

The Owner Succeeding to the Status of the Lessor in *Chonse* Accidents: Comments on the Korean Supreme Court Decision 2023Da201218, May 18, 2023*

Jina Seong** and Jaeyoung Heo***

Abstract

Chonse is a common form of lease in Korea, where the lessee provides a lump sum deposit (*Chonsegeum*) to the lessor instead of paying periodic rental payments, while the lessor benefits from the profits earned on the deposit until it is returned at the end of the lease period. The *Chonse* contract provides the lessee residence at a low cost and the lessor a financing channel. However, lessees face potential risks of housing instability and loss of the deposit (*Chonse* accident). This essay critically reviews the Supreme Court Decision 2023Da201218, which protected the lessee in a typical *Chonse* accident deciding that the lessee with opposing rights is a third person not affected by the rescission of the contract. This paper points out that the decision (1) assumes that the lease contract is null in principle and (2) results in unfair liability distribution. We propose an alternative perspective based on supplementary interpretation of the special agreements of the sale contract that grants the buyer the authority of disposition. Particularly, the lessee can claim that the owner (or the previous seller) succeeds to the status of the lessor in the case of rescission of the sale contract. Using the suggested legal principle, the stability of the lessee of *Chonse* accidents in terms of residence and deposit return can be highly improved, for lessees both with and without opposing rights. This perspective also imposes greater liability on the owner, who has taken the risk to provide the basis of a *Chonse* accident by separating ownership and the right to lease.

KEYWORDS: *Chonse*, *Chonse* accident, lease, Housing Lease Protection Act, supplementary interpretation

Manuscript received: January 19, 2024; review completed: February 1, 2024; accepted: February 7, 2024.

* We are deeply grateful to Professor Kye Joung Lee, who has kindly accepted to advise us while writing this essay. Professor Lee has provided valuable insight and inspiration throughout the process, and we would not have been able to complete this essay without his careful guidance. Without saying, the responsibility of any error lies with us.

** J. D. Candidate, Class of 2026, Seoul National University School of Law.

*** J. D. Candidate, Class of 2026, Seoul National University School of Law.

[Decision]

I. Facts of the Case

The plaintiff is a lessee who entered into a lease agreement for H(house) in this case's apartment on October 9, 2017. Lessor E had signed a contract of sale with F, the former owner of the apartment complex. F passed away, and K inherited the apartment complex on May 3, 2017. E and F had agreed on the following terms:

- (1) If a housing unit is leased out before the final payment date, the ownership of that leased unit shall be transferred to E upon the lessee's move-in and the payment of the final balance.
- (2) Regardless of whether each unit is leased or not, E will acquire ownership of all housing units on the final payment date.

When the plaintiff entered into the lease agreement with E, the following special terms were included:

- (1) The lease contract lists E as the lessor.
- (2) The entire process of transferring the registry from the registered owner K to E would be managed and overseen by real estate agent D.
- (3) Even if the ownership of the real estate changes, the deposit, lease period, and the return of the deposit would be absolutely guaranteed as per the original contract.

Around the time of signing the contract, the plaintiff took possession of H. On March 2, 2018, the plaintiff completed the resident registration and obtained a fixed date of the contract, thereby obtaining the opposing right under the Housing Lease Protection Act. The deposit, 89 million won, was transferred to D, who then sent 80 million won to K's agent C as a balance payment for H.

When E failed to make the final payment, K sent a certified mail to E on

March 9, 2018, indicating the termination of the sale contract for the apartment. Additionally, K demanded the eviction of the plaintiff for they had moved into H without K's consent. However, on March 21, 2018, agent C confirmed in a letter: "E is indeed the buyer of the apartment complex, and the balance for H, excluding the loan amount, has been fully paid. The unit is now waiting for the transfer of registry. K promises not to make any kind of eviction request to the plaintiff." This letter was given then to the plaintiff.

Despite the confirmation letter, the ownership of H was not transferred to E. On April 4, 2019, K entered a sale contract for H with B and completed the ownership transfer registration the following day. Subsequently, K and agent C sent a certified mail to E indicating the termination of the apartment complex sale contract and requesting the plaintiff's eviction from H.

As a result, the plaintiff filed a suit against defendants B, C, and D seeking the return of the deposit. In response, defendant B counterclaimed, seeking the return of the house and the return of unjust enrichment related to the rent.

II. Litigation Progress

A. *First Instance*¹⁾

According to the first instance court, the plaintiff had entered into a lease agreement with E who was not the owner of the house, and it is interpreted that F granted E the right to lease conditioned upon the rescission of the sale contract. Therefore, since the sale contract was terminated due to E's non-fulfillment of the obligation, the plaintiff cannot claim the right to use and benefit from H. Consequently, the court ruled that the plaintiff cannot claim the opposing right under the Housing Lease Protection Law and the return of the deposit from defendant B. Furthermore, the court decided that the plaintiff had to return H and rent

1) Suwon Jibangbeobwon Seongnam Jiwon [Seongnam Branch Ct. of the Suwon Dist. Ct.], Oct. 20, 2021, 2020Gadan214939 & 215338 (consol.) (S. Kor.).

as unjust enrichment to B.

Meanwhile, the court noted that defendant D had agreed to return the deposit to the plaintiff in case the sale contract was not properly executed, as per the special terms of the lease agreement. Therefore, it was decided that defendant D was obligated to return the deposit to the plaintiff.

B. The Appellate Court²⁾

The appellate court agreed with the rationale of the first instance court's decision, deciding that E had lost the right to lease H. Therefore, the plaintiff, who entered into a lease agreement with E, is not considered a protected "third person" under the proviso of the Civil Act, Art. 548 para. 1.³⁾ Consequently, the plaintiff's appeal was dismissed.

C. The Supreme Court⁴⁾

The Supreme Court considered that E had a legitimate right to lease based on the sale contract of the apartment complex. Therefore, the plaintiff, who had entered into a lease agreement with E and met the requirements to gain opposing rights under the Housing Lease Protection Act, Art. 3 para. 1,⁵⁾ was regarded as a third person whose rights are protected under the proviso of the Civil Act, Art. 548 para. 1. Therefore, the Supreme Court decided that the plaintiff had opposing right to transferee B,⁶⁾ regardless of the rescission of the sale contract, thereby overturning the

2) Suwon Jibangbeobwon [Suwon Dist. Ct.], Nov. 23, 2022, 2021Na100776 & 100783 (consol.) (S. Kor.).

3) Minbeob [Civil Act] art. 548 para. 1 (S. Kor.) ("If one of the parties has rescinded the contract, each party shall be liable to restore his/her other party to his/her original position: Provided, That the rights of third persons shall not be prejudiced thereby.").

4) Daebeobwon [S. Ct.], May 18, 2023, 2023Da201218 (S. Kor.).

5) Jutaeg Imdaecha Bohobeob [Housing Lease Protection Act] art. 3 para. 1 (S. Kor.) ("Even though it is not registered, if the lessee is provided with a house and completes resident registration, the lease shall take effect against any third person from the following day thereof. In such cases, the resident registration shall be deemed made at the time of the moving-in report.").

6) This is because the transferee of a leased house is deemed to have succeeded to the status of the lessor, according to the Housing Lease Protection Act, art. 3 para. 4.

appellate court's decision.

[Comments]

I. Introduction of the Issue

A *Chonse accident* refers to situations where the residential stability of lessees under the *Chonse* system is invaded due to changes in real estate ownership, or where the deposit is not returned after the expiration of the lease period. The case in question is a typical example of a *Chonse* accident, where the lessee faced eviction requests and filed a lawsuit to get the deposit returned. This *Chonse* accident was due to the discrepancy between the right to lease and the ownership of the property. Since *Chonse* contracts are a form of lease contracts⁷⁾ in the Civil Act and often take the form of contracts generating solely rights in personam, rather than registering *Chonsegwon*⁸⁾ as a right in rem,⁹⁾ the legal status of lessees is inherently unstable. There is a particular need to protect lessees in terms of residential stability during the lease period and the return of the deposit after the lease ends. Furthermore, there is a need for civil legal principles that enable a fair distribution of liability among the parties involved in such cases.

In the Civil Act, a lessee who has entered into a lease agreement possesses the right *in personam* against the lessor to use and benefit from the object. Under the Civil Act, Art. 621,¹⁰⁾ by registering the lease, the lessee can acquire the opposing right against third parties, such as transferees. However, to provide stronger protection for lessees of residential properties

7) Minbeob [Civil Act] art. 618-654 (S. Kor.).

8) Minbeob [Civil Act] art. 303-319 (S. Kor.).

9) Heonbeobjaepanso [Const. Ct.], June 29, 2000, 98Hunma36 (HUNJIP 12-1, 869) (S. Kor.).

