withdrawn through the automatic withdrawal method, in order to prevent depositors mismanaging their PINs. Our reasoning is as follows.

Withdrawals by automatic withdrawal methods differ from where withdrawals are conducted at a bank teller counter, as whether the person requesting the withdrawal has legitimate authority to do is decided solely according to automatic verifications that the passbook is authentic and that the PIN entered and the PIN given by the card holder match; without measures such as the bank employee's observation of the behaviour and responses of the

person requesting the withdrawal of the deposit and judgment as to whether that person has authority and the addition of verification measures as necessary. In an automatic withdrawal, provided that an authentic passbook or similar is used, and the correct PIN number is entered, there are no inquiries whatsoever made into the identity of the person performing these acts.

In light of the fact that in automatic withdrawals the decision as to the authority of the person accepting performance is performed automatically by a formulaic system set up by the bank, in order for the Court to find that the bank was without negligence in regard to withdrawals made by unauthorised persons, the bank is not only required to have had performed the automatic verification of the passbook and PIN at the time of the withdrawals correctly, but is also required to have set up and managed the automatic withdrawal system in its entirety so as to, so far as is possible, eliminate withdrawals by unauthorised persons including reducing errors by users of the system and ensuring that depositors are aware of the importance of information such as PIN numbers.

(2) According to the above facts, although Bank Y adopted the Passbook Withdrawal system, the bank did not provide to that effect in the card regulations and also failed to clearly indicate the same to depositors (it should be noted that although according to the records documents entitled "For customers using ATMs" were posted in locations where the ATMs were installed showing withdrawal fees "For customers using the Bank's passbooks and cards", this cannot be said to be sufficient as a clear indication to depositors). Accordingly, X did not know that withdrawals of deposits could be made by the Passbook Withdrawal method.

In order to eliminate withdrawals by unauthorised persons, it is necessary to make depositors aware that their PIN and passbook can be used for automatic withdrawals and to have them practice sufficient safekeeping of the same. In light of this, it is right to say that in order for banks that adopt the Passbook Withdrawal system to be regarded as having done their utmost to fulfil their duty of care in relation to the installation and management of this system, the banks will be required to prescribe in the deposit regulations that withdrawals can be made by the Passbook Withdrawal method and to clearly indicate the same to depositors. It follows that it cannot be said that the Bank Y did its utmost to fulfil the duty of care to prevent withdrawals by unauthorised persons in relation to the Passbook Withdrawal system, and we find that there was negligence in relation to the Withdrawals. It must, however, be added that according to the above facts, X had set as X's PIN to the same numbers as the four digits of X's vehicle registration number, and in addition had parked the vehicle in a parking lot near X's home with the Passbook left inside the dashboard. As the Court accepts that this led to X's Passbook being stolen together with X's car by an unknown person, who then guessed X's PIN and made the Withdrawals, the Court finds that there are also grounds for imputing negligence to X in relation to the making of the Withdrawals. However, the Court finds that the extent of the grounds for imputing negligence to X are insufficient to overturn the earlier finding of negligence on the part of Bank Y.

It follows that the Court cannot accept that the payments in relation to the Withdrawals were effective under Article 478 of the *Civil Code*."