SPC Guiding Case No. 210: Jiujiang Municipal People's Government v. Jiangxi Zhengpeng Environmental Protection Technology Co., Ltd., Hangzhou Lianxin Building Materials Co., Ltd., Li De, et al. (Eco-environmental Damage Compensation Lawsuit)

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

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Keywords

Civil / eco-environmental damage compensation lawsuit / partial pre-litigation consultation / judicial confirmation / evidence / continued trial

Holding

1. In an eco-environmental damage compensation case, where a state-designated organ, through pre-litigation consultation, reaches an eco-environmental damage compensation agreement with some of the compensation obligors, it may apply to the people's court for judicial confirmation in accordance with law; with respect to the other compensation obligors with whom consultation fails, the state-designated organ may initiate an eco-environmental damage compensation lawsuit in accordance with law.

2. Where the infringer is suspected of a criminal offense on account of the same act of polluting the environment or damaging the ecology, but the evidence for establishing the infringement facts in the eco-environmental damage compensation lawsuit is sufficient, the people's court shall not rely on the outcome of the related criminal case, and shall continue the trial and, in accordance with law, order the infringer to bear ecological environment restoration and compensation liability.

Basic Facts

From 2017 to 2018, Jiangxi Zhengpeng Environmental Protection Technology Co., Ltd. ("Zhengpeng Company") signed contracts with Hangzhou Tangqi Thermal Power Co., Ltd. ("Tangqi Company") and others to transport and dispose of sludge generated in the production processes of multiple companies, charging corresponding sludge treatment fees. Li De, the actual person in charge of Zhengpeng Company, directly dumped sludge purchased from multiple places, cooperated with Fengcheng Zhihe New Materials Co., Ltd. ("Zhihe Company," which had been deregistered) in dumping, or handed it over to Zhang Yongliang, Shu Zhengfeng, and others without disposal qualifications to dump at multiple plots in the urban area of Jiujiang City. Hangzhou Lianxin Building Materials Co., Ltd. ("Lianxin Company"), knowing that Zhang Yongliang was engaged in the illegal transfer of sludge, still allowed him to hold blank contracts stamped with the company seal to dispose of sludge. Upon appraisal, the sludge dumped as described above totaled 14,800 tons, causing soil, water, and air pollution, with restoration expenses required of RMB 14,462,880. After the case came to light, the Xunyang District People's Procuratorate of Jiujiang City initiated criminal proceedings against defendants Zhang Yongliang and five others in accordance with law, and, after a second-instance trial by the Jiujiang Intermediate People's Court, on October 25, 2019, sentenced defendants Zhang Yongliang, Shu Zhengfeng, Huang Yong, Chen Shishui, Ma Zuxing, and Shen Xiaojun for the crime of polluting the environment (Li De and Xia Jiping were handled in a separate case), with fixed-term imprisonment ranging from three years and two months to ten months, and fines ranging from RMB 100,000 to RMB 50,000. The Jiujiang Municipal People's Government carried out consultation in accordance with the

relevant provisions, and reached a compensation agreement with Tangqi Company in the amount of RMB 4,872,387, but failed to reach a compensation agreement with Zhengpeng Company, Lianxin Company, Li De, and four others (seven persons in total). The compensation paid by Tangqi Company included all the restoration expenses for Plot No. 1 and Plot No. 2 and part of the restoration expenses for Plot No. 4, and was fully performed in accordance with the agreement. The parties to the agreement applied to the Jiujiang Intermediate People's Court for judicial confirmation, and the Jiujiang Intermediate People's Court had, in accordance with law, ruled to confirm the consultation agreement. Because it failed to reach a compensation agreement with Zhengpeng Company, Lianxin Company, Li De, and four others (seven persons), the Jiujiang Municipal People's Government initiated the present lawsuit over the restoration expenses for Plot No. 3 and Plot No. 5 and the remaining restoration expenses for Plot No. 4, requesting that each defendant perform the obligation of restoring the ecological environment, pay the ecological environment restoration expenses, publicly apologize, and bear attorney fees and litigation costs.

