SPC Guiding Case No. 128: Li Jin v. China Resources Land (Chongqing) Co., Ltd. (Environmental Pollution Liability Dispute)

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

Keywords

Civil; environmental pollution liability; light pollution; determination of damage; tolerance threshold.

Holding

Because the harm caused by light pollution to the human body is characterized by latency, concealment, and individual differences, when determining light pollution damage, the people's court should make a comprehensive determination based on national standards, local standards, and industry standards, whether the pollution interferes with others' normal life, work, and study, and whether it exceeds the public tolerance threshold. The public tolerance threshold may be judged based on the reactions of surrounding residents, the actual on-site experience, and expert opinions.

Basic Facts

Plaintiff Li Jin purchased a residential unit in Building ×, Unit ×-×-×, × Residential Community, Xiejiawan Main Street, Jiulongpo District, Chongqing, and has resided there since 2005. The MIXC shopping center developed and constructed by Defendant China Resources Land (Chongqing) Co., Ltd. is separated from the plaintiff's residence by a six-lane road, with a light rail line in the middle of the six lanes. There are no other obstructions between the MIXC shopping center and the plaintiff's residence. An LED display screen was installed on the exterior wall of the MIXC shopping center directly facing the plaintiff's residence, used to play advertisements and the like. The advertising space of that LED display screen began operating after its construction in 2014, playing promotional materials and video advertisements every day; the strong light it produced shone directly into the rooms of the plaintiff's residence, affecting the plaintiff's normal life.

In May 2014, owners in the plaintiff's residential community complained to the municipal government's public mailbox, reporting that: beginning May 3, the giant LED screen of the MIXC at China Resources 24 City in Xiejiawan began operating; the strong light of the giant LED screen shone directly into their rooms, causing serious light pollution, and the promotional videos were extremely loud, affecting their daily lives; they hoped the relevant departments would have the MIXC reduce the volume and dim the LED screen brightness. In September 2014, residents of the × residential community on Huangyang Road complained to the municipal government's public mailbox, reporting that: the MIXC had a giant LED screen playing materials and advertisements all night, producing excessively strong light that made it impossible to sleep at night and to rest properly. The light pollution from the MIXC's large screen at night seriously affected the high-rise residents of surrounding communities; they requested the relevant departments to resolve the issue, prohibit nighttime broadcasting, or prohibit all-night broadcasting, allowing broadcasting only before 8 p.m., and to dim the brightness. In February 2018, residents of the plaintiff's community complained to the municipal government's public mailbox, reporting that: the MIXC's outdoor advertising screen was the residents' nightmare; the advertising screen played video advertisements every day, with extremely strong and frequently flickering light, making the homes of owners living across from it as bright as daytime at night, seriously affecting the rest of the elderly and children; they hoped the relevant departments would rectify it as soon as possible.

During the trial of this case, the people's court organized both parties to conduct an on-site inspection on the evening of August 11, 2018. An LED display screen directly facing the plaintiff's residence was playing an advertising video, and the light it produced was relatively strong and could shine directly into the plaintiff's

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residence; that evening, the LED display screen played the advertising video until 20:58, when it was turned off. An employee of the defendant company stated that the LED display screen had an area of 160 m².

Regarding whether environmental monitoring could be conducted on the light pollution issue in this case, the people's court consulted the Jiulongpo District Ecological Environment Monitoring Station of Chongqing. The person in charge of that station stated that neither the state nor Chongqing had norms or technical indicators for environmental monitoring of light pollution, so the monitoring station could not conduct environmental monitoring of the light pollution issue. An expert in the expert database of the Chongqing courts participating in environmental resources adjudication, who was also the deputy director of the Yongchuan District Ecological Environment Monitoring Station of Chongqing, also stated that from an environmental protection perspective there was no specific standard for light pollution, but from the perspective of civil legal relations, whether light pollution was caused could be judged by combining the remaining evidence. From the evidence submitted by the plaintiff in this case, the damage caused by the MIXC electronic display screen to the plaintiff objectively existed, mainly manifested in affecting the plaintiff's normal rest. Regarding issues related to the light radiation produced by the LED display screen, the court consulted experts including a professor of the School of Architecture and Urban Planning of Chongqing University and vice-chairman of the China Illuminating Engineering Society, and a senior engineer of the School of Architecture and Urban Planning of Chongqing University and council member of the China Illuminating Engineering Society. The experts stated that the light radiation of LEDs has, on the one hand, visual effects on people, among which disability glare and discomfort glare affect the human eye; on the other hand, there are biological effects: as the light intensity decreases at night, people gradually fall asleep as a result of the action of two hormones, melatonin and cortisol — melatonin rises at night and falls during the day, while cortisol is the opposite. If the light radiation is too strong, it disrupts people's biological clock, and over time there will be effects. In addition, the white light of LEDs contains a blue-light component, and blue light damages the human retina irreparably. However, the harm of outdoor blue light is difficult to detect, and the standards for time and intensity are yet to be determined pending the promulgation of standards. Regarding the effect of light brightness on people, some research conclusions suggest that below 400 cd/m² the effect on people is relatively small, but this is difficult to apply to dynamic advertising screens. As for brightness norms, different departments have compiled norms with different brightness limits, but an LED display screen is still different from direct illumination; it is more appropriate to determine this based on the relevant national standards for LED display screens.

