

Creditor's Right to Demand the Rescission of Fraudulent Testamentary Disposition

Michiko Iwado
(Okayama University)

A person (A) is able to pass her/his property at death to Beneficiaries (B) by employing testamentary gift, testamentary trust, and will substitute inter vivos trust. When A is dead leaving these arrangement, they take effect and could harm A's creditors (inheritance obligees: C). So it is necessary to permit C to demand the rescission of fraudulent testamentary disposition, if the inherited property is in sufficient to cover the debt to C.

Article 424, paragraph (1) of the Civil Code prescribes, "An obligee may demand the court to rescind any act which an obligor commits knowing that it will prejudice the obligee; provided, however, that, this shall not apply to the cases where any person who benefits from such act ····· did not know at the time of such act the fact that the obligee is to be prejudiced."

The following are general requirements for the right of obligee to rescind the act of the obligor. First, it is required for the obligee (C) to have a claim on the obligor (A). The claim must be based on a cause that had occurred before the act of obligor (CC Art.424 (3)). Second, the obligor does not have sufficient assets to cover the debt at the time of her/his act. In such case, it is necessary for obligee to rescind obligor's act and to secure obligor's general assets. Third, only acts that would harm obligee's interests are subject to rescission, and the obligor must be aware when she/he did the act of the fact that the obligee is to be prejudiced. Fourth, the obligee may not exercise the

right of rescission when a person who benefits from fraudulent act (the beneficiary: B) did not know at the time of obligor's act the fact that it would harm obligee's interests (CC Art.424 (1)). Fifth, when there is a person who succeeds to the benefits from fraudulent act, the obligee may exercise the right of rescission against such person only when the person knew at the time of succession the fact that the act would harm obligee's interests (CC Art. 424-5).

As is the case for the rescission of testamentary disposition, these requirements must be amended as follows. First, since a will takes effect at the time of the testator's death, it is sufficient for the obligee to have a claim which is based on a cause that had occurred before the death of the testator (the obligor). Second, the obligor does not have sufficient assets to cover the debt at the time of her/his death, and her/his heir also does not have assets to pay full obligations (obligations of deceased A and heir's own obligations). Third, it is sufficient for the obligee to have a knowledge just before her/his death of the fact that the obligee is to be prejudiced when the testamentary disposition takes effect. In regard of the testamentary trust, concerning the fourth and fifth requirements, Article 11, paragraph (1) and (4) of the Trust Code provides that settlor's creditor may request the court for a rescission under the provision of Article 424, paragraph (1) of the Civil Code, where trust beneficiary had knowledge of the fact that the creditor would be harmed at the time when the beneficiary became aware to have been designated as a trust beneficiary or when the beneficiary acquired beneficial interests. As for the testamentary gift, there is not such provisions, but the donee must know the fact that it would harm obligee when the testamentary gift takes effect at the time when the donee become aware to be a donee after the death of the obligor, and the successor must know that fact at the time of succession.