10) Minbeob [Civil Act] art. 621 (S. Kor.) (“(1) The lessee of an immovable may, unless there exists any contrary agreement between the parties, request the lessor to cooperate in effecting necessary formalities for the registration of the lease. (2) The lease of an immovable, if registered, shall be effective against the third persons from the time registration has been effected.”).

even in cases where the registration is not completed, the Housing Lease Protection Act was established.¹¹⁾ The Housing Lease Protection Act, Art. 3 para. 1¹²⁾ provides lessees the opposing power the day following the provision of the house and residential registration, even in the absence of registration. Furthermore, under Art. 3-2, a lessee with opposing rights and a fixed date acquires a preferential repayment right over junior obligees and other creditors. For lessees of small-scale lease contracts, this preferential right is guaranteed for a certain amount regardless of the order security establishment, even if the fixed date is later. Additionally, Art. 4 para. 2¹³⁾ extends protection to lessees even after the end of the lease period by defining the end of the lease relationship not as the expiration of the lease period but as the time when the deposit is returned to the lessee. This ensures that lessees who have not received their deposit back after the lease period ends are protected as they were during the lease period.

Moreover, the government aims to increase the preferential repayment of the Housing Lease Protection Act.¹⁴⁾ Furthermore, due to the severity of Chonse accidents as a social issue, multiple revisions have been made to the act for even stronger protection for lessees. For instance, Art. 3-3 para. 3 (effective Jul. 9, 2023) has been revised to address the issue of failing to register the leasehold when the leasehold registration order has not been delivered to the lessor. This revision allows registration without delivery to the lessor.¹⁵⁾

11) The Housing Lease Protection Act (No. 3682) was amended in 1983, when Article 12 was added to protect houses leased by Chonse contracts without registration.

12) Jutaeg Imdaecha Bohobeob [Housing Lease Protection Act] art. 3 para. 1 (S. Kor.) (“Even though it is not registered, if the lessee is provided with a house and completes resident registration, the lease shall take effect against any third party from the following day thereof. In such cases, the resident registration shall be deemed made at the time of the moving-in report.”).

13) Jutaeg Imdaecha Bohobeob [Housing Lease Protection Act] art. 4 para. 2 (S. Kor.) (“Even though the period for lease has expired, the relations of lease shall be deemed to continue until a deposit is repaid to a lessee.”).

14) MINISTRY OF LAND, INFRASTRUCTURE AND TRANSPORT, JEONSESAGI PIHAE BANGJIBANGAN [MEASURES TO PREVENT CHONSE FRAUD DAMAGES], 6 (2022), https://www.molit.go.kr/USR/NEWS/m_71/dtl.jsp?lcmepage=5&id=95087138 (In Korean).

15) MINISTRY OF LAND, INFRASTRUCTURE AND TRANSPORT, IMDAEIN SONGDAL EOPSIDO IMCHAGWONDEUNGIREUL HAL SU ITGE DOEOTSEUMNIDA [IT IS NOW POSSIBLE TO REGISTER THE LEASE RIGHTS WITHOUT THE NEED FOR LESSOR’S DELIVERY.], 1 (2023), <https://www.molit.go.kr/USR/>

The court is also responding to *Chonse* accidents by strongly protecting lessees whose deposits have not been returned to them. For instance, the Supreme Court stated that if a lessee continues to possess the leased property after the lease period based on *exceptio non adimpleti contractus*, the extinctive prescription of the right to claim the deposit repayment does not proceed, even without directly claiming the lessor's obligation to return the deposit.¹⁶⁾ The Supreme Court also ruled that even when the buyer has not yet received complete ownership by registration, they can lawfully be provided the property as part of performing the sales contract. This buyer is also recognized to have rights to use and take profit from the property and, as such, legitimately lease the property to others.¹⁷⁾ Therefore, in cases where a lessee enters into the contract with a lessor who is not the owner of the house but has lawful right to lease it, the Housing Lease Protection Act can be applied.¹⁸⁾ Then, if the lessee obtains the opposing right under the Housing Lease Protection Act, Art. 3 para. 1 before the rescission of the sale contract between the owner and the lessor, they are protected by the proviso of the Civil Act, Art. 548 para. 1.¹⁹⁾ The Supreme Court decision of discussion is also a case where the plaintiff's opposing right was recognized and protected based on these legal principles.

The Supreme Court decided that lessor E had the lawful right to lease, thereby recognizing the plaintiff's opposing right under the Housing Lease Protection Act. This is the most significant difference from the decisions of the first instance and appellate courts, which did not recognize the plaintiff's opposing right. However, the courts' different judgments on whether the lessor had the lawful right to lease, resulting in different conclusions about whom the lessee can claim the deposit return from, indicate the insufficient accumulation of legal principles concerning the liability and its fair distribution in *Chonse* accidents. Furthermore, discussions on lessees' residential instability are relatively lacking compared to those on the

NEWS/m_72/dtl.jsp?lcmepage=1&id=95088468 (In Korean).

16) Daebeobwon [S. Ct.], July 9, 2020, 2016Da244224 & 244231 (consol.) (S. Kor.).

17) Daebeobwon [S. Ct.], Mar. 31, 1971, 71Da309 & 310 (consol.) (S. Kor.).

18) Daebeobwon [S. Ct.], Oct. 12, 1995, 95Da22283 (S. Kor.).

19) Daebeobwon [S. Ct.], Aug. 22, 2003, 2003Da12717 (S. Kor.); Daebeobwon [S. Ct.], Apr. 10, 2008, 2007Da38908 & 38915 (consol.) (S. Kor.); Daebeobwon [S. Ct.], Jan. 30, 2009, 2008Da65617 (S. Kor.).

deposit return. Previous studies on Chonse accidents have focused on proposing policy and legislative improvements to ensure the deposit return. In practice, social efforts in various fields are mainly focused on strictly dealing with Chonse fraud under criminal law²⁰⁾ in relation to Chonse.²¹⁾

This paper first provides an overview of South Korea's Chonse system and points out the systemic residential and economic instability lessees face. Then, it examines the concept and current state of Chonse accidents, followed by a critical review of the Supreme Court decision 2023Da201218 decided May 18, 2023. The decision is criticized for (1) the premise of the nullity of the lease contract, failing to protect lessees without opposing rights, and (2) lightly attributing liability to K, C, and D, who actively contributed to the Chonse accident compared to the transferee B. The essay suggests that using a supplementary interpretation of the sale contract, the lease contract maintains its effect with the original owner as the lessor. In this way, the residential and economic stability of the lessee can be protected while

20) Hyeongbeob [Criminal Act] art. 347 para. 1 (S. Kor.) ("A person who defrauds another, thereby taking property or obtaining pecuniary advantage from another, shall be punished by imprisonment with labor for not more than ten years or by a fine not exceeding 20 million won.").

21) Regarding Chonse fraud, proactive measures are being implemented, including the 'Nationwide Special Crackdown on Chonse Fraud' based on close collaboration between the Ministry of Land, Infrastructure, and Transport (MoLIT), the National Police Agency (NPA), and the Supreme Prosecutors' Office; the designation of dedicated prosecutors and investigators for Chonse fraud cases; and the enactment and implementation of the Special Act on Support for Chonse Fraud Victims and Residential Stability' (effective July 2, 2023). In contrast, support for Chonse accidents is almost solely provided through the Chonse deposit money insurance programs. Lessees can buy the insurance through the local banking system, and protected by HUG they are repaid the amount applied for within the upper limit. Recently, the Chonse Damage Support Center has been established according to the government's Measures to Prevent Chonse Fraud Damages (Sept. 1, 2022) to protect lessees' property and residential stability. SUPREME PROSECUTOR'S OFFICE, NATIONAL POLICE AGENCY & MINISTRY OF LAND, INFRASTRUCTURE AND TRANSPORT, BEOMJEONGBU JEONSESAGI JEONGUK TEUKBYEOLDANSOK JUNGANGYEOLGWA [INTERIM RESULTS OF NATIONWIDE SPECIAL CRACKDOWN ON CHONSE FRAUD ACROSS GOVERNMENT AGENCIES], 1 (2023), https://www.molit.go.kr/USR/NEWS/m_71/dtl.jsp?lcmstage=2&id=95088409 (In Korean); MINISTRY OF LAND, INFRASTRUCTURE AND TRANSPORT, BUDONGSAN GEORAE JEONGBO DEUNG HWARYONG JEONSESAGI JEOKBAL [DISCOVERY OF CHONSE FRAUD UTILIZING REAL ESTATE TRANSACTION INFORMATION], 1-2 (2023) (In Korean); NATIONAL POLICE AGENCY, JEONSESAGI JEONGUK TEUKBYEOLDANSOK (2CHA) JUNGANGYEOLGWA BALPYO [ANNOUNCEMENT OF INTERIM RESULTS FOR NATIONWIDE SPECIAL CRACKDOWN ON CHONSE FRAUD (2ND PHASE)], 2 (2023) (In Korean).

fairly distributing the liability to the owner in cases of *Chonse* accidents.