Judgment

On December 28, 2018, the Jiangjin District People's Court of Chongqing rendered Judgment (2018) Yu 0116 Min Chu No. 6093:

1. Defendant China Resources Land (Chongqing) Co., Ltd. shall, from the date this judgment takes effect, immediately cease its light pollution infringement upon Plaintiff Li Jin caused by operating the LED display screen on the exterior wall of the MIXC shopping center at Xiejiawan Main Street, Jiulongpo District, Chongqing, directly facing the plaintiff's residence in Building ×, × Residential Community, Xiejiawan Main Street, Jiulongpo District, Chongqing:

(1) The aforesaid LED display screen shall be turned on after 8:30 and turned off before 22:00 during the period from May 1 to September 30; during the period from October 1 to April 30, it shall be turned on after 8:30 and turned off before 21:50.

(2) The brightness of the aforesaid LED display screen after 19:00 each day shall not exceed 600 cd/m².

2. The remaining claims of Plaintiff Li Jin are dismissed.

After the first-instance judgment was pronounced, neither party appealed, and the judgment became legally effective.

Reasoning

The effective judgment of the court held that: protecting the environment is a basic national policy of China, and all entities and individuals have the obligation to protect the environment. Article 9 of the General Provisions of the Civil Law of the People's Republic of China provides: "When engaging in civil activities, civil subjects shall be conducive to conserving resources and protecting the ecological environment." Article 90 of the Real Right Law of the People's Republic of China provides: "A right holder of immovable property shall not, in violation of state provisions, discard solid waste or discharge atmospheric pollutants, water pollutants, noise, light, electromagnetic radiation, or other hazardous substances." Article 42, Paragraph 1 of the Environmental Protection Law of the People's Republic of China provides: "Enterprises, public institutions, and other producers and operators that discharge pollutants shall take measures to prevent and control pollution of and harm to the environment by waste gas, waste water, waste residue, medical waste, dust, malodorous gases, radioactive substances, and noise, vibration, light radiation, electromagnetic radiation, and the like generated in production, construction, or other activities." This case was an environmental pollution liability dispute. Under Article 65 of the Tort Liability Law of the People's Republic of China: "Where damage is caused by environmental pollution, the polluter shall bear tort liability." Environmental pollution tort liability is a special tort liability, whose constituent elements include the following three aspects: first, the polluter has engaged in conduct that pollutes the environment; second, the aggrieved party has suffered damage; and third, there is a causal relationship between the polluter's polluting conduct and the aggrieved party's damage.

I. Whether the defendant had engaged in conduct that pollutes the environment.

Defendant China Resources Land (Chongqing) Co., Ltd., as the builder and operator of the MIXC shopping center, installed an LED display screen on the exterior wall of the shopping center directly facing the plaintiff's residence to play advertisements and promotional materials, and the strong light produced shone directly into the plaintiff's residence. Based on the photographs, video materials, and other evidence provided by the plaintiff, as well as the on-site inspection organized for both parties, it could be determined that the strong light produced by the defendant's use of the LED display screen to play advertisements and promotional materials had exceeded the range generally tolerated by the public. In terms of the public's cognitive patterns and direct experience, that strong light would seriously affect the normal work and study of neighboring people and interfere with the normal life and rest of surrounding residents, and had already constituted light pollution caused by strong light. The defendant's conduct of using the LED display screen to play advertisements and promotional materials, causing light pollution, had constituted conduct that pollutes the environment.

