

Rendition of judgement on February 20, 2019

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Court Clerk

Case: 2017 (Wa) No. 134 Claim for handover of movable property

Conclusion date of oral argument: December 19, 2018

Judgement

259-4, Kanotsunocho, Takamatsu, Kagawa

Plaintiff: Takanori Mizumoto

Plaintiff's Legal Counsel: Masahiro Ito

452-1, Aza-Kitahara, Gojo, Yoshino-cho, Awa-shi, Tokushima

Defendant: Junichi Sato

Defendant's Legal Counsel: Hiroshi Akiyama

Defendant's Legal Counsel: Gotaro Takahata

Main Text

1. All the claims of the plaintiff are dismissed.
2. The court costs shall be paid by the plaintiff

Facts and Reasons

1. Claim

The defendant should render Shiba dogs 1 to 5 described in the list in the attached document to the plaintiff.

2. Summary of this case

This is the case that the plaintiff, whose business is breeding and selling Shiba dogs, demands that the defendant render the Shiba dogs 1 to 5 described in the list in the attached document (thereinafter, described as “dogs of this case” for all the dogs and “dog 1 of this case”, for example, for an individual dog) to the plaintiff based on primarily the termination of the lease for use and secondly the ownership, claiming that the plaintiff has the ownership and right of disposal of the dogs and has just leased them for use to the defendant,

2-1 Underlying facts (There is no conflict between the parties concerned except for the evidence stated)

- (1) The plaintiff is breeding and selling Shiba dogs by the name of Sanuki Mizumoto-so. The Shiba dogs born in Sanuki Mizumoto-so have received many awards in exhibitions hosted by Public Interest Incorporated Association Nihon Ken Hozonkai (thereinafter, described as “Nihon Ken Hozonkai”), etc. (thereinafter, described as “exhibitions”) (Exhibit B8 and the Summary of Arguments).

The defendant purchased Shiba dogs (Shinryu-go and Shinryumaru-go) from the plaintiff at the beginning of October 2014 and the relationship of the plaintiff and the defendant started then.

- (2) Only registered dogs owned by a member of Nihon Ken Hozonkai can enter the exhibitions (Exhibit B26).
- (3) The regulations of Nihon Ken Hozonkai stipulate that when the owner of a registered dog changes, a registered dog transfer report (thereinafter, described as “transfer certificate”) in a designated form should be submitted together with the pedigree registration certificate (thereinafter, described as “pedigree certificate”) to Nihon Ken Hozonkai and obtain a certificate to prove the transfer (Exhibit B2).
- (4) The plaintiff demanded that the defendant return the dogs of this case within two weeks after the document arrived in the document delivered on January 13, 2017.

2-2 Points at issue and claims of the parties concerned regarding the points at issue

- (1) Presence or absence of lease for use (primary claim)
(Plaintiff’s claims)
 - A. The plaintiff leased the dogs of this case during the following periods free of charge to the defendant without the return time limit determined.
Dog 1 of this case: Around September 2015
Dog 2 of this case: Around May 2015
Dog 3 of this case: Around November 2015
Dog 4 of this case: Around June 2016
Dog 5 of this case: Around July 2016
 - B. The name of the owner of the dogs of this case was changed to that of the defendant only because the defendant needed to be registered as the owner of the dogs to enter exhibitions, but the actual ownership was not

transferred to the defendant.

(Defendant's claims)

The defendant denies the lease for use.

The defendant received the dogs of this case based on the accord and satisfaction and settlement agreement as described below. When the defendant received each of the dogs of this case from the plaintiff, he also received the transfer certificate with the name and seal of the former registered holder, and based on that, the name of the owner in the pedigree certificate was changed to that of the defendant accordingly. In terms of the system of Nihon Ken Hozonkai, issuing a transfer certificate and reflecting it in the pedigree certificate is not allowed if the actual ownership is not transferred.

