SPC Guiding Case No. 143: Beijing Lanshida Optoelectronic Technology Co., Ltd. and Huang Xiaolan v. Zhao Min (Right to Reputation Dispute)

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Keywords

Civil / right to reputation / online infringement / WeChat group / public space

Holding

1. To determine that remarks made in a WeChat group constitute an infringement of another's right to reputation, all the constituent elements of an infringement of the right to reputation must be satisfied, and comprehensive judgment should also be made taking into account the characteristics of dissemination over information networks and specific factors such as the infringing subject, the scope of dissemination, and the degree of damage.

2. A WeChat group composed of persons with no specific relationship has the attributes of a public space. Where a citizen publishes remarks in such a WeChat group that insult, defame, slander, or belittle another person, this constitutes an infringement of the right to reputation and the person shall bear legal liability in accordance with law.

Basic Facts

The plaintiffs Beijing Lanshida Optoelectronic Technology Co., Ltd. ("Lanshida") and Huang Xiaolan alleged that Huang Xiaolan was an employee of Lanshida, engaged in machine-based beauty and nail-care business. Since January 17, 2017, the defendant Zhao Min had continuously fabricated rumors about, defamed, and falsely accused the two plaintiffs, repeatedly slandered and abused them, claimed that Huang Xiaolan had schizophrenia, slandered Lanshida's instruments as unprofessional and accused it of blackmailing customers, and disseminated such statements through WeChat groups and other means, causing serious damage to the plaintiffs' reputation and harm to their business. They requested that the people's court order: (1) the defendant to apologize to the two plaintiffs, and to eliminate the impact and restore their reputation by posting an announcement at No. X, Shunyi District, Beijing, and publishing an announcement in a local Beijing newspaper; (2) the defendant to compensate Lanshida RMB 20,000 for its losses; and (3) the defendant to compensate each of the two plaintiffs RMB 5,000 as solatium for mental distress.

The defendant Zhao Min argued that she had not posted information damaging the plaintiffs' reputation in the residential community WeChat group, and had only spoken to neighbors and good friends about the dispute with the two plaintiffs, and that the matter had also greatly affected her. The view that Lanshida's instruments were unprofessional and that it blackmailed customers was not hers alone; others felt the same way. The plaintiffs' beauty shop was often closed, and their losses were unrelated to her. She therefore requested that the plaintiffs' claims be dismissed.

The court found upon trial that Lanshida operated a beauty shop on the first floor of a residential community in Shunyi District, Beijing, and that Huang Xiaolan was a shareholder of the company and also served as a beautician. At around 4 p.m. on January 17, 2017, Zhao Min accompanied another resident of the community to the beauty shop for a beauty treatment. Huang Xiaolan performed the treatment for the

customer, and Zhao Min inquired about her earlier freckle-removal treatment at the shop; the two then argued over a beauty service issue. Later, the public security department issued an administrative penalty decision against Zhao Min, imposing on her a penalty of three days' administrative detention.

The plaintiffs asserted that Zhao Min's WeChat nickname was "X Junzhu" (WeChat ID X—calm), and that she was the administrator of the residential community owners' WeChat group; after the dispute arose, Zhao Min repeatedly fabricated rumors about, defamed, slandered, and abused the two plaintiffs in the owners' WeChat group, and removed Huang Xiaolan from the owners' group, and Lanshida's business suffered serious damage as a result of Zhao Min's acts. The plaintiffs provided WeChat chat records and the witness testimony of Zhang Moumou to prove this. The WeChat chat records came from two WeChat groups with 345 and 123 members respectively, and recorded remarks concerning Huang Xiaolan and Lanshida sent under the nickname "X Junzhu," as well as replies from other group members inquiring about the situation; witness Zhang Moumou was a customer of Lanshida and also a resident of the community, who testified in court to the contents of the WeChat group he had seen and produced his mobile phone in court to show WeChat, the group administrator's WeChat ID being X—calm.

Zhao Min did not accept the plaintiffs' statements and evidence, and stated that in 2016 she underwent laser freckle removal at the beauty shop in question, and Huang Xiaolan promised to remove all the freckles, but after two treatments the freckles became increasingly severe; after repeated communication, the other party refused to refund the money. On the day of the incident she again consulted about the matter, but Huang Xiaolan denied that Zhao Min had undergone freckle removal there, and the two argued. Zhao Min stated that she had only one WeChat account, which she often renamed, that she was now called "X Guo" in the owners' group, that she was not the group administrator and did not know the administrator's situation, that she had never added Huang Xiaolan as a friend, and that she had never posted information damaging the plaintiffs' reputation in any WeChat group, having only spoken to neighbors and friends about the dispute with the plaintiffs. She maintained that Lanshida's instruments were unprofessional and that it blackmailed customers, that others felt the same way, and that citizens enjoy freedom of speech.

Upon the plaintiffs' application, the court obtained from Shenzhen Tencent Computer Systems Co., Ltd. the real-name authentication information for WeChat ID X—calm, confirming it to be Zhao Min, and also confirmed that the WeChat ID and Huang Xiaolan's WeChat ID X-HL became friends at 13:16:18 on March 4, 2016. Zhao Min accepted this, but stated that she was not clear about the information concerning Huang Xiaolan and Lanshida sent in the WeChat group, that she no longer used that WeChat account, and that she had also left one of the owners' groups.