II. Overview of the Korean *Chonse* System and the Instability of Lessees

A. Overview of *Chonse*

Chonse is a distinct form of lease in Korea, where a portion of the real estate price is deposited as *Chonsegeum*, and the lessee receives the deposit back at the end of the *Chonse* contract period, without having to make additional periodic rental payments.²²⁾ In essence, the lessee provides the lessor with a deposit, gaining the right to possess, use, and profit from the real estate. The *Chonse* system is unique from a comparative legal perspective, as leases in most cultures typically involve periodic rental payments, whereas lease structures solely based on returnable deposits, without periodic payments, are rare. In the *Chonse* system, the lessee enjoys the possession, uses, and profits of the real estate without making rental payments, while the lessor gains the right to freely utilize the deposit money's proceeds during the contract period.²³⁾ As a result, the *Chonse* system offers a cost-effective housing solution for the lessee and acts as a means of financing for the lessor. Over time, this unique *Chonse* system has become a prominent form of lease in Korea, particularly during the period when formal housing finance was not yet fully established.²⁴⁾ Essentially, *Chonse* served both as a leasing system and a financing mechanism with the house serving as collateral.^{25), 26)}

22) Se-Eun Hwang & Hee-Soon Jang, *Jeonsesagi yuhyeongbyeol bunseok mit haegyeolbangan* [Analysis and Solution of *Jeonse* (the lease of a house on a deposit basis) Fraud by Type], 21(1) RESIDENTIAL ENV'T 21, 23 (2023) (In Korean).

23) Young-joon Kwon & Yong-Shik Lee, *Legal Analysis of Traditional Leasehold in Korea (Chonsegwon) from a Comparative Legal Perspective*, 29 ARIZ. J. OF INT'L & COMPAR. L. 263 (2012).

24) Jin-yoo Kim, *Jeonseui yeoksawa hangukgwa bolibiaui jeonsejedo bigyobunseog* [Comparative Analysis between *Chonse* Korea and Anticretico in Bolivia], 85 KOR. SPATIAL PLAN. REV. 41, 50, (2015) (In Korean).

25) Young-joon Kwon & Yong-Shik Lee, *supra* note 23, at 266.

26) The origins of *Chonse* can be traced back to the late Joseon Dynasty, where it started as a customary form of house pawn. Historical records from the Japanese colonial era reveal

South Korea's Chonse system is particularly noteworthy in the comparative legal context in that it is incorporated into civil law. When a lessee acquires *Chonsegwon* (the right of Chonse), they are entitled to receive exclusive and general protection. An officially registered *Chonsegwon* is a right *in rem*, granting the lessee the opposing right against any third party that interferes with their rights to possess, use, and profit from the real estate. Consequently, *Chonsegwon* is highly protected compared to rights *in personam*. Moreover, *Chonsegwon* has the nature of collateral that allows the return of the Chonse deposit, and the holder of *Chonsegwon*, as per the Civil Act, Art. 303 para. 1,²⁷⁾ has preferential repayment rights over junior creditors. These benefits of Chonse to both parties of the transaction and the incorporation of Chonse into civil law, along with the various protections for lessees under the Housing Lease Protection Act and other policies, contributed to maintaining Chonse as a predominant form of leasing—even though lessees have to deposit a huge sum of money to the lessor.

However, solely focusing on the comparative legal uniqueness of Chonse may not provide a comprehensive understanding of the system's current reality. Despite the protective nature of *Chonsegwon* and its reinforcement of lessee rights, the registration rate of *Chonsegwon* remains relatively low in practice. This aligns with the criticism that has been raised since the Civil Act was introduced, incorporating *Chonsegwon* as a right *in rem*.²⁸⁾ Early scholars had advocated for Chonse to be included in the Civil Act as a typical form of contract rather than as a right *in rem*. They anticipated that lessors might be reluctant to register *Chonsegwon*, as it would primarily serve to protect the lessee.²⁹⁾ As anticipated, the actual registration

that individuals with customary Chonse rights paid Chonsegeum to the house owner, with the interest on Chonsegeum considered the cost of residence. The repayment of Chonsegeum occurred when the lessee vacated the house. Typically, Chonsegeum amounted to around 50~80% of the house price. YONG-DAM KIM ET AL. EDS., JUSEOGMINBEOB: MULGWON 3 [COMMENTARY ON CIVIL LAW: RIGHT IN REM 3] 238-260 (5th ed. 2019) (In Korean).

27) Minbeob [Civil Act] art. 303 para. 1 (S. Kor.) (“Any person having chonsegwon is entitled to use it in conformity with its purposes and to take the profits from it, by paying the deposit money and possessing the real property owned by another person. Furthermore, he is also entitled to obtain the repayment of deposit money in preference to persons having the junior right or other creditors, with respect to the whole real property.”).

28) Young-joon Kwon & Yong-Shik Lee, *supra* note 23, at 268.

29) CIVIL LAW ASSOCIATION, MINBEOBAN EUIGYUNSEO [COMMENT ON THE DRAFT OF THE CIVIL

of *Chonse* is now infrequent.

Real estate owners generally hold a higher economic status compared to lessees, which leads them to avoid setting up *Chonse*. Registering *Chonse* would grant lessees opposing powers and disposal rights, which owners may prefer to avoid. Consequently, *Chonse* agreements tend to be based solely on contracts, making rights regarding *Chonse* a right *in personam*. Then, strictly speaking, even if a *Chonse* contract is established, the lessee can only claim the deposit return based on contractual rights from the lessor.³⁰⁾

Over the centuries, *Chonse* has been a prominent form of lease in Korea, serving as a useful means for lessees to accumulate funds and secure a future home by increasing their saving rates.³¹⁾ However, the *Chonse* system is not without its drawbacks; a huge deposit amount, usually accumulated over a lessee's lifetime, is essentially entrusted to the lessor, making the lessee inevitably economically vulnerable. This is because there is a risk that the lessor may not return the deposit. *Chonse accidents* are manifestations of this systemic instability, where the lessee may ultimately not receive their deposit back or may face disruptions to their residential stability due to factors such as changes in ownership during the lease period.

B. *The Risk of Chonse Accidents*

Under the *Chonse* system, the instability of the lessee's status results in the deposit not being returned to them, referred to as a *Chonse accident*. The concept of *Chonse accident* should be distinguished from "*Chonse fraud*", where the lessor or other party intentionally deceives the lessee and does not return part or all of the deposit, taking property or obtaining pecuniary advantage. In other words, *Chonse fraud* is when there is clear, intentional deception that meets the requisite elements of fraud under the

CODE] 184 (1957) (In Korean).

30) However, supplementary measures protect lessees' deposit repayment rights; the Housing Lease Protection Act and the *Chonse* Deposit Return Insurance gives priority to the lessees' rights, and the Korean Housing & Urban Guarantee Corporation assumes the liability for deposit money returns through PF Guarantee.

31) Young-joon Kwon & Yong-Shik Lee, *supra* note 23, at 263.

Criminal Act. On the other hand, a Chonse accident is when the lessee fails to receive a deposit return without clear evidence of intentional deception. For example, situations where the lessor cannot return the deposit due to economic downturns or where the deposit money is not fully returned due to an auction by prior mortgages can be seen as Chonse accidents.

Cases of Chonse accidents where lessees are not repaid the deposit are also on the rise. According to the Korea Housing & Urban Guarantee Corporation (HUG), there were 1,385 Chonse accident cases as of March 2023.³²⁾ These cases summed up to 319.9 billion won in deposit. As a result, HUG recorded 225.1 billion won in insurance payouts, and the amount has been increasing each year; it reached a total of 924.1 billion won in 2022. So far, the total amount of insurance payouts issued by the corporation stands at 7.13 trillion won.³³⁾

In cases of Chonse accidents, the lessee generally has the option to file a lawsuit to claim the deposit return. Unlike Chonse fraud, where fraud is evident based on the recognized facts, in Chonse accidents, it is relatively unclear whom the lessee can hold responsible and for what specific liability. Therefore, there is a need to discuss the distribution of liability among the parties involved from the civil law perspective.

III. Lack of Discussion on Fair Liability Distribution in Chonse Accidents

Various studies have suggested measures to protect the residential stability of Chonse lessees and guarantee the deposit return. These measures include the introduction of a maximum limit for deposit, the establishment of a deposit escrow system, and the activation of deposit guarantees.³⁴⁾

32) These cases were when the deposit money was not returned within 1 month after the lease period termination or not returned due to auction of the property.

33) Yungmin Seo, *Samwol Jeonsebojeungsago Yeokdae Choedae Sagogeumaek Samcheoneok Neomeotda* [In March, the Largest-ever Chonse Deposit Accident Occurred with the Accident Amount Exceeding 300 Billion Won], KBS (Apr. 21, 2023, 13:36), <https://news.kbs.co.kr/news/view.do?ncd=7657711> (In Korean).