II. Regarding the aggrieved party's damage facts.

The damage facts of environmental pollution mainly include the fact that the polluting conduct caused damage to the parties' property and persons, as well as damage to the environment. The damage consequences of environmental pollution tort differ from those of ordinary torts; they include not only damage results with obvious symptoms that can be measured, but also damage results with no obvious symptoms, or with temporary absence of symptoms that cannot be reflected by measurement methods for the time being. This case was a light pollution dispute. The harm caused by light pollution to the human body is characterized by latency and concealment. The aggrieved party often does not show obvious symptoms of injury at the beginning of being harmed, and the damage suffered often cannot be reflected by precise measurement methods for the time being. But as time passes, the damage will gradually manifest. Referring to the expert opinions in this case, the impact of light pollution on people, apart from the perceivable visual impact, includes disruption of the human biological clock caused by excessively strong light radiation, the impact of which cannot be seen in the short term but will manifest over the long term. In this case, the strong light produced by the defendant's use of the LED display screen to play advertisements and promotional materials had exceeded the degree tolerable to ordinary people and affected the normal life and rest of the

plaintiff and other residents living nearby. According to the rules of everyday life experience, the light pollution produced by the defendant's operation of the LED display screen would inevitably cause damage to the physical and mental health of the plaintiff and others, which is also generally recognized by the public. In sum, the light pollution produced by the defendant's operation of the LED display screen had damaged the plaintiff's environmental rights and interests in his residence and caused damage to the plaintiff's physical and mental health.

III. Whether the defendant should bear tort liability for environmental pollution.

Article 66 of the Tort Liability Law of the People's Republic of China provides: "Where a dispute arises from environmental pollution, the polluter shall bear the burden of proof regarding the circumstances under which it does not bear liability or bears mitigated liability as provided by law, and regarding the absence of a causal relationship between its conduct and the damage." In this case, the plaintiff had proved by evidence that the defendant had engaged in polluting conduct and the plaintiff's damage facts. The defendant was required to bear the burden of proof regarding the existence of circumstances under which it does not bear liability or bears mitigated liability as provided by law, or the absence of a causal relationship between its polluting conduct and the damage. However, the defendant did not submit evidence to prove the aforesaid circumstances, and should therefore bear the adverse consequence of failing to prove, and should bear tort liability for environmental pollution. Under Article 13 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Environmental Tort Liability Dispute Cases: "The people's court shall, based on the aggrieved party's claims and the specific circumstances of the case, reasonably determine that the polluter bears civil liabilities such as cessation of infringement, removal of obstruction, elimination of danger, restoration to the original condition, apology, and compensation for losses." The damage caused by environmental tort differs from general personal and property damage, and there are unique requirements for the tort liability borne by the infringer. Because environmental tort infringes upon the personal and property rights and interests of an unspecified number of people in a certain area through the medium of the environment, and once damage that can be reflected by measurement methods appears, the consequences are often irreparable and cannot be eliminated. Therefore, in environmental tort, once the infringer has committed polluting conduct, it shall bear corresponding tort liability even if no measurable damage consequences have yet appeared. In this case, judging from the complaints of citizens, the defendant, as the operator of the MIXC shopping center, should have recognized in the course of its production and operation that the strong light emitted by its use of the LED display screen to play advertisements and promotional materials would affect the plaintiff and others living in the residences opposite and in surrounding residential communities, and bore the obligation to take necessary measures to reduce the impact on the plaintiff and others. However, the defendant continued to use the LED display screen to play advertisements and promotional materials, and the strong light produced clearly exceeded the degree tolerable to ordinary people, constituting light pollution that seriously interfered with the normal life of surrounding people and damaged the environmental rights and interests of the plaintiff and others, thereby harming the physical and mental health of the plaintiff and others. Therefore, even if the plaintiff had not yet shown obvious symptoms, the fact that his life was disturbed by light pollution and his environmental rights and interests were damaged objectively existed. The defendant should therefore bear civil liabilities such as cessation of infringement and removal of obstruction.

(The judges of the effective judgment: Jiang Ling, Luo Jing, and Zhang Zhigui.)

Relevant Legal Provisions

1. Articles 65 and 66 of the Tort Liability Law of the People's Republic of China.

2. Article 42, Paragraph 1 of the Environmental Protection Law of the People's Republic of China.

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