

Power to receive performance

1. Who has the 'power' to receive?

- creditor, his agent, receiver (when the creditor is in bankruptcy)
- pledgee (where credit is offered as a pledge)
- (apparent or true) possessor of a negotiable instrument, documentary credit
- possessor of a receipt issued by the creditor: Art. 471
- those who have the appearance of an agent (distinct from ostensible authority)
- appearance of an assignee
- invalid collection order or assignment order
 - 96Da44747 (assignment order)
 - 94Da59868 (Yonhap Comm.)
 - [\[link\]](#)

2. Protecting the debtor

- Article 470: good faith + absence of negligence
- 98Da61593 (survivors of a car accident received the insurance payment and then received an additional payment from the aggressor)(The insurer sues the survivors claiming tort or, alternatively, unjust enrichment):
 - For the Insurer's claim to be successful, the Insurer must prove that 1) the survivors were at fault (either deliberately received the money knowing that they were not entitled or negligently received the money believing that they were entitled) and 2) the aggressor's payment was in good faith (not negligent), i.e., the aggressor did not know about the insurance payment or erroneously believed that the payment was insufficient.
 - If the Insurer fails to prove the validity of the

aggressor's payment, the Insurer's claim against the Insured will fail. (for the Insurer sustained no loss because its claim against the aggressor remains valid). The insurance company failed to discharge the burden of proof. The insurance company should have sued the aggressor (rather than the survivors who received the payment).

- 2000Da23006: The debtor who paid negligently (upon erroneous advice of lawyers) successfully claimed (alleging its own negligence) return of the payment from the recipient.

3. Protecting the creditor

- creditor may sue *either* the party who received the performance *or* the debtor who made the payment (which is invalid).
- the debtor who paid in good faith will be discharged as long as he was not negligent
- 98Da61593 (suing the "recipient" in tort)
 - debtor who paid in good faith is absolved; hence, may not demand return of the payment.
 - Creditor who suffered loss may sue the "recipient" of the payment to claim unjust enrichment (or in tort).
 - If, however, the debtor was negligent, the payment does not discharge the debt.
 - The payer must have paid in good faith and without negligence. The recipient (the 'tortfeasor') must have been negligent or deliberately received the payment.
- 87Daka546 (suing the "debtor" in tort)
 - A and B are competing creditors who have claims against C.
 - C has 5.8 million KRW credit claimable from D.
 - A attached C's claim against D. B also attached C's same claim.

- B applied for and got an assignment order which transferred C's claim (against D) to B. B sued D and D did not contest the validity of the assignment order. Upon judgment in favour of B, D promptly paid to B, purporting to discharge its debt to C.
- A sued D for payment of the debt (relying on an assignment order, which turned out to be equally invalid). When it emerged that the assignment order was invalid, A modified the claim and sued D in tort to seek damage (resulting from the loss incurred by D's collusive discharge of debt).
- The court allowed A's tort damage claim. In theory, however, if D was negligent in discharging its debt or if D was bad faith, D's payment would not have the effect of extinguishing D's debt and thus it cannot be said that A suffered any 'loss'. A could have freshly attached the claim and applied for a collection order (authorising A to claim against D) and bring a claim against D. But the court apparently ignored these theoretical niceties and allowed A's tort claim against D probably on the weight of the evidence showing collusion between B and D.