34) See Pan-gi Kim, *Jutaegimchainui Imchabojeunggeum Bohoreul Wihan Beopjeongchaekjeok Gochal* [A Study on Legal Policy for the Protection of Deposit for Lease in Housing Lease], 13(1) J. L.

Systematic weaknesses have also been pointed out; for example, although the registration of right of lease through court orders guarantees the lessee's opposing power and preferential payment right, the process is time-consuming. Practical solutions, such as institutional prepayment of deposit and registration by subrogation were suggested in previous studies.³⁵⁾

Research specifically on *Chonse* accidents distinguished from *Chonse* frauds³⁶⁾ has mostly been made recently. Non-fraudulent *Chonse* accidents are categorized into (1) cases where a priority lien exists, (2) cases where *Chonsegeum* is almost the same as the real estate price, and (3) cases where trust agreement is registered. As for the legal solution, increasing penalties for *Chonse* fraud, imposing duties to inform lessees of the scope of guaranteed preferential repayment amount, enhancing lessees' awareness, and mandatory registration of trust agreements are suggested.³⁷⁾ Other solutions in the aspect of legislation such as mandating the deposit escrow, changing the timing of project finance insurance obtainment to before final payment, and requiring the consent of all lessees in case of ownership transfer during the lease period, are also proposed.³⁸⁾ Some studies sought to find solutions through regression analysis to discriminate contributing factors of the probability of *Chonse* accidents.³⁹⁾

The above studies primarily focus on proposing policy and legislative improvements to protect lessees from *Chonse* accidents. However, there is

AND POL. RSCH. 265 (2013) (In Korean).

35) See Jung-tae Kim, *Imchadeunggimyunryungeul Tonghan Imchabojeunggeumbanhwanjeolchae Gwanhan Yeongu* [A Study on the Procedure for the Repayment of Deposits Through Leasehold Registration Orders], 6(4) LEGAL THEORY & PRAC. REV. 235 (2018) (In Korean).

36) See Se-Eun Hwang & Hee-Soon Jang, *supra* note 22.

37) See Young-cheon Seo, *Jutaek Jeonsesago Yebangeul Wihan Beob Jedo Gaeseonbangan Yeongu* [A Study on the Improvement of Law and System for the Prevention of Housing Lease Accidents], 41(2) J. KOR. REAL EST. SOC'Y 61 (2023) (In Korean).

38) See Jae Jin Cho, *Budongsan georae (imdaecha) sago yebangeul uihan beobjeyungu - Imchaineui jiwui ganghwaleul jungsimeuro-* [Legal Research for Real Estate Transaction (Lease) Accident Prevention -Focusing on Strengthening the Position of the Lessee-], 11(2) LEGAL THEORY & PRAC. REV. 179, (2023) (In Korean).

39) See Jin-yoo Kim, *Gowuiheom jeonsewa jeonsebojeungeum mibanhwan wuiheomui sanggwangwangye bunseok -Seoulsi jeonsebojeungsagoreul jungsimeuro-* [The Relationship Between Jeonse-to-Price Ratio and Jeonse Deposit Non-Return Risk -Focused on Jeonse Guarantee Accident in Seoul-], 28(4) J. KOR. REAL EST. ANALYSTS ASS'N 55, (2022) (In Korean); Chansup Oh & Jeongyeal Suh, *Jeonsejageumbojeung sago balsaeng teukseonge gwanhan yeongu -jiyeok mit gagu teukseungeul*

a lack of discussion on the legal principles regarding how fair liability distribution can be made in such cases involving multiple parties. This gap, combined with the conflicting decisions of the courts and relatively limited social attention compared to Chonse fraud, results in insufficient protection for lessees in Chonse accident cases. However, lessees who suffer from Chonse accidents are damaged similarly as in Chonse frauds in terms of residential instability and unrecovered deposits.

IV. Comments on the Decision

A. Significance

The Chonse accident in this case falls under the category of “gap investment without capital.” A gap investment without capital is a usually mentioned as a common type of criminal Chonse fraud⁴⁰⁾ where the constructor, a licensed real estate agent, and the buyer conspire to acquire apartments⁴¹⁾ without capital and then collect deposits through lease contracts.⁴²⁾ However, a gap investment without capital broadly refers to situations where the buyer of a residence has little or no capital but purchases the property using the small gap between the sale price and the Chonse price. In such leveraged purchases, there is a high likelihood that the lessee’s deposit, which is used to cover the remaining balance of the sale contract,

jungsimeuro– [A Study on the Characteristics of Charter Fund Guarantee Accidents –Focusing on Regional and Household Characteristics–], 55(1) STUD. REG’L DEV. 117, (2023) (In Korean).

40) According to the concentrated investigation results from the National Police Agency, among the 2,188 suspects of lease fraud from July 25, 2022, to March 26, 2023, 420 people (19.2%) were identified as involved in gap investment without capital. NATIONAL POLICE AGENCY, GYEONGCHALCHEONG GUGGASUSABONBUJANG, JEONSESAGI DANSOGGANGHWA TEUKBYEOLJISI, [THE DIRECTOR OF THE NATIONAL INVESTIGATION BUREAU AT THE NPA ISSUES SPECIAL INSTRUCTIONS TO STRENGTHEN CRACKDOWNS ON CHONSE FRAUD], 1 (2023) (In Korean).

41) These usually are small-scaled apartments; so-called *villas*.

42) Seonghun Lee & Suji Shin, *Jeonse sagi, ggangtongjeonsewa dalla ...geonseolubja·junggaesa·beurokeo gyeoltakgae ‘bojeunggeum chakcwui’* [Chonse Fraud is Different From Tin Jeonse... Constructor·Real Estate Agent·Brokers Conspire and ‘Collect Deposit Money’], CHOSUN DAILY (Apr. 20, 2023, 09:36), https://www.chosun.com/economy/real_estate/2023/04/20/AODZLEQ6SNBB7LFBKTESBDCDYE/ (In Korean).

will not be returned. In the subject case, lessor E entered into a lease agreement with the plaintiff without having the capital to cover the remaining balance for H by himself – without completing the ownership transfer registration. As a result, E failed to pay the balance by the final payment date, leading to the rescission of the sale contract. Then, the ownership was transferred to B, a third party. Consequently, the plaintiff was requested to leave the house, making the lease unstable. Therefore, this case can be evaluated as a *Chonse* accident in the form of a gap investment without capital.

Based on the proviso of the Civil Act, Art. 548 para. 1, a lessee who had acquired complete rights through registration and delivery or shared new interests based on the contract before the rescission of the contract is considered a protected third person regardless of good or bad faith.⁴³⁾ If a lessee who fulfills the conditions for protection under the Housing Lease Protection Act leases the house from the buyer who has received the house, the buyer should be considered to have legitimate right to lease at that time. Therefore, even if the contract is rescinded, the lessee must be protected as a third person under the proviso of the Civil Act, Art. 548 para. 1, even if the buyer could not acquire ownership. In this regard, the significance of the Supreme Court's decision lies in the fact that the court correctly identified the first instance and the appellate courts' misinterpretation of the legal principles concerning the proviso of Art. 548 para. 1 and did not neglect the protection of the lessee. As a result, the plaintiff was not placed in an unjust situation of being unable to oppose the lease rights to the transferee, who has become the new owner of the house without the lessee's awareness.

However, the Supreme Court's decision raises issues on two fronts: (1) It assumes the nullity of the lease contract, and (2) it assigns less liability to the defendants D, C, and K, who were actively involved in the *Chonse* accident, compared to defendant B.

B. Problematic Issues

1. The Nullity of the Lease Contract

The point at which the decisions of the first instance and the appellate

43) Daebeobwon [S. Ct.], Jan. 24, 2003, 2000Da22850 (S. Kor.).

courts, and the Supreme Court differ lies in whether E had the lawful right to lease and whether, based on this, the plaintiff had opposing rights. If the plaintiff is acknowledged to have opposing rights under the Housing Lease Protection Act, they can claim the deposit return from the transferee of the house, not the original lessor. However, beneath the conflicting judgments, the first instance, appellate, and Supreme Courts all assume that the lease agreement of the case is null in principle.

The first instance and appellate courts noted that F granted the right to lease to E on the condition of the sale contract's rescission. Therefore, as E failed to fulfill the obligations of the contract, resulting in rescission, the plaintiff, having entered into a lease agreement with someone without the right to lease, was deemed not to have the opposing right. The Supreme Court too, implicitly, considered that the full payment by the buyer and lessor E is the condition for the validity of the lease agreement. Thus, in this case where E neglected to pay the balance, the lease contract is considered null, since it was done by someone without such right to lease. However, the Supreme Court ruled that since the plaintiff had completed the resident registration and was possessing the house, under the Housing Lease Protection Act, Art. 3 para. 1, they had opposing rights. Therefore, the plaintiff was protected by the retroactive effect of the rescission. However, it is noteworthy that the Supreme Court's decision is based on the premise that in other cases where the lessee cannot gain opposing rights under the Housing Lease Protection Act, the lease agreement would be, in principle, nullified due to the retroactive loss of the right to lease. This implies that lessees without opposing rights may be left out without effective protection, risking disruption to their residential and economic stability.