(2) Presence or absence of accord and satisfaction and settlement agreement

(Secondary claim)

(Plaintiff's claim)

A. By rescission upon agreement on the trade of Sanukifuji-go between the plaintiff and defendant, the plaintiff owed a debt of 3 million JPY to the defendant as the sales value. The plaintiff and defendant agreed on that the plaintiff would hand over Shiba dogs valued at 3 million JPY to the defendant in exchange of the payment described above, and based on the agreement, the ownership of the dogs of this case was transferred and the dogs were handed over to the defendant as follows.

Dog 1 of this case: Around October 2015

Dog 2 of this case: Around September 2015

Dog 3 of this case: Around December 4, 2015

Dog 4 of this case: Around June 5, 2016

Dog 5 of this case: Around August 19, 2016

B. Regarding the accord and satisfaction described above, a certain amount of the payment was not determined for each of the dogs between the plaintiff and defendant, therefore, each transfer was carried out in the range of an agreement that the transfer should continue until the amount reached 3 million JPY. Although even if this case was not regarded as accord and satisfaction since the amount was not determined, because the plaintiff and defendant agreed on the completion of the repayment of 3 million JPY described above with the transfer of Shiba dogs (including the dogs of this case) from the plaintiff

to the defendant after the exhibition held in Nara in around September 2016, the effect of the ownership transfer was determined at that time point at latest.

(Plaintiff's claim)

The plaintiff denies the existence of the accord and satisfaction and settlement agreement.

As described above, the dogs of this case were leased for use.

3. Judgement on the points at issue

3-1 The found facts

(1) The following facts are found in accordance of the evidence (Exhibit A 5, A8, B40, witness Rumi Sato, the plaintiff and the ones described at the end of each item) and the Summary of Arguments.

A. The defendant requested the plaintiff to sell dogs which were able to receive an award in national exhibitions to him, if any, at the beginning of October 2014 and purchased Shinryu-go (registration number: H26-22653) and Shinryumarugo (registration number: H26-22654) at the total price of 300,000 JPY. The plaintiff brought the pedigree and transfer certificates of Shinryu-go and Shinryumarugo to the house of the defendant and handed them over to the defendant at the beginning of October 2014. At that time, the plaintiff recommended the defendant to purchase Chihanakomachi-go (registration number: H26-16409) brought by the plaintiff as a possible future prize-winner in exhibitions and the wife of the defendant, Rumi Sato (thereinafter, described as "Rumi"), purchased the dog at the price of 150,000 JPY.

The defendant registered the change of the ownership of Shinryu-go and Shinryumarugo on October 6 and Rumi registered the change of the ownership of Chihanakomachi-go on October 14. (Exhibit B9 to B13)

B. The defendant and his wife were running [redacted], which operated general motor truck transportation business (thereinafter, described as [redacted]) at that time. Since the plaintiff said that he wanted to do transportation business, which might expand into related businesses, as his family was big, the defendant provided him with convenience, introducing an administrative scrivener who worked for [redacted] to enable Mizumotokomuten co., Ltd. (thereinafter, described as Mizumotokomuten), which was run by the plaintiff, to be registered as the first class consigned freight forwarding business and paying the expenses from [redacted]. The

defendant requested the plaintiff to choose and provide Shiba dogs excellent enough to win an award in exhibitions in return. (Exhibit B28 to B31)