Judgment

On November 4, 2019, the Jiujiang Intermediate People's Court of Jiangxi Province rendered Civil Judgment (2019) Gan 04 Min Chu No. 201: (1) defendants Zhengpeng Company, Li De, Huang Yong, Shu Zhengfeng, and Chen Shishui shall, within three months after the judgment took effect, jointly bear the ecological restoration obligation for the sludge at the mountain col plot near Shayan Road, Jiujiang Economic and Technological Development Zone (Plot No. 3), and, where they fail to perform the restoration obligation, the above defendants shall, within ten days after the period expires, jointly compensate ecological restoration expenses of RMB 2,803,396 (defendant Shu Zhengfeng had voluntarily paid RMB 100,000 of ecological restoration funds to the court account); (2) defendants Zhengpeng Company, Lianxin Company, Zhang Yongliang, Li De, Huang Yong, Shu Zhengfeng, Xia Jiping, and Chen Shishui shall, within three months after the judgment took effect, jointly bear the ecological restoration obligation for the sludge at the Zhengjiawan plot, Wufeng Village, Shayan Road, Jiujiang Economic and Technological Development Zone (Plot No. 4), and, where they fail to perform the restoration obligation, the above defendants shall, within ten days after the period expires, jointly compensate ecological restoration expenses of RMB 2,018,515 (defendant Lianxin Company had voluntarily paid RMB 1,000,000 of ecological restoration funds to the court account); (3) defendants Zhengpeng Company, Zhang Yongliang, Li De, Xia Jiping, and Ma Zuxing shall, within three months after the judgment took effect, jointly bear the ecological restoration obligation for the sludge at the surrounding plots of Jiusong Shanhe Longyuan in Yongxiu County, Jiujiang City (Plot No. 5), and, where they fail to perform the restoration obligation, the above defendants shall, within ten days after the period expires, jointly compensate ecological restoration expenses of RMB 4,489,181; (4) each defendant shall, within ten days after the judgment took effect, jointly pay environmental impact assessment report preparation expenses of RMB 200,000, risk assessment plan preparation expenses of RMB 100,000, and attorney fees of RMB 40,000; (5) each defendant shall, within ten days after the judgment took effect, publicly apologize to the public in provincial-level or higher media; and (6) the remaining claims of the plaintiff Jiujiang Municipal People's Government were dismissed. After the judgment was pronounced, the parties did not appeal, and the first-instance judgment took effect.

Reasoning

The court's effective judgment held that Zhengpeng Company, Lianxin Company, Zhang Yongliang, Li De, Shu Zhengfeng, Huang Yong, Xia Jiping, Chen Shishui, and Ma Zuxing, by illegally transferring and dumping sludge in a manner of division of labor and cooperation, caused ecological environment pollution and damaged the public interest, and should bear corresponding eco-environmental damage compensation liability. Because the sludge dumped by each defendant at each plot had become mixed, and the sludge at the same plot could not be separated for restoration, the relevant defendants should bear joint restoration liability for the same plot. The tort liability that each defendant in this case should bear for the environmental pollution of Plots No. 3, 4, and 5 in issue was determined one by one as follows:

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I. The sludge at Plot No. 3

The sludge at Plot No. 3 was taken over by Li De from multiple companies on the surface of the Yangtze River, and dumped by Huang Yong, Shu Zhengfeng, and Chen Shishui in a manner of division of labor and cooperation. The restoration expenses for this plot were RMB 2,803,396, which should be borne jointly by the above defendants. Chen Shishui argued that he was an employee of Li De, and that his illegal gains from the illegal dumping were relatively small and his role was relatively minor, and that the employer Li De should bear the compensation liability, or that he should bear only a smaller share of compensation liability. Because environmental joint tort does not calculate restoration liability by illegal gains or the size of the role, and there was no evidence in this case to prove that Chen Shishui was an employee of Li De, Chen Shishui and the other defendants illegally dumped sludge in a manner of division of labor and cooperation, and should bear joint and several environmental restoration liability for the joint tort.