Specifically, consider a situation where the lessee fails to meet the requirements for protection under the Housing Lease Protection Act, Art. 3 para. 1; for example, they fail to complete the residence registration. In such a scenario, the lessee is not recognized as having legal protection under the Housing Lease Protection Act and is not considered a third person in the Civil Act, Art. 548 para. 1. Then, if the sale contract is rescinded due to the lessor's non-fulfillment of the obligation, according to the logic of the Supreme Court, the lease contract is nullified. Subsequently, in the legal relationship that follows, the vulnerability of lessee protection can be pointed out in mainly three aspects. Since the lease agreement is null, (1)

the lessee has no legitimate authority to occupy another person's property and is obligated to leave the house. (2) The lessee without the right to occupy is also required to return the calculated equivalent amount of rent from the time of occupation to the owner as unjust enrichment.⁴⁴⁾ (3) Furthermore, the lessee can demand the deposit return from the lessor as unjust enrichment by performance (*Leistungskondiktion*), but the lessor who has neglected the obligation to pay the balance in the sale contract is likely to be insolvent in reality.

This difficult situation for the lessee can be observed in the lower court decisions of the present case. Unlike the Supreme Court, the first instance and appellate courts did not recognize the lessee's opposing right and deemed that, due to the rescission of the sale contract, there is no basis for E's right to lease, which is a prerequisite for the lease agreement to be valid. The lease contract, which stated the lease period until March 12, 2020, was considered null. Consequently, the lessee was placed in a situation where (1) they were obligated to leave H and deliver it to B, and (2) starting from April 5, 2019,⁴⁵⁾ they had to return the calculated equivalent amount of rent—determined to be 421,667 won per month—to B. (3) However, in the present case, a special agreement in the lease contract obligated the real estate agent D, not the lessor E, to return the *Chonse* deposit to the lessee. Assuming a general situation without such a special agreement, following the logic of the Supreme Court, if a lessee lacks other requirements to gain the opposing right, the lease contract is nullified, jeopardizing the lessee's stability.

Particularly, the instability becomes apparent in the process of returning the lump *Chonse* deposit to the lessee. Typically, a lease agreement is structured with the lessee directly paying the deposit to the lessor. However, in a gap investment without capital, like in this case, there are instances where the payment is made to the owner (the seller) as part of the remaining balance. In situations where the deposit is transferred to a third party other than the lessor, based on the Supreme Court's ruling, this can

44) Minbeob [Civil Act] art. 741 (S. Kor.). ("A person who without any legal ground derives a benefit from the property or services of another and thereby causes loss to the latter shall be bound to return such benefit.").

45) This is the date when B acquired ownership of H.

be interpreted as a shortcut performance. In other words, (1) based on the lease contract, the lessee has the obligation to pay the deposit to the lessor and (2) based on the sale contract, the lessor has the obligation to pay the price of the house to the owner. (3) Then, by having the lessee directly pay the deposit to the owner, both the lessee and lessor's obligations are fulfilled in this triangular relationship. However, in cases where such a shortcut performance occurs in a triangular relationship, if there is a need to return the payment due to contract rescission or other reasons, the party entitled to return should be the counterparty to the contract, not the counterparty to the payment.⁴⁶⁾

Therefore, in the case of a Chonse accident in the form of a gap investment without capital, even if the lessee had transferred the deposit to the owner instead of the lessor specified in the contract, the lessee cannot directly demand the deposit return from the owner when the lease contract becomes null. Therefore, the lessee should make the settlement of the lease agreement with the direct counterparty, which is the lessor. However, the lessor, being not the direct recipient of the deposit and having faced "failure" in the gap investment, is unlikely to return the deposit easily. Ultimately, the lessee would need to go through complex procedures, such as filing a suit against the owner on behalf of the lessor, to seek the deposit return.

Furthermore, even if the lessee does gain opposing rights, following the ruling of the Supreme Court's decision of discussion, similar issues arise in cases where there is no assignee, and the ownership of the house remains with the seller. That is, if the lessee is protected by the proviso of the Civil Act, Art. 548 para. 1, the lessor of the lease contract remains the buyer of the house, who has failed to fulfill the payment. Then, this results in (1) a definitive separation of ownership and right to lease until the lease ends, causing instability, and (2) a high likelihood of the lessor being insolvent by the end of the lease period, when they should return the deposit. The fact that the sale contract was rescinded would typically mean the lessor is already insolvent, and this is also why the deposit was originally paid directly to the owner of the house, not the lessor. Therefore, the lessee,

46) Daebeobwon [S. Ct.], Jan. 24, 2003, 2000Da22850 (S. Kor.); Daebeobwon [S. Ct.], Dec. 26, 2003, 2001Da46730 (S. Kor.).

seeking the return of the *Chonse* deposit from the lessor, faces an inconvenient and unstable situation akin to the one a lessee without opposing rights faces.

In summary, the decision's approach of considering the lease contract null in principle is problematic, especially considering the instability faced by the lessee who lacks protection under the Housing Lease Protection Act. Additionally, even for lessees with opposing rights, to increase the likelihood of retrieving the deposit, it seems necessary to devise a way to make a claim against the owner who directly received the deposit, rather than against a financially unstable lessor.

2. *The Unfair Distribution of Liability*

The first instance and appellate courts decided that the real estate agent D should return the deposit to the plaintiff, whereas the Supreme Court's ruling held that the plaintiff had opposing rights against the transferee B. All three levels of the court did not hold defendants C and K liable for the *Chonse* accident. In other words, in this case, with E's loss of the right to lease and the plaintiff's opposing right, the current owner of the house, B, bears all the liability instead of D, C, and K.

Because the plaintiff had already completed the resident registration and had the fixed date when B acquired unit H, it is implied that B knew or at least could have known about the leasing status of the acquired property. Moreover, if B succeeded to the status of the lessor under the Housing Lease Protection Act, Art. 3 para. 4,⁴⁷⁾ they likely foresaw the risk that the lessee might demand the return of the *Chonse* deposit. This risk might have been reflected in the price of H when B purchased it. Therefore, if the plaintiff is acknowledged to have opposing power, holding B accountable for the return of the deposit would be reasonable. However, in this case, it cannot be conclusively determined that B easily knew about the uncertain status of lessor E just by the lease registration on the property in K's name. Additionally, when B he purchased H a year later, it would not have been easy to know that there was an agreement between K (by his agent C) and

47) *Jutaeg Imdaecha Bohobeob* [Housing Lease Protection Act] art. 3 para. 4 (S. Kor.). ("The transferee (including any person who has succeeded to the right to lease) of a leased house shall be deemed to have succeeded to the status of the lessor").

the plaintiff to not be evicted. Hence, it appears somewhat harsh to hold defendant B, who was not actively involved in the Chonse accident, accountable for all liability related to the plaintiff's lease.

On the other hand, the licensed real estate agent D received and transmitted the deposit at the time of the lease agreement and set a special term, taking full responsibility for the entire process of transferring the ownership registration of unit H to E. In this regard, both the first instance and appellate courts deemed D liable for the return of the deposit. D was not merely an intermediary in the lease contract but actively involved and is responsible for the Chonse accident. However, because the Supreme Court recognized the plaintiff's opposing power under the Housing Lease Protection Act, the plaintiff can assert lease rights against B, relieving D from liability. While the Supreme Court's decision robustly protects the lessee's rights against the current owner of the house, there may be room for questioning the specific validity of the decision since it results in lightening the liabilities of D and other parties involved in the Chonse accident.

Meanwhile, C and K directly gained economic benefits from the Chonse accident of the present case. Both the first instance and appellate courts considered factors such as D recording the transfer of the deposit money to C as "balance of H", and the special terms of the lease contract being effective only between the plaintiff and E, then concluding that it is difficult to regard C as the de facto lessor or to see that C has privately assumed the obligation to return the deposit. However, C actively contributed to forming trust that E was a lawful lessor. Considering that the deposit was transferred to C instead of the owner, K, and that various certified mails and confirmation letters have been sent by C, there is a possibility that C is not just a mere agent of K but the de facto owner of H. If C is someone who actively participated in establishing trust in the lease and at least gained benefits from the Chonse accident, it would be an unjust outcome for C to bear no liability.

