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The Tokyo District Court found unenforceable a venue clause with a Delaware court as the exclusive court of jurisdiction

- Interlocutory Judgment of the Tokyo District Court, February 15th, 2016

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On February 15, 2016, the Tokyo District Court found invalid a dispute resolution clause in a transaction agreement between Apple Incorporated ("Apple") and Shimano ("Shimano"), a manufacturer in Japan, specifying a Delaware court in the U.S. as the court of exclusive jurisdiction, and concluded that it has jurisdiction over the dispute between Apple and Shimano. This newsletter explains scope and meaning of this recent court decision considering past case precedents and the Japanese Code of Civil Procedure (the "Code").

1. Summary of the case

(1) Background and dispute

Shimano, the plaintiff in this case, is a Kabushiki Kaisha (limited liability company) with 350 employees and capital of JPY 90 million. Shimano manufactures machinery parts used in electronic devices [i].

Shimano presented the summary of the case as below in the Complaint.

Since 2006, Shimano has supplied parts used in Apple PCs. In September 2009, Shimano and Apple executed the Master Development and Supply Agreement (the "Master Agreement") regarding manufacture and supply of parts necessary for manufacturing Apple's PCs.

In the transactions with Apple, Shimano made a large investment in order to increase the production volume and improve quality based on Apple's wishes. In particular, in 2011, Shimano put a significant amount of labor and development costs into Apple's new products.

Apple, on its part, made repeated requests for price reductions. In August 2012, Apple suddenly stopped ordering parts from Shimano and notified Shimano that Apple would not order any more parts without significant price reductions by Shimano. Shimono had no choice but to agree to the price reductions. Apple, however, further requested a rebate, which Shimano also had to accept. After payment of a large rebate, Apple resumed parts orders, but the amount of orders did not reach the initially planned level.

Shimano filed a lawsuit in the Tokyo District Court against Apple claiming about USD 95 million in damages based on refusing transactions with Shimano and abuse of dominant position in demanding price reductions and rebate, etc. constituting an abuse of dominant bargaining position which is a breach of Act on Prohibition of Private Monopolization and Maintenance of Fair Trade of Japan (the "Anti-Monopoly Law").

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(2) Dispute Resolution Clause

General terms and conditions of the Master Agreement included the following provision (the "Clause"):

> If there is a dispute between the parties…either party may commence litigation in the state or federal courts in Santa Clara County, California. The parties irrevocably submit to the exclusive jurisdiction of those courts and agree that one of the final judgment in any action or proceeding brought in such courts will be conclusive and may be enforced in any other jurisdiction…Each party irrevocably waives to the fullest extent permitted by applicable law (i) any objection it may have to the laying of venue in any court referred to above; (ii) any claim that any such action or proceeding has been brought in an inconvenient forum…The terms of this Section apply whether or not the dispute arises out of or relates to the Agreement, unless the dispute is governed by a separate written agreement..

Based on the Clause, Apple argued that the Tokyo District Court does not have jurisdiction over this case.

3 Summary of this Judgment

The Tokyo District Court made an interlocutory judgment which is summarized below (this "Judgment"):

- Article 3-7, Paragraph 2 of the amended Code of Civil Procedure (the "Code") stipulates that the agreement between the parties on international jurisdiction "shall not become effective unless it is made with respect to an action based on certain legal relationships";
- Although Article 3-7, Paragraph 2 does not directly apply to this Master Agreement, which was entered into before amendment of the Code, the necessity to secure the foreseeability regarding jurisdiction exists equally for the agreements made before the amendment of the Code;
- Therefore, based on jori (rule of reason), an agreement on international jurisdiction, no matter whether it is entered into before the amendment of the Code, needs to be made with respect to an action based on a certain legal relationship;
- The Clause stipulates that it will apply if "there is a dispute between the parties" and that the "terms of this Section apply whether or not the dispute arises out of or relates to the Agreement, unless the dispute is governed by a separate written agreement." That means, the Clause will apply to all disputes arising between the parties without limitation. Therefore, the Court could not find the Clause applies to an action based on a certain legal relationship and the Clause cannot be found to be consistent with the formality requirements of jori, and thus is unenforceable.

