

## J. Y. Interpretation No.186 (March 9, 1984) \*

**ISSUE:** Is a person who has suffered injury as a result of his right to corporate stocks being invalidated by a court judgment entitled to make a claim for damages sustained or for restitution on the ground of unjust enrichment if his right cannot be restored despite the revocation of such judgment?

### **RELEVANT LAWS:**

Article 564, Paragraph 1 and Article 565, Paragraphs 1 and 2 of the Code of Civil Procedure (民事訴訟法第五百六十四條第一項、第五百六十五條第一項、第二項) ; J.Y. Interpretation Yuan-tze No. 2811 (司法院院字第二八一一號解釋).

### **KEYWORDS:**

bona fide assignee (善意受讓人), security (證券).\*\*

**HOLDING:** Where an invalidating judgment declaring a stock certificate null and void is revoked, the effect of the original stock certificate shall be restored. If, however, a new certificate has been issued by the issuing corporation to replace the certificate nullified, and the stockholder's interest in such stock has been legally acquired by a bona fide as-

**解釋文：**宣告股票無效之除權判決經撤銷後，原股票應回復其效力。但發行公司如已補發新股票，並經善意受讓人依法取得股東權時，原股票之效力，即難回復。其因上述各情形喪失權利而受損害者，得依法請求損害賠償或為不當得利之返還。本院院字第二八一號解釋，應予補充。

\* Translated by Raymond T. Chu.

\*\* Contents within frame, not part of the original text, are added for reference purpose only.

signee, it would be no longer possible for him to restore the effects of such stock. In such a circumstance, the person who has suffered injury as a result of his right being invalidated is entitled to make a claim under law for damages sustained or for restitution on the ground of unjust enrichment. This is to supplement Interpretation Yuan-tze No. 2811.

**REASONING:** Where a security is declared null and void by an invalidating judgment, the party filing the petition for such judgment is entitled to claim against the party bound to perform obligations under the security for all rights in connection with such security. Consequently, the bearer of the security is not entitled to exercise his rights appertaining to such security (Code of Civil Procedure, Article 564, Paragraph 1, and Article 565, Paragraph 1). In the case where the invalidating judgment declaring nullification of the security is revoked, the effect of such judgment is extinguished retroactively, and the original security must of course resume its effect. A stock certificate is a type of security. Where an in-

**解釋理由書：**除權判決宣告證券無效後，其聲請人對於依證券負義務之人，得主張證券上之權利，持有證券人即不得本於原證券行使權利（民事訴訟法第五百六十四條第一項、第五百六十五條第一項）。而宣告證券無效之除權判決經撤銷後，除權判決之效力溯及消滅，原證券自應回復有效。股票為證券之一種，宣告股票無效之除權判決經撤銷後，原股票應回復其效力；但發行公司如已補發新股票，並經善意受讓人依法取得股東權時，為維護證券交易之安全，符合民事訴訟法第五百六十五條第二項規定之意旨，原股票之持有人既不能行使股票上之權利，其股票之效力，即難回復。其因上述各情形喪失權利而受損害者，得依法請求損害賠償或為不當得利之返還。本院院字第二八一

validating judgment declaring a stock certificate null and void is revoked, the effect of the original stock certificate shall be restored. If, however, a new certificate has been issued by the issuing corporation to replace the certificate nullified, and the stockholder's interest in such stock has been legally acquired by a bona fide assignee, and the bearer of the original stock certificate has become unable to exercise his right on the stock for reason of maintaining the safety in security transactions as contemplated in the provision of the Code of Civil Procedure, Article 565, Paragraph 2, it would therefore no longer be possible to restore the effects of such stock. In such a circumstance, the person who has suffered injury as a result of his right being invalidated is entitled to make a claim under law for damages sustained or for restitution on the ground of unjust enrichment. This is to supplement Interpretation Yuan-tze No. 2811.

Justice Shih-Ron Chen filed dissenting opinion.

Justice Wei-Kuang Yiau filed dissenting opinion.

一號解釋，應予補充。

本號解釋陳大法官世榮、姚大法官瑞光分別提出不同意見書。