Most importantly, it is unfair that K, as the comprehensive inheritor of F, is not held liable even though they have the responsibility to ensure the plaintiff's lease rights. First, F provided the very basis for this Chonse accident, by granting the right to lease to E before transferring the ownership by registration. It can be said that because of this authorization by F, the plaintiff entered into a lease agreement with E. Therefore, it will be fair

to say that F created an appearance that E had lawful authority to enter into a lease contract with the plaintiff, and the plaintiff relied on this appearance. Especially, F, through a special clause in the sale contract, had anticipated the existence of “a housing unit leased out before the final payment date”. Therefore, F may be deemed responsible for ensuring the plaintiff, as E’s lessee, is protected during the lease period. K inherited the rights related to F’s property comprehensively under the Civil Act, Art. 997 and Art. 1005. Thus, K, upon inheriting the apartment complex, also inherited the responsibility to guarantee the plaintiff’s lease. In this case, H was sold to a third party, B, and the plaintiff met the requirements to gain the opposing right. These resulted in K, who provided the basis for the *Chonse* accident by *separating ownership and right to lease and then rescinding the contract*, not being held liable.

In summary, the Supreme Court’s decision emphasizes the lessee’s protection, but has relatively focused less on the fair distribution of liabilities involved in the ownership and lease contract of the property. That is, while the decision has its significance in strongly protecting the plaintiff, the outcome of shifting the liabilities of defendants D, C, and K to the transferee, defendant B, has resulted in an imbalance of justice.

C. Suggestion of Alternative Legal Principles

1. Other Perspectives About the Rationale in Deriving Lawful Right to Lease

It is appropriate that the Supreme Court decided that E had the lawful right to lease, but there is a need to modify the logic to derive this conclusion. In the present case, the issue was whether E could be considered to have a legitimate right to lease even when full payment and transfer of ownership has not been made. This was the crucial point that led to Supreme Court to overturn the appellate court’s decision. According to other decisions, the application of the Housing Lease Protection Act is not limited to lease agreements between the lessor and the owner. Nevertheless, it is required that the lessor must have the lawful right to make a lease contract concerning the property.⁴⁸⁾

48) Daebeobwon [S. Ct.], Apr. 10, 2008, 2007Da38909 & 38915 (consol.) (S. Kor.).

Supreme Court Decision 71Da309 & 310 (consol.)⁴⁹⁾ ruled that even when the buyer has not yet received complete ownership by registration, they can lawfully be provided the property as part of performing the sales contract. This buyer is also recognized to have rights to use and take profit from the property and, as such, legitimately lease the property to others. Supreme Court Decision 2023Da201218 of discussion applied this ruling by deciding that considering the circumstances revealed in the facts of the case, the lessor had the lawful right to lease. The decision's basis of acknowledging E's legitimate right to lease is supported by (1) the fact that E entered a contract with F, obtaining the right to lease the house of discussion, (2) the fact that E partially paid the house price to C, and (3) that E had been provided the house as a performance of the sales contract.

However, it is not appropriate to say that the fact that E had partially paid the remaining balance of the purchase price supports E's lawful right to lease. First, since E's payment occurred after the lease agreement with the plaintiff, the court's rationale that the payment validates E's status as a lessor is undermined. While the decision acknowledges that E obtained the right to lease when entering into the sale agreement with F and has subsequently signed a lease contract with the plaintiff, assessing the validity of the lease agreement based on the later payment of the purchase price is also inconsistent with the court's other decisions in the stance of lessee protection. Moreover, it becomes unclear whether E has actually been given the lawful right to lease from the owner since E paid the price only *partially*. The Supreme Court has acknowledged buyers who have purchased a building from the owner and are possessing it as a *de facto* disposer,⁵⁰⁾ even before ownership registration.⁵¹⁾ However, this authority is only recognized when full payment of the price has been made. Situations where only partial payment has been made must be distinguished from such cases. The buyer signing a lease contract is not equal to disposal, but leasing and disposing is similar in that it comes with a third party. Considering that the court considers whether full payment has been made when acknowledging

49) Daebeobwon [S. Ct.], Mar. 31, 1971, 71Da309 & 310 (S. Kor.).

50) In such cases, the buyer is recognized as having a *de facto* disposing authority within the scope of the possession.

51) Daebeobwon [S. Ct.], Feb. 28, 1967, 66Da2228 (S. Kor.).

the de facto disposing authority, partial payment cannot be conclusively seen as a supporting fact for the lessor's lawful right to lease. If partial payment can be used as grounds, it will raise uncertainty about the amount and timing of the payment that would render the rights to lease legitimate. This ambiguity significantly diminishes the legal stability and predictability for the lessee.

Therefore, the current logic of the Supreme Court's decision that sees that the owner's granting of the right to lease legitimately exists as a contractual performance due to the lessee's payment is inappropriate. Rather, it is more reasonable to consider that the lawful right to lease was already granted to the buyer when entering the initial sale contract. For instance, in the present case, based on the terms⁵²⁾ agreed upon by both parties, E has lawfully acquired the right to lease regardless of the payment of the purchase price. This is because the term presupposes that a lease can occur before the balance payment is made, and it aligns more closely with the parties' intentions to consider that E was a lawful lessor from the time of the sale contract.

By using this approach, it can also be seen that at the time of the sale contract, the owner was aware or at least could have been aware of the risk that the buyer might not become the true owner in the future, and accepted this risk. This is because the owner granted the buyer the right to lease before the payment while retaining the transfer of ownership. That is, F agreed to the special terms with E, who had insufficient capital and had to cover the purchase price by entering into a lease agreement and receiving deposit. Therefore, F can be considered to bear some responsibility for the *Chonse* accident since they provided the basis of the plaintiff's trust in E's right to lease by granting him such authority. In practice, owners who build residential buildings quite often agree with the buyer to compensate for insufficient capital by receiving lump money through *Chonse* contracts. This usually becomes the basis of *Chonse* accidents. Thus, there is also a practical need to hold the owner, the grantor of the right to lease, accountable. Based on this awareness of the issue, this essay proposes the

52) "If a housing unit is leased out before the final payment date, the ownership of that leased unit shall be transferred to E upon the lessee's move-in and the payment of the final balance."

application of supplementary interpretation that effectively protects Chonse lessees without nullifying the lease contract.

2. *The Owner Succeeding to the Status of the Lessor: The Application of Protective Effects for Third Parties and Supplementary Interpretation*

In cases of Chonse accidents like the one being discussed, the owner can be said to have granted the “authority of disposition (*Verfügungsermächtigung*)” by recognizing the buyer as a lessor even before the payment of the purchase price. The concept of the authority of disposition, specially developed in Germany, is based on the German Civil Codes, Section 185, which states that disposition by someone without the authority to do so is effective if made with the consent of the person entitled. Under the principle of private autonomy, the owner can grant the buyer the power to use and profit from the property in advance, but in cases of the buyer not being an *agent*, recognizing the concept of authority of disposition can ensure the stability of the subsequent legal relationships.⁵³⁾

That is, in Chonse accidents like this case, if the owner grants the authority of disposition to the buyer, it can be argued that the owner cannot deny the validity of the lease contract due to the trust formed by the lessee. Regarding whether the lessee, who is not a party to the sale contract or such a authority disposition agreement, can claim rights invoking it, the concept of “contract with protective effect for third parties (*Vertrag mit Schutzwirkung für Dritte*)”⁵⁴⁾ can be discussed. As a manifestation of the

53) In current South Korean civil law, the concept of authority of disposition is not legislated, but it is recognized by the Court and is addressed by analogously applying the regulations of ratification of unauthorized agency, see Daebeobwon [S. Ct.], Jan. 13, 1981, 79Da2151 (S. Kor.); Daebeobwon [S. Ct.], Oct. 11, 1988, 87Daka2238 (GONG 1988, 1406) (S. Kor.). However, there have been voices expressing that the without specific regulations on the authority of disposition, the resolution of cases are left insufficient. For detailed discussions, see Sangyoung Lee, *Minbeob gichoironeuroseo cheobunsugwoneui ibbeobpiryoseong* [The Need for Legislation of the Authority of Disposition as a Theory of Civil Law], 27(4) J. COMPAR. PRIV. L. 1 (2020) (In Korean); Sangyoung Lee, *Cheobunsugwoneui gaenyeomgwa yogeon* [The Concept and Requirements of the Authority of Disposition], 19(4) J. COMPAR. PRIV. L. 1143 (2012) (In Korean) [hereinafter Lee, *Concept and Requirements*]; Sejun Kim, *Mugwonrijaeui cheobungwa dogilminbeob je185joeui cheobunsugwon* [Unauthorized Disposition and the Authority of Disposition in BGB Section 185], 104 KOR. J. CIV. L. 57 (2023) (In Korean).

54) There is a Supreme Court decision that seems to adopt this concept; see Daebeobwon [S. Ct.], Aug. 27, 1993, 92Da23339 (S. Kor.).

expansion of contractual liability in Germany, this theory posits that under certain circumstances, third parties who are not parties to the contract can be included in its scope of protection.⁵⁵⁾ According to German case law, for a protective effect for third parties to be acknowledged, (1) the third party must have close connection to the contract's performance (*Leistungsnähe*), (2) the creditor must also have a special interest in protecting the third party (*Gläubigernähe*), and (3) the obligator must be able to recognize these circumstances at the time of signing the contract (*Erkennbarkeit*).⁵⁶⁾ In the case of *Chonse* accidents in the form of a gap investment without capital, (1) the owner's granting of the right to lease is closely related to the lessee who will contract directly with the buyer, (2) the buyer, having been granted the authority of disposition, has a special interest in protecting and maintaining the lease relationship with the lessee, and (3) the owner, who granted the authority anticipating the lease, can be assumed to have recognized these circumstances at the time of sale. Therefore, the lessee can be considered a third party protected by the disposition authority agreement in the sale contract.