II. Part of the sludge at Plot No. 4

Part of the sludge at Plot No. 4 came from Lianxin Company (obtained by Zhang Yongliang in the name of Lianxin Company), and was dumped by Li De, Huang Yong, Shu Zhengfeng, and Chen Shishui in a manner of division of labor and cooperation. The remaining restoration expenses for this plot were RMB 2,018,515, which should be borne jointly by the above defendants. Lianxin Company argued that the sludge from Zhang Yongliang was not equivalent to sludge from Lianxin Company, and that Lianxin Company should not bear compensation liability. Based on the facts ascertained in the trial, Lianxin Company, when its sludge treatment capacity was limited, handed over its company seal and blank contracts to Zhang Yongliang to treat sludge, failed to track Zhang Yongliang's sludge treatment process in accordance with the process prescribed by law, and had obvious supervisory negligence, and the testimony of Zhang Yongliang and witness Huang [X] confirmed that part of the sludge at Plot No. 4 came from Lianxin Company. Therefore, Lianxin Company's defense should not be upheld.

III. The sludge at Plot No. 5

The sludge at Plot No. 5 came from Zhang Yongliang and was dumped by Li De and Ma Zuxing in a manner of division of labor and cooperation. The restoration expenses for this plot were RMB 4,489,181, which should be borne jointly by the above defendants. The environmental impact assessment report preparation expenses of RMB 200,000, the risk assessment plan preparation expenses of RMB 100,000, and the attorney fees of RMB 40,000 in the environmental damage appraisal report were all reasonable expenses of the litigation in this case, and the plaintiff's claims for the above expenses should be upheld. The manners of bearing liability in eco-environmental damage compensation cases include apology, and the Jiujiang Municipal People's Government's claim requiring the defendants to publicly apologize in provincial-level or higher media was legally well-founded and should be upheld.

The judgment in this case also held that Li De, as the actual controller of Zhengpeng Company, participated in the illegal dumping of sludge in the name of Zhengpeng Company when Zhengpeng Company had no sludge treatment qualifications or capacity, and Li De and Zhengpeng Company should jointly bear ecological environment restoration liability. In the illegal dumping of sludge at Plots No. 4 and 5, Xia Jiping participated in the manner of cooperating with Zhengpeng Company to treat sludge in the name of Zhihe Company, and, as the actual person in charge of Zhihe Company, obtained a share of the relevant profits, so Xia Jiping should jointly bear the ecological restoration liability for the above plots. With respect to Xia Jiping's arguments that she did not know of the illegal dumping of sludge by Zhengpeng Company and should not bear ecological environment damage restoration liability, and that she was suspected of an environmental pollution criminal offense and was being prosecuted, and that the criminal case should be tried before this case, the cooperation agreement between Zhengpeng Company and Zhihe Company in this case, the bank flow records, and the statements of Li De, Xia Jiping, and Zhang Yongliang, the testimony of witness Wang [X], and the transfer waybills of Zhihe Company were sufficient to prove that, after Zhihe Company and Zhengpeng Company cooperated on September 14, 2017, the two parties jointly participated

in the dumping of the sludge in issue, and that Xia Jiping obtained a share of the profits from dumping the sludge, and should bear the environmental damage compensation liability caused by the dumping of the sludge involved. The finding of Xia Jiping's infringement facts in this case was supported by relevant evidence, and it was not necessary to rely on the outcome of the related criminal case, and it was not improper to continue the trial.

Relevant Legal Provisions

Article 1229 of the Civil Code of the People's Republic of China (the case applied Article 65 of the Tort Liability Law of the People's Republic of China, effective July 1, 2010).

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