4 Comments on this Judgment

(1) News reports on this Judgment

This Judgment was widely reported in Japan and the following points were explained in those reports, (i) as the background to this case, it is unreasonable for Japanese parties to be obliged to file a suit in overseas courts even when there is a breach of Japanese law such as the Anti-Monopoly Law by a foreign company; (ii) in many cases Japanese middle or small sized companies have resigned themselves to abandoning litigation against big foreign companies even where subject to misconduct which is against the Anti-Monopoly Law, etc. because international jurisdiction agreements in which a foreign court is chosen which makes litigation quite burdensome for the Japanese companies; (ii) the position of middle or small sized Japanese companies in regard to large foreign companies can be expected to improve after this Judgment as this Judgment opens the door to the possibility of filing a law suit in a Japanese court with regard to disputes which are irrelevant to the transaction agreement, such as unfair treatment of subcontractors.

(2) Amended Code and Previous Court Cases

There is a Supreme Court judgment called the Chisadane case [ii], which was a leading case regarding international jurisdiction agreement before amendment of the Code.

Under the former Code, there was no explicit provision regarding enforceability of an international jurisdiction agreement. In the Chisadane case, under such circumstances, it was decided that, while an exclusive jurisdiction agreement which designates only certain foreign court and excludes jurisdiction of other courts is enforceable in principle, and, as an exception, where "the agreement on jurisdiction is extremely irrational and against public policy, etc.", enforceability of such jurisdiction agreement should be denied.

A provision which provides that an international jurisdiction agreement is enforceable (Article 3-7, Paragraph (1)) was added to the amended Code. On the other hand, Article 3-9, a general provision stipulates as follows: "Even where a court of Japan is to have jurisdiction over an action (excluding the case where an action is filed in accordance with an agreement to the effect that an action may be filed only with a court of Japan), a court may dismiss without prejudice the whole or part of the action when it finds that there are special circumstances where if a court of Japan conducts a trial and makes a judicial decision on the action, it would harm equity between the parties or impede the well-organized progress of court proceedings, while taking into consideration the nature of the case, the degree of burden that the defendant is to bear by making an appearance, the location of evidence, and other circumstances."

This provision set forth that, even in the case that a Japanese Court has jurisdiction, if there are special circumstances which would harm equity between the parties, etc., the court may dismiss the claim. On the other hand, this provision does not apply to the case where an action is filed in accordance with a jurisdiction agreement to the effect that an action may be filed only with a court of Japan. The reason of such exclusion is said to be that there is some opinion, from the Japan Federation of Bar Associations among others, that the enforceability of an international jurisdiction agreement should not be easily denied as that will harm principle of the autonomy of the parties and foreseeability [iii]. At the same time, considering the background discussion at the Legislative Council of the Ministry of Justice, Article 3-9 is not intended to exclude the possibility of a jurisdiction agreement being unenforceable if it is against public policy, etc., as set forth in Chisadane. However, as the amended Code does not provide in which case a jurisdiction agreement will be unenforceable, the substance of "public policy, etc." will be determined based on the future body of case law.

If the Clause in this Apple case can be regarded as extremely irrational and against public policy, etc., it is possible that the Clause is found to be unenforceable based on the Chisadane case.

However, this Judgment is not based on such reasoning. Rather, as stated above, this Judgment found the Clause to be unenforceable because it applies to a dispute between the parties whether or not the dispute arises out of or relates to the Agreement. That may be because the Tokyo District Court was simply trying to avoid the difficult question of whether the Clause is against public policy, etc. and may have rendered its judgment based on a breach of formality of the clause. However, it can also be supposed from this Judgment that, the mere fact that a litigation in foreign court is burdensome for Japanese middle or small sized companies, or that subcontractors or agents may be treated less favorably in a foreign court than in a Japanese court is not sufficient grounds to conclude that such provision is against public policy or extremely irrational.

Therefore, a foreign party who has entered into or will enter into a contract with Japanese party should at least review the dispute resolution clause to make sure that the clause is limited only to cover disputes which "relate to" or "arise from" such contract. However, more court cases are needed to determine the scope of cases in which an agreement on international jurisdiction will be found to be unenforceable due to being "extremely irrational" or "against public policy, etc."

i. Shimano's website: http://www.shimano-inc.com/index.html(as of March 3, 2016)
ii. Supreme Court Judgement November 28, 1975 (*minsyu* Vol. 29 No. 10 p. 1554)
iii. Hiroyuki Tezuka 'Agreement on Jurisdiction (including Cases of Jurisdiction by Appearance)' in "New Legislation on International Jurisdiction of the Japanese Courts – Practitioner's Perspective" Bessatsu NBL No. 138

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