In summary, in the subject case, through special terms in the sale contract, the owner can be seen as having granted the authority of disposition to the buyer by giving him the right to lease in advance. Therefore, within that scope, the sale contract can be considered to have a protective effect on the lessee, who is a third party. This means that even if not a party to the sale contract, the lessee can invoke the interpretation of the agreement concerning the authority of disposition. This enables the stabilization of the lessee's position in the *Chonse* contract.⁵⁷⁾

Specifically, this paper suggests that in *Chonse* accident cases where the buyer lacks the capital to directly pay the purchase price, and therefore, the seller grants the right to lease to the buyer before transferring ownership, it is possible to maintain the lease contract valid through supplementary interpretation (*ergänzende Auslegung*) with the seller in the lessor's status. This kind of interpretation considers that in situations where the buyer fails

55) JAEHYUNG KIM, MINBEON 4 [THEORIES OF CIVIL LAW 4] 44 (2011) (In Korean).

56) YONG-DAM KIM ET AL. EDS., JUSEOGMINBEON: CHAEGWON GAGCHIG 1 [COMMENTARY ON CIVIL LAW: INDIVIDUAL PROVISIONS OF RIGHT IN PERSONAM 1] 531 (4th ed. 2016) (In Korean).

57) This idea is also discussed in Lee, *Concept and Requirements*, *supra* note 53 at 1177-1178.

to fulfill the payment obligation and the sale contract is rescinded, the seller has expressed an intention to succeed to the status of the lessor. The critical reason this is possible is that it can be inferred from the contract that the owner clearly expected the lease. Therefore, in the case of discussion, for example, even though the sale contract with F was rescinded due to E's fault, it can be interpreted from the contract that in such case, the hypothetical intention between the parties was for the lessees to maintain their lease with F (and later, the inherent K) as the lessor. As a result, the plaintiff can be strongly protected while the original owner of the house is held responsible for the Chonse accident. The rationale for such an interpretation lies in the following points.

The interpretation of legal acts, especially contracts, is not strictly bound by the language itself used; rather, it is based on various factors such as true intention, customary practices, the principle of trust and good faith, among others. In South Korea, the Civil Act does not have explicit provisions regarding the interpretation of legal acts, but Art. 106⁵⁸⁾ stipulates reliance on customs. Foreign examples show more explicit legislation on the methods of interpreting legal acts. For instance, the German Civil Code, Section 133⁵⁹⁾ and Section 157⁶⁰⁾ specify that the interpretation should consider the true intention, customary practice, and good faith rather than the literal meaning. In US Restatement (2nd) of the Law of Contracts, §201(1) dictates that "where the parties have attached the same meaning to a promise or agreement or a term thereof, it is interpreted in accordance with that meaning." The Principle of European Contract Law, Art. 5:101 to Art. 5:107 provide detailed rules for interpreting contracts, taking various circumstances into account.

The methods of interpreting contracts can be classified into natural and

58) Minbeob [Civil Act] art. 106 (S. Kor.) ("If there is a custom which differs from any provisions of Acts or subordinate statutes which are not concerned with good morals or other social order, and if the intention of the parties to a juristic act is not clear, such custom shall prevail.").

59) Interpretation of a declaration of intent: When a declaration of intent is interpreted, it is necessary to ascertain the true intention rather than adhering to the literal meaning of the declaration.

60) Interpretation of contracts: Contracts are to be interpreted as required by good faith, taking customary practice into consideration.

normative interpretation, which aims to explain the meaning of the expression itself, and supplementary interpretation,⁶¹⁾ which fills in the defects or gaps of the contract. In cases where there are gaps (*Lücke*) in the contract, supplementary interpretation uses the “hypothetical intention” of the parties, or *hypothetischer Parteiwille*, to fill it in.⁶²⁾ According to the Supreme Court’s decisions, if both parties make the same mistake regarding matters that form the basis or premise of the contract and do not specifically agree on such matters, the interpretation of the contract can be supplemented based on what they would have agreed upon had there been no mistake. It is important to note that the supplemented hypothetical intention of the parties does not refer to the actual or subjective intent of the parties but rather to an objectively inferred intention for a fair adjustment of interests based on the purpose of the contract, customary practices, applicable laws, and principle of good faith.⁶³⁾

In cases like the present one, it appears that there was no agreement between the parties regarding how to handle the lease contract by the buyer when the main contract is rescinded. This can be considered a gap or defect in the contract. It is possible that the parties did not anticipate legal issues related to the lease after the contract rescission, or if they did, they might have considered a special agreement unnecessary. According to the general opinion, when there is such a gap or defect in the contract, first, the application of default rules is examined, and if such rules do not exist or are not suitable for resolving the matter, supplementary interpretation is possible.⁶⁴⁾ Here, default rules refer to substantive laws that can directly

61) See YUN-JIK GWAK ET AL. EDS., MINBEOBJUHAE II: CHONGCHIG 2 [CIVIL LAW COMMENTARY: GENERAL PROVISIONS 2] 205-211 (1992) (In Korean); YONG-DAM KIM ET AL. EDS., JUSEOGMINBEOB: CHONGCHIG 2 [COMMENTARY ON CIVIL LAW: GENERAL PROVISIONS 2] 528-535 (4th ed. 2010) (In Korean); TUCK-SOO SONG, MINBEOBCHONGCHICG [CIVIL LAW GENERAL PROVISIONS] 182-186 (6th ed. 2021) (In Korean).

62) YONG-DAM KIM ET AL. EDS., JUSEOGMINBEOB: CHONGCHIG 2 [COMMENTARY ON CIVIL LAW: GENERAL PROVISIONS 2] 528-529 (4th ed. 2010) (In Korean).

63) Daebeobwon [S. Ct.], Nov. 23, 2006, 2005Da13288 (S. Kor.).

64) Jin Soo Yoon, *Beoblyulhaengwiui bochungjeog haeseoge gwanhan dogilui hageolgwa panlye* [German Theory and Court Decisions on Supplementary Interpretation of Legal Acts], 59 TRIAL MATERIALS 87, 91 (1992) (In Korean); YONG-DAM KIM ET AL. EDS., *supra* note 61 at 528; Chin-Woo Kim, *Imuigyujeonghwa bochungjeog haeseog -Gyeyagur gongbaegbochungjeul jungsimero-* [Default Rule and Supplementary Interpretation -Focusing on the Filling of the Gap of Contracts-], 17(1) J.

become part of the contract itself.⁶⁵⁾ The Housing Lease Protection Act, Art. 3 para. 4 stipulates that if the lessee has opposing power, the transferee succeeds to the status of the lessor. Decisions from the Supreme Court views this provision as a default rule, which may be excluded based on the lessee's objection, given that it is designed for the protection of the lessee.⁶⁶⁾ However, unlike the subject case, in cases when there is no such transferee, it is an inappropriate default rule to fill the gap in the contract.

Consequently, it is possible to utilize supplementary interpretation and infer the hypothetical intentions of the parties considering the purpose of the agreement, customary practices, applicable laws, and good faith. In this particular form of Chonse accidents, it can be inferred that the intention is that, upon the rescission of the sale contract, the seller – and owner – succeeds to the status of the lessor.

First, we examine the purpose of the special agreement that if the house is leased out before the payment of the balance, the ownership will be transferred after the payment is made. This term presupposes that a lease contract can be signed before the transfer of the ownership, and aims to avoid the separation of the lessor and the owner in such cases. Second, we examine the customary practices of housing sale contracts and lease contracts. Typically, lease contracts are signed by the owner of the house as the lessor. Therefore, in housing sale contracts, apart from stipulating the object of sale, price, and various performance periods, usually, no separate agreement regarding the buyer's authority to lease is made. For lessees entering a lease agreement, it is generally believed that the lessor is either the owner of the house or someone who will soon become the owner. The granting of the right to lease by the seller to the buyer is understood, in customary practices, as a preliminary grant of rights to use and benefit from the house as the previous step before the completing the registration. It is not intended to persistently separate ownership and the right to lease.

HONGIK L. REV. 271, 284-288 (2016) (In Korean).

65) Jin Soo Yoon, *Muhyohaengwuiui jeonhwaninga, bochungjeog haeseoginga? –Daebeobwon 2016. 11. 18. Seongo 2013Da42236 jeonwonhabuiche pangyeol [Is It Conversion of Null Act, or Supplementary Interpretation? –The Supreme Court en banc Decision 2013Da42236 Decided Nov. 18, 2016]*, 1(58) CIV. L. 253, 277 (2021) (In Korean).