- C. The plaintiff handed over Sanukifuji-go (registration number: H25-8849) to the defendant at the end of December 2014 and issued the pedigree and transfer certificates a several days later. The defendant registered the change of the ownership of Sanukifuji-go on January 7, 2015. (Exhibit B25)
- D. The plaintiff handed over Shiki-go (registration number: H26-9688) at around January 7, 2015 and the defendant registered the change of the ownership on the same day. (Exhibit B37-3)
- E. The defendant started providing convenience to the plaintiff such as negotiating with a truck dealer, whom the defendant had dealings with, for a discount and introducing transactions to the plaintiff for appropriate business planning in around March 2015 to let Mizumotokomuten obtain a license of general motor truck transportation business and Mizumotokomuten obtained the license described above on September 17, 2015. (Exhibit B32 to B35, B36-1 to B36-4)
- F. The plaintiff handed over Azusakoukihime-go (registration number: H26-6383) to Rumi on around January 30, 2015 and she registered the change of the ownership on the same day. (Exhibit B37-1)
- G. The plaintiff handed over Suzuhomaremaru-go (registration number: H25-28238) to the defendant in around June 2015 and the defendant registered the change of the ownership on June 18, 2015. (Exhibit B18)
- H. The plaintiff handed over Kotobukinoryota-go (registration number: H27-10691) to the defendant on around June 22, 2015 and the defendant registered the change of the ownership on the same day. (Exhibit B37-7)
- I. The plaintiff handed over Shota-go (registration number: H26-16395) to the defendant on around August 20, 2015 and the defendant registered the change of the ownership on August 24, 2015. (Exhibit B37-6)
- J. The plaintiff handed over Taiga-go (registration number: H26-14709) and Kokiryu-go (registration number: H26-16388) to the defendant on around September 2, 2015 and the defendant registered the change of the ownership on September 7, 2015, respectively. (Exhibit B37-4 and B37-5)
- K. The plaintiff handed over the dog 2 of this case (Koshinrikimaru-go) to the defendant (the timing is a point at issue). After the ownership of the dog 2 of this case was changed in the registration to the plaintiff on March 20, 2014, the ownership was then changed to Hiroyoshi Sano (thereinafter, described

as Sano) on May 7, 2014 (no transfer date is recorded) and again to the defendant on September 11, 2015 (transfer date: June 10, 2014). (Exhibit B1-1, B3-1, B38-1, B38-2 and B39)

- L. The plaintiff handed over the dog 1 of this case (Kenryu-go) to the defendant in around September to October 2017. In the pedigree certificate of the dog 1 of this case, there are descriptions to show that the original producer of the dog was the plaintiff and the registration of the ownership changed to Toshiaki Omura on October 18, 2010 (transfer date: September 3, 2010), to Sano on February 14, 2012 (transfer date: February 1, 2012), to Masamichi Narusawa (thereinafter, described as Narusawa) on July 2, 2015 (transfer date: June 1, 2015), and to the defendant on October 19, 2015 (transfer date: October 13, 2015). (Exhibit B1-2 and B3-2)
- M. Sanukifuji-go was diagnosed with dermatitis in the right medial knee on November 7, 2015. (Exhibit B20)
- N. The plaintiff handed over the dog 3 of this case (Kojinranmaru-go) at around the end of November to the beginning of December 2015 and the defendant registered the change of the ownership on December 4, 2015. (Exhibit B1-3 and B3-3)
- O. The defendant handed over the dog 4 of this case (Ryuhi-go) in May to the beginning of June 2016 and the defendant registered the change of the ownership on June 13, 2016. (Exhibit B1-4 and B3-4)
- P. The plaintiff handed over the dog 5 of this case (Setonotenryu-go) on around August 19, 2016 and the defendant registered the change of the ownership on August 29, 2016. (Exhibit B1-5 and B3-5)
- Q. The plaintiff and defendant stopped their relationship after the exhibition held in Nara Prefecture in around September 2016 and no dog has been traded between the two parties since then.
- R. The defendant registered Tokushima Sato-so and Rumi registered Shikoku Yuhomare-so to Nihon Ken Hozonkai as the names of their kennels. (Exhibit A4)
- S. The defendant paid 3000JPY/hour for brushing and trimming his dogs and 50000 JPY/time for serving as a handler in an exhibition to Akira Takeda (thereinafter, described as Takeda), who is a breeder belonging to the group of the plaintiff, when his dogs entered an exhibition.
- T. The plaintiff organized a group of breeders who were able to raise dogs capable to receive awards, asked them to train dogs born under the

management of the plaintiff and paid them for feeding the dogs and other necessary expenses.

To the breeders belong to the group, pedigree and transfer certificates were issued by the plaintiff to change the registered ownership to theirs to exhibit the dogs as theirs when they entered exhibitions.

