

Defense of a Sovereign from Civil Claims

A foreign state government was sued by a Japanese trading company in Tokyo court, and engaged KLO to urge dismissal of the case on grounds of sovereign immunity and lack of international jurisdiction. The Japanese trading company had concluded contracts with a foreign trading company in the foreign state for the sale of a large computer system, in which the foreign trading company claimed to be acting as an agent of its state government.

The Japanese trading company reported delivery of the computer system to the foreign trading company, and then sought payment from the foreign state government directly. However, the foreign state government disavowed any knowledge of the sale or foreign trade company's purported authority to buy the computer system, and initially refused to cooperate with the litigation. Consequently, in the first trial, in its absence, the foreign state government was ruled liable to the Japanese trading company.

KLO was engaged to defend the foreign state government during an appeal of that judgment. At the appeal we introduced the foreign state government's assertions and the Japanese trading company's claims were rejected on grounds of sovereign immunity.

The Japanese trading company took the issue of sovereign immunity to the Supreme Court of Japan, which denied the foreign state government's defense by applying the "commercial activity" exception to the sovereign immunity doctrine. The Supreme Court then remanded the case back to the appellate court to proceed with the issue of sovereign immunity settled.

However, when the case returned to the appellate court, we pressed the argument that, notwithstanding any exceptions to sovereign immunity, the "commercial activity" exception didn't apply. We gathered and presented evidence disproving any grant of authority between the foreign state government and the foreign trading company, and thereby showing that no valid commercial act could have taken place involving the foreign state government. Since there was no proof that the foreign state government had taken part in a commercial action, the "commercial activity" exemption couldn't be applied. Accordingly, the foreign state government was completely exempted from the civil jurisdiction of Japan, and the action was dismissed.

Locations in which this case decision was published or cited:

- Japanese Supreme Court Civil Case Report (Saiko Saibansho Minji Hanreishu) 60 Vol. 6 No. 2542
- Japanese Supreme Court Case Report - Civil (Saiko Saibansho Saibanshu Minji) 220 No. 903
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