66) Daebeobwon [S. Ct.], Sept. 4, 2002, 2001Da94915 (S. Kor.).

Third, we examine the purpose of the Housing Lease Protection Act, Art. 3 which is the applicable law. The essence of the transferee's succession to the status of the lessor under Art. 3 is that they are aware of the lease relationship. The requirement of residence registration, stipulated in Art. 3 para. 1 as a condition to gain opposing rights is established as a method of public disclosure to enable third parties to clearly recognize the existence of the lease right for transactional security. The court also rules that the validity of the residence registration in disclosing a lease is determined by whether it is acknowledged in general social norms that such a registration indicates that the lessee is registered at the leased property as their address or residence.⁶⁷⁾ Therefore, for residence registration to satisfy the requirement of gaining the opposing right, it is insufficient to merely have formal registration; the possession mediated by lease rights represented by registration must be recognizable to third parties.⁶⁸⁾ Although the seller who is the owner, is not a "transferee" of the house, they can be seen as someone who expects and knows about the lease relationship and the lessee's possession resulting from it. Therefore, when the sale contract with the lessor is rescinded and the status of the owner and lessor is separated, it is not only consistent with Art. 3 para. 4 but also natural, considering the Act's purpose of protecting lessees, to consider that the owner succeeds to the status of the lessor.

Fourth, the owner is also responsible for the lease relationship under the principle of trust and good faith, having taken the risk of separating the ownership and the right to lease for the efficient disposition of the property. As an owner himself who anticipated a lease contract to be concluded by granting such rights to the buyer, the succession to the status of the lessor cannot be said to be an unforeseeable loss. It is also fair in terms of the principle of self-responsibility that the owner, not the third party, bears the liabilities arising from the buyer's non-fulfillment of the contract; it was the owner's choice to choose a buyer with limited capital and grant them the right to lease. Transferring such anticipated risk to the lessee by requesting eviction should not be allowed, as it violates good faith.

67) Daebeobwon [S. Ct.], Nov. 22, 1994, 94Da13176 (S. Kor.).

68) Daebeobwon [S. Ct.], Apr. 23, 1999, 98Da32939 (S. Kor.).

D. The Benefits of the Alternative Perspective

If the owner as the seller succeeds to the status of the lessor upon the rescission of the sale contract through this supplementary interpretation, the court can adequately protect both lessees who have opposing rights and those who do not.

First, lessees who gain the opposing right can claim their lease rights against the house owner regardless of changes in the ownership. If, after the rescission, the owner transfers the ownership to another buyer, the lessee can oppose the new owner as per the Housing Lease Protection Act. The transferee automatically succeeds to the lessor, whereby they assume all rights and obligations of the lessor in the lease contract in conjunction with the ownership of the property. As a result, the transferee privatively assumes the obligation to return the deposit, while the original owner is relieved of it.⁶⁹ This conclusion is the same as the Supreme Court's decision of discussion. However, even in cases where there is no such transferee, under the proposed supplementary interpretation, it is reasonable to consider that the owner succeeds to the lessor. This is because the key to the court's rationale regarding Art. 3 para. 4 is that the transferee assumes all rights and obligations *in conjunction with the ownership*. Therefore, following the previous decisions' rationale precisely, the owner can be deemed to have succeeded to the status of the lessor upon the rescission of the contract with the original lessor. Then, the lessee can assert their lease rights against the owner. This is the distinctive benefit compared to the Supreme Court's decision. It provides practical protection to lessees by enabling them to claim the deposit return not from the insolvent lessor, but from the owner who directly received the deposit.

Second, lessees without opposing powers can claim their lease rights against the original owner. This is possible because supplementary interpretation is fundamentally based on the assumption that the lease contract remains valid. As the owner continues the lease relationship with the lessee, the lessee is assured of residential stability and economic security

69) Daebeobwon [S. Ct.], Mar. 10, 1987, 86Daka1114 (S. Kor.); Daebeobwon [S. Ct.], Jan. 17, 2013, 2011Da49523 (S. Kor.); Daebeobwon [S. Ct.], Nov. 11, 2021, 2021Da251929 (S. Kor.).

during the lease. More specifically, since the lessee has a legitimate right to possess the house, (1) the owner cannot request eviction, arguing the lease contract is null, and (2) there is no need to return any additional rent as unjust enrichment. (3) Furthermore, after the lease period ends, the lessee can request the deposit return from the (original) owner. According to the existing legal principles that consider the lease contract to be null, the lessee can only claim unjust enrichment from the lessor specified in the contract. However, following the legal principles of supplementary interpretation, if the owner is deemed to maintain the validity of the lease contract as the lessor, the lessee can also claim the return of the deposit money from the owner. The owner, being the one who has received the deposit money as the balance in the sale contract,⁷⁰⁾ is more likely to fulfill the obligation than the original lessor. Thus, even when the lessee does not have opposing rights, they can still be effectively protected by guaranteeing the existing lease. However, for future protection against a transferee or for protection like preferential repayment rights under the Housing Lease Protection Act, it is more desirable for the lessee to obtain opposing rights by meeting the requirements specified in Art. 3 para. 1.

V. Conclusion

This paper reviewed the Supreme Court decision 2023Da201218 decided May 18, 2023 and suggested a supplementary legal interpretation to protect lessees in *Chonse* accidents. *Chonse* is a unique system in Korea where lessees possess, use, and profit from a property without separate rental payments. Instead, they deposit a large sum of money as *Chonsegeum*, making the lessee's legal and economic status unstable. This instability becomes evident in *Chonse* accidents. In this case, such an accident occurred due to a gap investment without capital. The Supreme Court

70) Upon the succession, during the restoration to the original position, the owner would not need to return the deposit money. The deposit is money that should be returned to the lessee; therefore, by not receiving it back the buyer withdraws from the lease relationship and is exempted from the obligation to return the deposit. Meanwhile, the owner, by assuming all the rights and obligations from the lease agreement, takes the obligation to return the deposit to the lessee.

protected the plaintiff, recognizing him as having the opposing right under the Housing Lease Protection Act, shielded from the retroactive effects of contract rescission. The decision reaffirms the Court's attitude of protecting lessees with opposing power as a third person under the proviso of the Civil Act, Art. 548 para. 1.

However, the decision could be criticized by assuming that in principle, when lessees do not have opposing power, the lease contract is nullified upon the rescission of the sale contract between the owner and the lessor. If the validity of the lease contract is not maintained the lessee suffers in three aspects: (1) eviction, (2) uncertainty of the return of the deposited Chonsegeum, and (3) the obligation to return additional rent as unjust enrichment. Furthermore, the unfairness in the distribution of responsibility was also highlighted since the owner, who provided the grounds for the Chonse accident by separating ownership and the right to lease, does not take the liability.

This essay pointed out that the basis for the lessor's lawful right to lease was not in the payment, but rather on the anticipation of early lease between the parties of the sale contract. Moreover, since the agreement granting the authority of disposition to the buyer can be seen as having a protection effect on the third party, the lessee could claim the supplementary interpretation of such agreement to maintain the lease agreement valid. Specifically, there was a gap in the contract regarding how to handle these early lease agreements when the contract is rescinded. This paper suggested using a supplementary interpretation that it is reasonable to assume that the parties' hypothetical intention was to maintain the lease relationship with the owner as the lessor. Consequently, this allows (1) lessees with opposing rights to assert lease rights against the owner regardless of changes in ownership and (2) lessees without opposing rights to assert lease rights against the original owner of the house.

This legal principle raises the expectation of better protection for lessees, who are often the weaker party in the Chonse system. Moreover, it can serve to heighten the awareness of owners who enter sale agreements. The significance lies in the fact that many Chonse accidents occur due to the granting of the right to lease to buyers lacking capital, followed by the rescission of the sale contract. If the owner is deemed to succeed to the status of the lessor, they would be more cautious in granting the right to

lease to the buyer especially when payment has not been made, and the performance of the contract remains incomplete. In essence, this legal principle imposes a heavier responsibility on the owner for predictable leases, thus effectively suppressing the separation of ownership and the right to lease.

There may be criticism regarding the legal principle proposed in this essay – suggesting that the lessee was at least able to know the discrepancy between the registered owner and the lessor of the contract and that they should also bear the risk of choosing the contracting party. However, considering that lessees are typically in a weaker position in lease agreements, that the owner has strongly formed a trust in the lessor’s right to lease, and that the long-term separation of ownership and the right to lease can result in instability in the *Chonse* market, it is more reasonable to impose greater liability on the owner rather than on the lessee.

In addition to the legal solutions proposed in this essay, it will be fundamentally important to reduce the likelihood of such *Chonse* accidents from a legislative and policy perspective. For instance, requiring that owners must consent to any lease agreements that are separated from ownership can eliminate instability. By requiring explicit acknowledgment from owners about the lease, lessees can be secured even in cases when the lessor loses their status as the prospective owner.

