

[Title]

Timing of Calculation of Damages where Performance is Impossible

[Deciding Court]

Supreme Court

[Date of Decision]

20 April 1972

[Case No.]

Case No. 212 (o) of 1969, Case No. 995 (o) of 1971

[Case Name]

Demand for registration of transfer of ownership of real property, demand for vacation of building, countersuit against demand for registration of transfer of ownership of real property and demand for vacation of building, incidental final appeal

[Source]

*Minshu* Vol. 26 No. 3: 520

[Party Names]

X Final Appellant: Juzaburo Kataoka

Vs.

Y Final Appellee: Marubun Corporation and 4 Ors.

[Summary of Facts]

X (Plaintiff, Intermediate Appellant, Intermediate Appellee, Final Appellant) had leased a building since 1927 from Company Y (Defendant, Intermediate Appellee, Intermediate Appellant, Final Appellee), which was in the real estate management business. After World War II, Y decided to sell its real property to those receiving the benefit of their use in order to secure funds, including for the payment of fixed property taxes. As part of the plan, Y sold the building in which X resided to X, along with the land on which it was situated (hereinafter referred to as the "Real Property").

The sales contract for the Real Property between X and Y stipulated that X would pay Y the sales price of 71,000 yen by the last day of April 1948, that registration of the transfer would be carried out when payment was received in full, and that the current lease would continue until payment was received in full. X could not pay the above price, and X and Y negotiated and as a result agreed at the end of December 1951 that the date for payment of the price would be extended till 24 August 1952, and that X would not pay rent as of January 1952, but instead, bear the fixed property taxes after that date. X paid the price in full, albeit slightly late. X did not, however, complete the procedures for the registration of the transfer, despite Y having requested the same (along with a claim for monies to fund Y's payment of the fixed property taxes on X's behalf), and left the property under the name of Y, with the registration of the transfer incomplete.

On 17 January 1958, Y expressed its intention to cancel the sales contract due to factors including breach of the principle of fairness on the part of X, and the “principle of lapse” (it should be noted that it was ruled in this suit that the above right to cancel did not arise). On the same day, Y sold the Real Property to non-party A, and on 24 March 1958, registered the transfer. (Furthermore, on 27 March 1959, A sold the Real Property to B, who leased part of the relevant building from X, and transferred the registration.)

Accordingly, X filed this suit claiming damages from Y on the grounds of impossibility of performance with respect to the obligation to transfer the ownership of the Real Property, due to the duplicated transfer to A. With respect to the amount of damages, X asserted that, as a real estate broker, Y could have foreseen the appreciation in the value of the Real Property after the impossibility of performance, and that the current post-appreciation value should be used as the standard, and claimed 6,470,000 yen which was equivalent to the value of the Real Property as of November 1963 (while the trial in this suit was pending). The court at first instance (Tokyo District Court decision, 27 June 1967, *Minshu* Vol. 26, No. 3: 529) affirmed Y’s liability for damages, however the Court ruled, with respect to the amount of damages, that “X purchased the Real Property solely for the purpose of utilizing it as his own residence, and it was clear that he did not intend to re-sell it for profit.” The Court ruled that the amount of damages was the value at the time performance became impossible, and allowed X’s claim to an extent just over 830,000 yen, calculated based on the value of the Real Property as of 24 March 1958. Both X and Y appealed. The lower court concurred with the court at first instance and dismissed the appeals (Tokyo High Court decision, 13 December 1968, *Minshu* Vol. 26, No. 3: 550). X cited the decision by the Supreme Court in 1962 (described below) and filed a final appeal.

[Summary of Decision]

Reversed and remanded to lower court.

“There is an existing precedent of this Court demonstrating that, when the obligor has unlawfully disposed of the subject matter of an obligation, making the obligation impossible to perform, and there are special circumstances in that the value of the subject matter continues to appreciate and the obligor, knew, or could have known about the special circumstances described above at the time he made performance of the obligation impossible, the obligee should be able to claim damages from the obligor calculated based on the current post-appreciation value of the subject matter ([Supreme] Court, Second Petty Bench decision, 16 November 1962, Case No. 135 (o) of 1961, *Minshu* Vol. 16 No. 11: 2280). Moreover, this logic should apply to situations as in this case, where the buyer purchased the real property under the sales contract not for the purpose of re-selling it to gain profits, but for the purpose of utilizing it himself, and the seller’s obligation to the buyer to transfer the ownership became impossible to perform due to the seller’s unlawful disposition of the real property. Indeed, even in this kind of situation, since the above buyer of the real property could have actually owned the real property worth the appreciated value but for the above default, it is appropriate to calculate the damages incurred by the buyer due to the above impossibility of performance using the standard of the current post-appreciation value of the real property.”