The plaintiff brought quality dogs with an excellent pedigree to the breeders described above and asked them to keep, breed and train the dogs. In this relationship, the breeders were able to take the honor to receive awards in exhibitions and the plaintiff was able to show the name of his kennel as the producer of the dogs and receive better evaluation of him as a good breeder when his dogs were awarded as the results of appropriate breeding and training by the experienced breeders (The plaintiff had received an encouraging award for producers consecutively). Therefore, regarding the commission of the care of the dogs above, there was no giving or receiving of money between the two parties.

- U. Nihon Ken Hozonkai does not admit the effect of an agreement on a dog whose ownership looks transferred in relation to Nihon Ken Hozonkai just by issuing a transfer certificate and reflecting the transfer in the pedigree certificate when the actual ownership is not transferred. (Exhibit B24 and B41)
- V. Nihon Ken Hozonkai charges 2000JPY/dog for registration of ownership change as a commission fee. (Exhibit B2)

(2) Supplementary explanation

- A. There were several cases of giving and receiving of Shiba dogs with no clear date recorded. Therefore, those cases are not included in “The found facts” above.
- B. Although the defendant claims that he is raising Shiba dogs as his hobby but not breeding or selling the dogs, since the Web Site of Tokushima Sato-so and Shikoku Yuhomare-so has the description of “Sales Information” and “Purchasing Method” (Exhibit A4), the defendant and Rumi are considered to breed and sell Shiba dogs to some extent regardless of the scale.

3-2 Presence or absence of lease for use (Point at issue (1))

(1) Legal relations regarding Sanukifuji-go

- A. The plaintiff claims that he handed over the dogs of this case to the defendant based on lease for use while the defendant disagrees with it, claiming that the take over was based on accord and satisfaction because the

plaintiff was liable for the payment of 3 million JPY due to the cancellation of the trading of Sanukifuji-go. Thus, judgement is to be done for legal relations of Sanukifuji-go first.

B. Details of the handover from the plaintiff to the defendant

(i) For the details of purchasing Sanukifuji-go, Rumi stated as follows;
(Witness: Rumi Sato)

After the defendant consulted the plaintiff, seeking for an adult dog which might receive an award in the national exhibition held in Hiroshima Prefecture in November 2015, since the plaintiff recommended a dog as an appropriate one at the end of December 2014, the defendant purchased the adult dog for one million JPY. However, an acquaintance of the defendant said to him later that it was difficult for the dog to receive an award, so that the plaintiff brought Sanukifuji-go to the defendant about three days later to replace the adult dog with Sanukifuji-go. The plaintiff said to the defendant that Sanukifuji-go was excellent enough to receive the Prime Minister Prize and the Minister of Education Award and although the dog was scheduled to be handed over from the current owner Kazutoshi Yamanaka (thereinafter, described as Yamanaka) to Sano, a breeder in Shizuoka Prefecture, he would try to negotiate the person if the defendant wanted to have Sanukifuji-go. The defendant said to the plaintiff that he strongly wanted to purchase Sanukifuji-go because Sano, who had received many awards, was going to purchase the dog. Then, the plaintiff said to the defendant that since the price of the dog was 3 million JPY, the defendant should pay another 2 million JPY in addition to the one million JPY which was already paid by the defendant. After the defendant agreed this, the plaintiff immediately contacted somebody and said to the defendant that the defendant was able to purchase the dog. The defendant paid 2 million JPY on the spot and Sanukifuji-go was handed over to him.

(ii) Based on the fact that the pedigree and transfer certificates of Sanukifuji-go were issued to the defendant and the change of the ownership to the defendant was registered, it is natural to presume that there was an agreement on the transfer of the ownership of Sanukifuji-go to the defendant unless there were special circumstances.

