

May 2022

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A Japanese Supreme Court Decision on Enforcement of an American Judgment with Punitive Damages and Allocation of Post-Judgment Partial Pay-Down in the U.S.

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Introduction:

The Japanese Supreme Court issued a new important decision¹ that discusses the degree to which punitive damages judgment can be tolerated for purposes of Japanese enforcement. The issues involved were how a U.S. partial post-judgment payment should be applied towards compensatory and punitive components of the underlying American judgment. This holding shows how the Supreme Court is determined to stay away from any association with punitive damages for purposes of Japanese law. The question is however whether such attitude is appropriate in the face of a post-judgment pay-down in the U.S. (not Japan) as well as whether it is feasible to be guided by the legal label of punitive damages put on by the American court over the substance of the award.

Facts:

1. The plaintiff is a company operating Japanese restaurants in California. The defendant Y is a Japanese corporation in real estate business. After a period of business cooperation and spit-up, the plaintiff sued the defendant for misappropriation of trade secrets in running the plaintiff's business, among other causes of action, in Superior Court in Orange County, California.
2. The California court rendered a judgment in May 2011 in which a total of \$275,000 was awarded with the breakdown of \$185,000 in compensatory damages and \$90,000 in punitive damages. It became final thereafter.
3. Subsequent to the judgment, the Superior Court issued an assignment order of a claim held by the defendant to be transferred to the plaintiff, under which USD135,000 was collected.
4. The plaintiff sought to enter the remainder (\$140,000) of the American judgment in Japan for collection. The pre-appeal judgment by the Osaka High Court² took the view that, given the foreign partial pay-down, the paid amount was applied to reduce the entire judgment amount, thereby leaving USD140,000, which serves as a basis of Japanese enforcement judgment.
5. Upon appeal, the Supreme Court disagreed and decided that only the remainder in compensatory portion (\$50,000) of the judgment after reduction by pay-down (i.e., \$185,000 less \$135,000) may be entered for enforcement.

Decision:

The Supreme Court has taken the view that the entry of punitive damages award by a foreign court for enforcement is against Japanese public policy. Under this circumstance, any punitive damages award is deemed invalid for Japanese law purposes and any partial payment with respect to a composite judgment may not be applied towards the punitive component at all. If so, the partial payment may only be applied towards the compensatory portion of damages and the remaining amount, if any, may be entered for enforcement of the foreign judgment. In the current facts, the compensatory damages of \$185,000 less the paid-down amount of \$135,000 is the amount (i.e., \$50,000) that can be entered for enforcement judgment.

Issues:

1. Whether Japanese court has a say in how a foreign partial payment should be applied towards a composite judgment consisting of compensatory and punitive damages.
2. What specifically triggers a public policy violation with respect to punitive damages if a Japanese court is asked to enforce a judgment involving them? If the underlying foreign court described them to be punitive without such substance, is it controlling? By which factor should the Japanese court operate between the designation of damages by the original court awarding damages or the substance of the same?
3. What is the true reason why Japanese courts should stay away from enforcing punitive damages?

Legal Underpinnings:

Punitive damages have been held by Japanese courts to be invalid for Japanese law enforcement purposes without exception.³ The Supreme Court has defined punitive damages as those awarded as a penalty against the wrongdoer for the purpose of prevention of similar conduct (the “penalty and deterrence test”), in the same understanding as the Common Law. The Japanese courts however, for the perceived lack of ability to evaluate the true purpose of certain damages, have operated uniformly by the denomination of damages accorded by the original court than the substance.

A foreign judgment for Japanese enforcement purposes requires an enforcement judgment⁴ and it has to satisfy the validity requirements including consistency with Japanese public policy. Admittedly, the review of public policy is based on the Japanese court’s own perspective and not on the basis of how a foreign court characterized certain damages. Nonetheless, when it comes to punitive damages, the court’s review stops automatically when the court hears the designation of “punitive damages.”

The policy reason why punitive damages must be invalidated for Japan has been explained as the non-civil element in a civil dispute and the disproportionate amount that can be awarded. Internationally the latter understanding has become more prevalent in explaining the concept. In fact many non-Common Law jurisdictions (e.g., France and Italy) apply more substantive tests in determining whether to invalidate punitive damages for enforcement than simply relying on the label.

Discussion:

At this point, the Supreme Court appears determined not to associate itself with anything that has punitive damage element based on the designation. This decision spends no time in analyzing what punitive damages are or why it is a public policy issue. It merely cites a precedent from 1997, which advanced the penalty and deterrence test of the term.

The Supreme Court goes so far as to consider that a partial pay-down that happened in California should be characterized in a way not to reduce any punitive component, albeit for Japanese enforcement purposes. This is because for Japanese law purposes, punitive damages are deemed not to exist. This is odd however, in the sense that the Japanese court is telling to ignore a valid and effective California judgment component with respect to an assignment of a claim that happened in California. The underlying decision of the Osaka High Court took a more relaxed view of the characterization and observed that given the foreign effect of a pay-down (i.e., a California law issue), the court is not directed to apply a view on how the allocation should be made between the compensatory and punitive components (and thus the entire pay-down amount may be deducted from the judgment amount for enforcement).

It is probably important to understand how punitive damages function in American jurisprudence; it is used sometimes to compensate for the rigidity of compensatory damages calculation and give more flexibility to award a damage amount that is appropriate under the circumstances. Not all such awards are in excessive amounts, as the case here appears to be. In that sense, it is not very different from the Japanese concept of damages for pain and suffering (*isharyo*) and the Japanese courts have argued how pain and suffering can be calculated without reference to economic damages because of the nature. If such amount is not disproportionate to the reality of the damages suffered, there probably is less reason to invalidate it for Japanese law purposes. Even Japanese Civil Procedure Code incorporates a provision⁵ today that appropriate amount of damages may be recognized and awarded by the court under relevant circumstances where it is extremely difficult to prove damage amount. Then the rightness of enforcing a damages award depends on the substance and nature of the damages awarded, not necessarily the label of punitive damages. It is hoped that over time Japanese courts would come to make this distinction; however, for now, it is the label that matters more than anything else.

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If you have any questions concerning these developing issues, please do not hesitate to contact the following Paul Hastings Tokyo lawyer:



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¹ Supreme Ct., May 25, 2021, Hanta 1489-36.

² Osaka High Ct., October 4, 2019, EX/DB25590568.

³ E.g., Supreme Ct., July 11, 1997, Minshu 51-6-2573.

⁴ Civ. Enforcement Code, Article 24.

⁵ Civ. Proc. Code, Article 248.