

[Title]

Negligence at the Contract Preparation Stage

[Deciding Court]

Supreme Court

[Date of Decision]

18 September 1984

[Case No.]

Case No. 152 (o) of 1984

[Case Name]

Claim for Damages

[Source]

*Hanrei Jiho* No. 1137: 51

[Party Names]

Y Final Appellant: Tadao Ikeda

Vs.

X Final Appellee: Yoshimasa Kakutani

[Summary of Facts]

According to the commentary in *Hanrei Jiho* (No. 1137: 51), the summary of facts acknowledged by the lower court was as follows: “(1) X planned to build a 4-story condominium, and began recruiting purchasers when construction work started. In November 1979, Y expressed the desire to purchase a condominium, and after negotiations, Y asked X to wait for an answer while Y gave further consideration to the matter. A month later, Y paid X 100,000 yen. In the meantime, Y engaged in acts such as issuing instructions to X with regard to the space and ordering drawings of the layout. (2) Later on, Y inquired of X about the electrical capacity of the condominium, indicating that Y would be operating a dental clinic, which required a large amount of electricity. X thought that the condominium’s electrical capacity would not suffice, and without confirming Y’s intentions, X ordered to replace the water tank with an electrical transformer room. Furthermore, in February 1980, X notified Y that X had revised the contract for electrical capacity, and that there would be additional costs to cover the expenses, to which Y did not particularly object. (3) Y subsequently requested that X prepare a written estimate, which was required for the application for the loan for the purchase. However, in the end, Y declined to purchase for reasons including that the monthly payment on the loan would be too high.” X (Plaintiff, Intermediate Appellee, Final Appellee) then claimed compensation from Y (Defendant, Intermediate Appellant, Final Appellant) to cover X’s costs, including those incurred to make the necessary changes described above, on the grounds of cancellation of the contract (the primary claim) or negligence whilst entering into the contract (the alternative claim).

The court at first instance (Tokyo District Court decision, 14 December 1981, *Hanrei Taimuzu* No. 470: 145) denied that a contract had been established and dismissed the primary claim.

However the court ruled with respect to the alternative claim that, “Unlike a relationship between ordinary citizens, parties who begin a transaction and commenced preparations to enter into a contract are in a close relationship governed by the principle of fairness, and therefore, regardless of whether or not the contract is later entered into, they are both subject to an obligation, under the principle of fairness, to not harm each other’s person or property. When a party has caused the other party loss in breach of such obligations, even in a situation where no contract was entered into in the end, it is proper to uphold liability for damages as liability under the contract.” The District Court added that, “Despite the fact that Y had already determined that the space in the relevant property basically did not meet his desired conditions by the middle of January 1980, Y pointed out the lack of the electrical capacity and had X perform various tasks ... in order to increase the electrical capacity, Y did not make any particularly request for X to cease when he learned from X about the procedures to make changes described above as well as the expenses of approximately 5,000,000 yen, and subsequently, Y even displayed an attitude of acceptance of the above design changes, such as by negotiating the lease for the upstairs portion, and requesting the preparation of a written estimate.” The court allowed part of the claim on the grounds described above (the proportionate negligence for both X and Y being set at approximately 50%).

Y appealed. The court at second instance (Tokyo High Court decision, 17 November 1983, unreported) followed the decision by the court at first instance, and dismissed the appeal, ruling that, “Even if the contract was not entered into, it was proper to allow damages, for losses (the ‘benefits of trust’) suffered, as liability under the principle of fairness pursuant to the contract-like relationship of trust already in existence between the parties, who were in preparations for the purpose of achieving that contract.” Y filed a final appeal asserting that, in situations such as this case where the contract was not entered into, it was improper to even consider liability during the preparations for entering into the contract.

[Summary of Decision]  
Final appeal dismissed.

“Under the facts lawfully acknowledged by the lower court, we affirm the lower court’s decision which upheld liability for damages on the grounds of Y’s breach of duty of care under the principle of fairness during the contract preparation stage. Furthermore, we cannot conclude that it was unlawful for the lower court to have allocated the proportionate negligence of the parties as 50% for both Y and X.”