Regarding this point, based on the fact that the plaintiff often had breeders who belonged to the group of the plaintiff breed and train Shiba dogs and joined exhibitions with the dogs under his ownership by registering the change of the ownership although the actual ownership was not transferred, the same relationship can be assumed between the plaintiff and defendant, thus, this case might be considered to be under special circumstances. However, based on the fact that when Sanukifuji-go was handed over, the defendant had little experience of breeding Shiba dogs, it is reasonable to assume that the defendant didn't have enough skills to breed and train dogs to receive an award in exhibitions like the breeders described above. This can be understood by the fact that the defendant had Takeda trim his Shiba dogs and serve as a handler in exchange of the payment when the Shiba dogs entered exhibitions. In addition, based on the points that there is no disagreement on the fact that the defendant purchased a Shiba dog from the plaintiff by paying some money at first, that the change of the ownership of the dogs taken over from the plaintiff to the defendant was registered each time, that when Takeda was asked whether the defendant belonged to the group of the plaintiff or not, he answered that he didn't know about it (Witness: Akira Takeda), and that when the defendant was asked about the content of the conversation on the start of leasing dogs to the defendant, the defendant answered that he only told the plaintiff to bring a dog which could receive an award, not mentioning the details of the specific relationship between the defendant and the group of breeders who belonged to the plaintiff, it is difficult to accept that there was the same relationship between the plaintiff and the defendant as the one between the plaintiff and his group.

Although the plaintiff claims that he thought it was safe to have the defendant take care of the dogs since the defendant's facilities were well conditioned and Rumi carefully managed the facilities, his claim can't be adopted because of the reasons above.

- (iii) Since there is no other evidence to support (ii) above as special circumstances, the ownership of Sanukifuji-go is considered to have been transferred to the defendant once. Therefore, this point supports the testimony of Rumi in (i) and rejects the claim of the plaintiff that

the case was lease for use.

C. Cancellation of the trading of Sanukifuji-go

Rumi stated that since it was found that Sanukifuji-go had dermatitis and couldn't enter an exhibition, she demanded to return the dog and get 3 million JPY back in around September 2015, however, the plaintiff said that the money couldn't be returned so that he would bring another dog as the substitute, thus, she accepted the offer. (Witness: Rumi Sato)

Although the plaintiff denies it, the claim of the plaintiff can't be adopted on the bases that the treatment for the dermatitis of Sanukifuji-go was recorded (Exhibit B20), proving the testimony of Rumi described above, that if Sanukifuji-go was leased for use, there was no reason to continue the lease as the dog couldn't enter an exhibition due to the dermatitis and that it is recognized that Sanukifuji-go was once owned by the defendant through the trading.

Although the plaintiff denies that Sanukifuji-go was returned from the defendant, based on the fact that for the question of whether Sanukifuji-go was returned from the defendant, the plaintiff answered that he thought it was returned probably but couldn't clearly say so, which was an ambiguous response, thus, the testimony of Rumi Sato is more trustworthy and the testimony of the plaintiff can't be adopted.

Additionally, regarding the fact that the registered owner is still the defendant (Exhibit B25), it is possible that as Sanukifuji-go has dermatitis and can't enter an exhibition, there is no need to change the name of the owner, therefore, the fact is not strong enough to reverse the testimony of Rumi described above.

Thus, it is considered that in accordance with the cancellation of the trading contract for Sanukifuji-go, the plaintiff became liable for repayment of 3 million JPY to the defendant.

(2) Regarding the dogs 1 and 2 of this case

- A. Regarding the dogs 1 and 2 of this case, considering that the pedigree and transfer certificates were issued to the defendant and the change of the ownership to the name of defendant was already registered, it should be presumed that there was an agreement on the transfer of the ownership of the dogs 1 and 2 of this case unless there were special circumstances.
- B. The plaintiff claims that regarding the dog 1 of this case, the case was lease for use and that Narusawa, the former registered owner, is the owner of the

dog and the plaintiff leased the dog from Narusawa and leased it out to the defendant, and regarding the dog 2 of this case, Sano, the former registered owner, is the owner of the dog and the plaintiff leased the dog from Sano and leased it out to the defendant.

