

[Title]

Ordinary household debt and apparent authority

[Deciding Court]

Tokyo High Court

[Date of Decision]

26 June 1980

[Case No.]

Case No. 1338 (ne) of 1978

[Case Name]

Appeal on Loan Claim

[Source]

Hanji No. 972, p. 32

[Parties]

Appellant: Yoshi Ogawa

versus

Appellee: Isao Sugimura/Toshiko Kayama

[Summary of Facts]

The facts are not necessarily clear, but X (plaintiff, and appellant) extended 22 loans totalling JPY 5.2 million to Y1 over a short period of time from 24 March 1973 to 27 December of the same year. Although there had been partial repayment, this action was filed in relation to the amount still outstanding against Y1 and on the basis of apparent authority against spouse Y2, as a loan in relation to ordinary household debts.

The first instance (Yokohama District Court, Yokosuka Branch) ruled in favor of a partial claim against Y1, and dismissed the claim against Y2. X appealed.

[Summary of Decision]

Appeal dismissed (Final).

“The proportion of interest to principal was clear with 5% per month for loans up until August 1973 , gradually increasing for subsequent loans to 6%, 7%, ...10%, per month.Rather than focusing on the individual specific events stated when Y1 borrowed the funds in the belief that the purpose of these loans was for ordinary housekeeping of Y2’s family, the Court finds that X extended these loans for the purpose of generating personal gain through lending at high interest rates.....

As such, it is insufficient for a third party who loaned a married couple an

enormous amount of money, at high interest rates, in excess of the scope of ordinary housekeeping expenses for the purpose of personal gain to simply believe the statement of one spouse, and to pursue joint liability in relation to one or other of a husband and wife through the analogous application of the intent of the *Civil Code* Art. 110 on the basis of a belief that such loans were within the scope of the couple's ordinary housekeeping, or that the other spouse had acquiesced to this act, and that there was just cause for such belief. While there should be special circumstances such as the other spouse being a cause of such belief that the spouse had approved such borrowing or that the action was within the scope of the couple's housekeeping, in this case, there is not sufficient evidence to sustain the existence of such special circumstances. RatherY2 had absolutely no knowledge that Y1 had received each of these loans throughout the period of the loans, and Y1 kept it a secret from Y2 and used most of the funds from these loans to pay high interest rate moneys borrowed from A.”