[Deciding Court]
Tokyo District Court

[Date of Decision]
15 February 2011

[Case No.]
2009 (wa) No.37494 and 2010 (wa) No.5622

[Source]
LEX/DB no.25471107, Hanrei Times No.1350 p.189

[Summary of Facts]

In March 2003, X (plaintiff, an American) executed an employment agreement with non-party company A (a U.S. corporation) and became the director of the Japan office of company A. The said contract contained the following arbitration agreement.

"With the exception of any disputes occurring under Chapters 4 through 9 of this Agreement, the Employee and the Company agree to submit any disputes occurring under or in connection with this Agreement or in relation to the termination of this Agreement to resolution by informal method to the utmost extent permitted by applicable laws, and if that is impossible, then to arbitration. (Abbreviation) Arbitration shall be proceeded in accordance with the provisions of the federal arbitration laws and the procedures and rules of the American Arbitration Association. (Abbreviation) Both parties agree that the laws of the state of Georgia and the applicable federal laws shall apply in the case that arbitration becomes necessary. The place of arbitration shall be Atlanta, Georgia. The arbitral award shall be legally binding upon both parties and shall become the final decision. Each party has the right to request for an enforcement judgement of the court by submitting the arbitral award to the court with jurisdiction in the state of Georgia."

In accompaniment with company A being merged by absorption by another company and becoming company Y (the defendant, a Delaware corporation), in September 2007, X executed with company Y an employment agreement with the governing laws being the laws of the state of Georgia (hereinafter, the "Employment Agreement") and became the director of the Japan office of company Y. The Employment Agreement contained the following arbitration agreement (this arbitration agreement).

"If there occurs a dispute regarding all or a part of this Agreement, any other

agreement, or the relationship between the employer and employee or the extinguishment or termination thereof between the employer and employee or between the employee and employer's affiliates, etc. or agents (including but not limited to directors, officers, managers, and other employees of the employer), and a lawsuit is filed against these persons in any capacity, such dispute shall, on the premise of Article 10 of this Agreement, be resolved by arbitration in Atlanta, Georgia in accordance with the current rules of the American Arbitration Association, and the arbitral award granted there may subject to enforcement judgment by submission to the court with jurisdiction. To the extent permitted by laws, the employee waives the right to receive official court proceedings or a jury trial. (Abbreviation)"

In September 2009, company Y gave notice of employment dismissal to X. X claimed to company Y that the dismissal was invalid and filed a lawsuit to the Tokyo District Court requesting for confirmation of status under the employment contract and payment of wages. In response, company Y requested for dismissal of the claim, citing this arbitration agreement. X claimed that this arbitration agreement violated the public policy of Japan or was invalid under Article 4 of the Supplementary Provisions of the Arbitration Act. Countering this argument, company Y disputed the application of the said Article, raising such claims as that Article 4 of the Supplementary Provisions should be interpreted as a provision applicable in the case that the seat of arbitration is Japan, and also stating such matters as that there is no possibility that X, who was an American born and educated in the U.S. and who graduated from a university in the U.S. was not familiar with the arbitration system which is widely infiltrated as a dispute resolution method in American society, claimed that this arbitration agreement did not violate the public policy of Japan.

[Summary of Decision]
claim dismissed

I "Comparing this arbitration agreement …… with the arbitration agreement with company A …… , since the main issue, etc. that a dispute regarding such matters as the termination of the employment agreement would be resolved by arbitration proceedings in Atlanta, Georgia, U.S.A. is the same, it can be said that this arbitration agreement succeeded the arbitration agreement with company A.

Since it should be said that this arbitration agreement was already formed at the time of March 2003, which was prior to the enforcement of the Arbitration Act (i.e. the time

that the employment agreement with company A was executed and the arbitration agreement with the said company was formed), Article 4 of the Supplementary Provisions of the Arbitration Act is interpreted as not applying thereto.

Article 19 of the Employment Agreement provides as follows: 'Any past employment agreements or agreements related to the subject matter of this Agreement executed between the employee and the employer (abbreviation) shall all terminate and be superseded by this Agreement.' However, since the main issue, etc. of this arbitration agreement and the arbitration agreement with company A is the same, the decision above is not overruled by this provision."

Ⅱ "The intent of Article 4 of the Supplementary Provisions of the Arbitration Act is considered to render invalid for the time being any arbitration agreement formed after the enforcement of the Arbitration Act in Japan for the purposes of protecting employees, based upon the current situation of Japan where the gap of information volume and negotiation power between the employee and employer is large at the time of the enforcement of the said Act. Therefore, it is interpreted that the said Article is not applicable to this arbitration agreement which renders the seat of arbitration and all the procedures as that of the United States of America.

Therefore, it is reasonable to recognize that this arbitration agreement is not rendered invalid by the said Article."

Ⅲ "It is recognized that X is an American who graduated from a U.S. university although he resides in Japan; that when he was working for company Y, X enjoyed such benefits as an annual salary of 150,000 dollars, life adjustment expenses of 120,000 dollars per year (from 2008 onwards), and provision of an urban apartment with monthly rent of JPY 810,000 through [a Japanese corporation which is the subsidiary of company Y]; X is currently employed and maintains livelihood as a senior title holder at non-party B; and X may entrust the investigation of facts, etc. to an attorney admitted in Georgia, U.S.A. Therefore, it should be said that it is only the subjective circumstance of X that X would be required to bear the burden of extensive time, labor and expenses, etc. to participate in arbitration in Georgia, U.S.A., and it cannot be said that this arbitration agreement violates public policy by such circumstance. In addition, there cannot be found any circumstance that the protection of the life of X, who has based his life in Japan for many years, would be impaired if this arbitration agreement were rendered valid."

Therefore, it should be said that the claims of X that 'this arbitration agreement violates the public policy of Japan and is invalid' are unreasonable."