However, Sano answered to the question of the defendant's legal counsel that since the ownership was already transferred as described in the pedigree certificate, he had nothing to do with the dog (Exhibit B38-1, B38-2 and B39), which is contradict to what the plaintiff claims as described above. In addition, with the points that it is difficult to accept that there was the similar relationship between the plaintiff and the defendant to that of the plaintiff and his group of breeders as described above, that the father of the two dogs was Kojinryu-go (registration number: H19-12906), which became the first place winner of the Prime Minister Prize in the national exhibition held in the autumn of 2010, showing their excellent pedigree, and that as the two dogs were bred by Sano, a famous breeder, the claim of the defendant that the two dogs were brought to him as the ones excellent enough to possibly receive the Prime Minister Prize and the Minister of Education Award and as the replacement of Sanukifuji-go obtained at the high expense of 3 million JPY but returned to the plaintiff. Therefore, the claim of the plaintiff above can't be adopted.

- C. Since there is no other evidence to show the existence of special circumstances described in "A" above, it is accepted that the ownership of the dogs 1 and 2 of this case was transferred to the defendant.
 - D. Considering that the plaintiff was liable for the repayment of 3 million JPY to the defendant, following the cancellation of the trading contract for Sanukifuji-go, as instructed about the legal relations with Sanukifuji-go above, it can be accepted that the plaintiff handed over the dogs 1 and 2 of this case to the defendant based on an agreement on the transfer of the ownership of the dogs in place of the repayment of the obligation described above. Therefore, it can't be accepted that a lease contract for use of the dogs 1 and 2 of this case was established between the plaintiff and the defendant.
- (3) Regarding the dogs 3 and 5 of this case
- A. Regarding the dogs 3 and 5 of this case, considering that the pedigree and transfer certificates were issued to the defendant and the change of ownership to the defendant was already registered, it should be presumed that there was an agreement on the transfer of the ownership of the dogs 3

and 5 unless there were special circumstances.

- B. Since there is no other evidence to show the existence of special circumstances described above, it is accepted that the ownership of the dogs 3 and 5 of this case was transferred to the defendant.
- C. Considering the legal relations with Sanukifuji-go described so far and the dogs 1 and 2 of this case instructed above, it can be accepted that the plaintiff handed over the dogs 3 and 5 of this case to the defendant based on an agreement on the transfer of the ownership of the dogs in place of the repayment of 3 million JPY to the defendant, following the cancellation of the trading contract for Sanukifuji-go. Therefore, it can't be accepted that a lease contract for use of the dogs 3 and 5 of the case was concluded between the plaintiff and the defendant.

3-3 Presence or absence of an agreement on accord and satisfaction and settlement (Point at issue (2))

- (1) It is accepted that the ownership of the dogs was transferred from the plaintiff to the defendant based on an agreement on the transfer of the ownership of the dogs in place of the repayment of 3 million JPY to the defendant, following the cancellation of the trading contract for Sanukifuji-go.

Since there was an agreement between the plaintiff and defendant on that taking over Shiba dogs would continue until the amount reached 3 million JPY and it was confirmed that the the amount was not reached at each transfer, this case is considered as a kind of accord and satisfaction.

- (2) There is no conflict between the two parties on the point that the defendant had the ownership of the dogs 3 and 5 of this case at the transfer from the plaintiff to the defendant. Regarding the dogs 1 and 2 of this case, although the plaintiff claims that he had the right of disposition, it is understood that the plaintiff had a right to handle and manage the dogs 1 and 2 in behalf of the owner.

As described in (1) above, the plaintiff agreed with the defendant on the ownership transfer of each dog of this case and handed over the dogs based on the agreement. Thus, it should be concluded that the ownership of each of the dogs of this case was transferred to the defendant and the claim of the plaintiff for handing over each of the dogs of this case as movable property to the plaintiff extinguished

4. Conclusion

With all the above, the judgement has been pronounced as stated in the main text since the plaintiff's claims are dismissed as groundless.

Civil Division, Takamatsu District Court

Judge Masato Morizane

(Attachment)

List

1. Name of dog: Kenryu
Registration number: H22-15202
2. Name of dog: Kojinrikimaru
Registration number: H24-14818
3. Name of dog: Kojinranmaru
Registration number: H27-7182
4. Name of dog: Ryuhi
Registration number: H27-16691
5. Name of dog: Setonotenryu
Registration number: H27-28384