Judgment

On September 19, 2017, the Shunyi District People's Court of Beijing rendered Civil Judgment (2017) Jing 0113 Min Chu No. 5491: (1) Zhao Min shall, within seven days from the date the judgment takes effect, post an apology statement at the door of the house at No. X, Shunyi District, apologizing to plaintiffs Huang Xiaolan and Beijing Lanshida Optoelectronic Technology Co., Ltd., the statement to remain posted for seven days, and the contents of the apology shall be subject to review by the court; if Zhao Min fails to carry out the above within the time limit, the court shall post the full text of the judgment at the door of the above address; (2) Zhao Min shall, within seven days from the date the judgment takes effect, compensate plaintiff Beijing Lanshida Optoelectronic Technology Co., Ltd. RMB 3,000 for economic loss; (3) Zhao Min shall, within seven days from the date the judgment takes effect, compensate plaintiff Huang Xiaolan RMB 2,000 as solatium for mental distress; and (4) the other claims of plaintiffs Huang Xiaolan and Beijing Lanshida Optoelectronic Technology Co., Ltd. were dismissed. After the judgment was pronounced, Zhao Min appealed. On January 31, 2018, the Beijing Third Intermediate People's Court rendered Civil Judgment (2018) Jing 03 Min Zhong No. 725: dismissing the appeal and affirming the original judgment.

Reasoning

The court in its effective judgment held that the right to reputation is the right enjoyed by a civil subject in accordance with law to protect its own reputation and to exclude infringement by others. Civil subjects include not only natural persons but also legal persons and other organizations. Article 101 of the General Principles of the Civil Law of the People's Republic of China provides that citizens and legal persons enjoy the right to reputation, the personal dignity of citizens is protected by law, and it is prohibited to damage the reputation of citizens or legal persons by means such as insult and defamation.

The focal point of dispute in this case was whether defendant Zhao Min's remarks concerning plaintiffs Huang Xiaolan and Lanshida in the WeChat group constituted an infringement of the right to reputation. A traditional infringement of the right to reputation has four constituent elements: the victim actually suffered damage to reputation, the actor's conduct was unlawful, there was a causal relationship between the unlawful conduct and the damaging consequences, and the actor was subjectively at fault. In determining whether remarks in a WeChat group infringe another's right to reputation, all the constituent elements of a traditional infringement of the right to reputation must be satisfied, and comprehensive judgment should also be made taking into account the characteristics of dissemination over information networks and specific factors such as the infringing subject, the scope of dissemination, and the degree of damage.

In this case, Zhao Min denied that the relevant information sent under her WeChat ID X—calm was sent by her, but failed to provide evidence to prove this, and the denial was inconsistent with the facts already established; the court therefore could not accept this defense. Based on the circumstances established at trial, combined with the contents of the WeChat chat records, the witness testimony, and the materials obtained by the court from Shenzhen Tencent Computer Systems Co., Ltd., it could be determined that, after the dispute with Huang Xiaolan arose, Zhao Min used her WeChat account to post in the two residential community owners' WeChat groups of the community where both parties lived such clearly insulting remarks as "fool," "damned fool," "schizophrenia," and "feigning madness and playing the fool," and used a photograph of Huang Xiaolan as an illustration. As to the belittling words directed at Lanshida, such as "the beauticians are unprofessional," "blackmailing customers," "broken instruments," and "neither the technique nor the products work," Zhao Min submitted no evidence to prove the objective truth of the remarks she published; even setting that aside, if the relevant facts had occurred, she should still have resolved the matter through lawful channels. Zhao Min posted the above improper remarks in two WeChat groups with many residents of the community, and her subjective fault was evident. Judging from the composition of the WeChat groups' members, the inquiries from other members, and the convenience, breadth, and speed of dissemination of information over networks, the remarks in question were indeed apt to trigger speculation and misunderstanding about the beauty shop operated by Huang Xiaolan and Lanshida, to damage the community public's trust in Lanshida, to create a negative impression of both, and to lower the social evaluation of Huang Xiaolan personally and of Lanshida's products or services. There was a causal relationship between Zhao Min's damaging acts and the damage to the reputation of Huang Xiaolan and Lanshida, and Zhao Min's acts therefore satisfied the elements of infringement of the right to reputation and constituted an infringement.

A person who, through fault, infringes the civil rights and interests of another shall bear tort liability. A WeChat group composed of persons with no specific relationship has the attributes of a public space; where a citizen publishes remarks in such a WeChat group that insult, defame, slander, or belittle another person, this constitutes an infringement of the right to reputation and the person shall bear legal liability in accordance with law. Where the right to reputation of a citizen or legal person is infringed, the victim has the right to demand cessation of the infringement, restoration of reputation, elimination of the impact, and an apology, and may demand compensation for losses. The requests of Huang Xiaolan and Lanshida that Zhao Min apologize for her acts infringing the right to reputation were in accordance with the law and should be supported; the specific manner of the apology shall be determined by the court at its discretion. As to the economic loss caused by the infringement of Lanshida's right to reputation, the evidence provided by Lanshida could not prove the actual amount of economic loss; however, Lanshida operated a beauty shop in

the community in question, and Zhao Min's posting of improper remarks in WeChat groups with many residents of the community was bound to have an adverse impact on Lanshida's business. The court therefore determined this item of Lanshida's claim at its discretion, comprehensively considering factors such as Zhao Min's degree of fault, the content and impact of the infringing act, the duration of the infringement, and Lanshida's actual business situation. The solatium for mental distress claimed by Huang Xiaolan was also determined at its discretion based on the above factors. As to the solatium for mental distress claimed by Lanshida, it lacked a legal basis and was therefore not supported.

Relevant Legal Provisions

1. Articles 101 and 120 of the General Principles of the Civil Law of the People's Republic of China.

2. Articles 6, 20, and 22 of the Tort Liability Law of the People's Republic of China.

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