

[translation omitted]

III. Judgment by the Court

I. Acknowledged facts:

Following facts are acknowledged by the court based on the aforesaid underlying facts, each and all evidences mentioned in the subsequent paragraphs (all of the branch-numbered evidences are included unless otherwise stated), as well as entire import of the oral argument.

(1) [REDACTED] Konno (“Konno”) is the owner (stockholder) and CEO of the both Defendant Universal Max and Defendant FIRST, and upon Konno’s request, Defendant Yonezawa became the representative director of Defendant Universal Max and Defendant FIRST. (Defendant Yonezawa himself, Evidence Kou 44)

Defendant Mori joined HK INVESTMENT Co., Ltd in 2010 when Konno was its representative director. Under Konno’s direction, Defendant Mori was transferred to Defendant FIRST on loan, and then to Universal Max on loan. Furthermore, Defendant Mori ostensibly borrowed 100,000,000 yen from Konno, bought S. F. C. Co., Ltd. from Konno, and became its representative director. (Defendant Mori himself, Evidence Kou 37, and Evidence Kou 41)

As of May, 2013, Defendant Mori was serving as Director of Sales Section at Defendant Universal Max, visiting customers who had made contract applications, describing contents of the contracts and making the customers sign in the contracts, receiving payments and depositing the money to the postal savings account of the company. (Defendant Mori himself and Evidence Kou 5)

(2) In early May of 2012, Plaintiff received an envelope sent in the name of Defendant Universal Max, and the contents of the envelope included a pamphlet titled “Guide to Investment in Cambodian Agricultural Property” (Evidence Kou 4), an application form, and Defendant Universal Max’s self-addressed return envelope. Although Defendant FIRST was named as the sole agent in Japan, and Defendant FIRST was named as the primary agent in the pamphlet, the pamphlet had been produced by Konno and sent out by Defendant Universal. (Plaintiff himself, Defendant Yonezawa himself, and Evidence Kou 4)

[translation omitted]

2. Discussion on Argument (1) (Illegality of the Transaction and Circumstances Leading to Defendants' Liability)

(1) This court has given consideration to the circumstances of solicitation by the person calling himself Okada of Umeda Corporation as in Acknowledged Facts (2), in particular, manipulative statements used to solicit large sums of money while evading to make any clear statement about repurchasing and payment by his company, the forged copy of the driver's license used to rent the telephone number of Okada's as stated in Acknowledged Facts (4), and the fact that, beside Plaintiff's case, many other similar cases of damage caused through solicitation by Umeda Corporation have been reported to Consumer Affairs Centers around Japan as stated in Acknowledged Facts (5). In consideration to these facts, real intent and capability of the person named Okada of Umeda Corporation to repurchase the land-use rights from Plaintiff cannot be acknowledged at all. With the objective of making Plaintiff, who had no intention to buy any land-use right in Cambodia, to pay money to Defendant Universal Max, Okada pretended as if he and his company were intending to purchase the land in Cambodia from Plaintiff at the price higher than the original price by 50,000 yen per 150,000 yen, made false statements that they wish to borrow Plaintiff's name, made Plaintiff to fall into error and to contact Defendant Universal Max, made Plaintiff to sign the contract with and to pay 4,650,000 yen in total to Defendant Universal Max. These acts of solicitation constitute a fraud, and even if the rights sold to Plaintiff stated above had any substance, even if the contract in question were lawful and effective as a transaction contract of right to use real-estate, the way of such solicitation and sales approach should be called an aberration from social adequacy, and therefore, such acts should be predicated as illegal.

Furthermore, according to Acknowledged Facts (2) herein, effectiveness of Okada's solicitation was enhanced by instructions and responses by the person named Akimoto of Defendant Universal Max, where Plaintiff's trust in the statements by Okada was reinforced, and Defendants successfully tap a large sums of money from Plaintiff. Reasonable inference of Okada being in concert with Akimoto of Defendant Universal Max can be drawn from this fact as well as many reports of the similar cases to Consumer Affairs Centers around Japan i.e. Acknowledged Facts (5).

A solicitor like Okada in the case herein would not receive money directly for himself, and would not get any profit directly from the transaction. Therefore, while specifics of the person named Okada of Umeda Corporation are unknown, reasonable inference should be that Okada acted in concert with and for the purpose of benefitting

the payee. Thus, in the case herein, as stated in Acknowledged Facts (3), the money paid to Defendant Universal Max, a primary agent, by customers including Plaintiff is rounded up at AAP Cambodia via Defendant FIRST. In addition, in the pamphlet sent to Plaintiff (Evidence Kou 4), the two names i.e. Defendant Universal Max and Defendant FIRST are printed jointly, signifying that they have been integral parts of the transaction with Plaintiff. And then, these two companies as well as AAP Cambodia have been virtually controlled by Konno.

Based on these facts, above-stated fraudulent actions and illegal solicitation by Okada judged to constitute an organized fraud, where the person named Okada who solicited Plaintiff directly, Defendant Universal Max and Defendant FIRST under Konno's control, and Defendant Mori who had been loaned to Defendant Universal Max by Konno's direction and, as an employee of Defendant Universal Max, played an important role in concluding the contract and transactions of money with Plaintiff. All of them played their respective roles, conspired together, and acted in concert.

Therefore, at least, Defendant Universal Max, Defendant FIRST, and Defendant Mori, in conspiracy and in a systematic manner, conducted illegal solicitation against Plaintiff, and swindled money from Plaintiff under the pretext of purchase money. For the damage suffered by Plaintiff, they shall be liable for joint tort.

(2) Defendant Yonezawa was the representative director of both Defendant Universal Max and Defendant FIRST at the time of the transaction with Plaintiff, and as stated above, these two defendant companies conducted illegal acts against Plaintiff in conspiracy with Okada and Defendant Mori. Defendant Yonezawa's failure to correct and stop these illegal acts constitutes failure to perform duties as the representative director with knowledge or in gross negligence. Therefore, Defendant Yonezawa shall be jointly and severally liable for Plaintiff's damage with causation proximate to his failure to perform his duties.

(3) Defendants assert, and Defendant Yonezawa and Defendant Mori have testified, that they know neither the company named Umeda Corporation nor the person named Okada and that they have nothing to do with Okada's illegal solicitation. On the contrary, Plaintiff's testimonies are credible in consideration to existence of notes taken while listening to solicitation words on the phone (Plaintiff's notes found in Evidence Kou 4) as well as analogy with many other cases reported to Consumer Affairs Centers around Japan as mentioned above. Defendants' testimonies and assertions are contrary to such facts and cannot be credited.

[translation omitted]

Junko Kenmotsu

Judge

Civil Chamber 49, Tokyo District Court