SPC Guiding Case No. 215: Case of Kunming Min [X] Paper Co., Ltd. et al. for Environmental Pollution (Criminal Case with Incidental Civil Public Interest Litigation)

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

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Keywords

Criminal / criminal case with incidental civil public interest litigation / environmental pollution / unit crime / environmental tort debt / piercing the corporate veil / joint and several liability of shareholders

Holding

Where company shareholders abuse the independent status of the company as a legal person and the limited liability of shareholders, causing the company to be unable to perform its obligation to repair and compensate for ecological environment damage that it should bear, and a state-designated organ or an organization prescribed by law requests that the shareholders bear joint and several liability therefor in accordance with Article 20 of the Company Law of the People's Republic of China, the people's court shall uphold such request in accordance with law.

Basic Facts

The defendant unit, Kunming Min [X] Paper Co., Ltd. ("Min [X] Company"), was established on November 16, 2005, with registered capital of RMB 1 million. Huang [X]hai held 80% of the shares, Huang [X]fen held 10%, and Huang [X]long held 10%. Li [X]cheng was the logistics plant manager of Min [X] Company. Since its establishment, Min [X] Company had laid a concealed pipe on one side of the Tanglangchuan River channel, a tributary of the Jinsha River in the Yangtze River basin, connecting it to the sewage discharge pipeline of the company's production workshop for the purpose of discharging production wastewater. Upon appraisal, during the period in which Min [X] Company secretly discharged wastewater, the water quality indicators in the Tanglangchuan River channel exceeded the baseline level by 13.0 to 239.1 times. The above acts polluted the surface water environment of the Tanglangchuan River, reduced the operating expenditure of wastewater pollution treatment facilities by a total of RMB 3,009,662, and, calculated using the virtual treatment cost method, caused environmental pollution damage amounting to RMB 10,815,021, and had a certain impact on the ecological functions of the Jinsha River basin downstream of the Tanglangchuan River channel.

While Min [X] Company's production and business activities caused ecological environment damage, its shareholders Huang [X]hai, Huang [X]fen, and Huang [X]long also engaged in the following acts: 1. They received company receivables totaling RMB 124,642,613.1 through the shareholders' personal bank cards without making financial records. 2. They recorded nine sets of housing properties belonging to company assets (with a market value of RMB 8,920,611) under the names of the shareholders and their spouses, and the shareholders occupied them without compensation. 3. The company's books were not separated from the shareholders' books, and it was difficult to distinguish company property from shareholder property, or the shareholders' own income from company profits. After the case came to light, Min [X] Company ceased production entirely, and the available balance of its corporate account was only RMB 18,261.05.

On April 12, 2021, the Xishan District People's Procuratorate of Kunming City, Yunnan Province, announced the relevant circumstances of the case. During the announcement period, no organ prescribed by law or

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relevant organization initiated a civil public interest lawsuit. The Xishan District People's Procuratorate of Kunming City accordingly initiated a public prosecution against Min [X] Company, Huang [X]hai, Li [X]cheng, and others for the above acts, and initiated a criminal case with incidental civil public interest litigation against the company and its shareholders Huang [X]hai, Huang [X]fen, and Huang [X]long, and others, requesting the denial of Min [X] Company's independent status and that the shareholders Huang [X]hai, Huang [X]fen, and Huang [X]long bear joint and several liability for the ecological environment damage compensation of Min [X] Company.

Judgment

On June 30, 2022, the Xishan District People's Court of Kunming City, Yunnan Province, rendered the judgment in the criminal case with incidental civil public interest litigation (2021) Yun 0112 Xing Chu No. 752, holding that the defendant unit, Kunming Min [X] Paper Co., Ltd., committed the crime of polluting the environment, and imposing a fine of RMB 2,000,000; that defendant Huang [X]hai committed the crime of polluting the environment, and was sentenced to fixed-term imprisonment of three years and six months and fined RMB 500,000; that defendant Li [X]cheng committed the crime of polluting the environment, and was sentenced to fixed-term imprisonment of three years and six months and fined RMB 500,000; that the defendant unit Kunming Min [X] Paper Co., Ltd. shall, within ten days after the judgment took effect, bear ecological environment damage compensation of RMB 10,815,021, with the above fees to be paid into the special fund account for environmental public interest litigation relief in Kunming City for ecological environment restoration; and that the defendant in the incidental civil public interest litigation, Kunming Min [X] Paper Co., Ltd., shall, within ten days after the judgment took effect, pay the appraisal and testing fees of the Xishan District People's Procuratorate of Kunming City totaling RMB 129,500. The defendants in the incidental civil public interest litigation, Huang [X]hai, Huang [X]fen, and Huang [X]long, shall bear joint and several liability for the ecological environment damage compensation and the appraisal and testing fees borne by defendant Kunming Min [X] Paper Co., Ltd.

After the judgment was pronounced, there was no appeal or protest, and the first-instance judgment became legally effective. The case entered the enforcement procedure, and the value of the property currently available for enforcement has covered the subject matter of enforcement.

Reasoning

The court's effective judgment held as follows:

In the course of production and operation, an enterprise shall bear the social responsibility of rationally utilizing resources, taking measures to prevent and control pollution, and performing environmental protection duties. The defendant unit, Min [X] Company, ignored the enterprise's social responsibility for environmental protection, violated the provisions of national law, and, without a pollutant discharge permit, failed to effectively treat its production wastewater and directly discharged it through a concealed pipe, seriously polluting the environment, which satisfied the provisions of Article 338 of the Criminal Law of the People's Republic of China and constituted the crime of polluting the environment. Defendants Huang [X]hai and Li [X]cheng, as the directly responsible supervisor and the directly responsible person of the defendant unit Min [X] Company, played comparable roles in the unit crime and should also be held criminally liable for the crime of polluting the environment. Min [X] Company arbitrarily discharged production wastewater directly into the river channel through a concealed pipe, causing ecological environment damage of as much as RMB 10,815,021 and also having a certain impact on the ecological functions of the Jinsha River basin downstream. Its acts constituted serious damage to the environmental public interest, and it should not only bear criminal liability in accordance with law but also bear civil liability for ecological environment damage compensation.

The defendant in the incidental civil public interest litigation, Min [X] Company, while pursuing economic benefits, disregarded its obligation of environmental protection, causing its production and business activities

to seriously damage the environmental public interest. The compensation for losses and the appraisal and testing fees borne by Min [X] Company constituted the company's environmental tort debt.

Because Min [X] Company had, since its establishment, had large and frequent capital transactions with its shareholders Huang [X]hai, Huang [X]fen, and Huang [X]long, and all three had occupied company property without compensation, they had constituted a high degree of commingling of personality with Min [X] Company, which could be found to be an act of shareholders abusing the independent status of the company as a legal person and the limited liability of shareholders, as prescribed in Article 20, paragraph 3 of the Company Law of the People's Republic of China. At present, the environmental tort debt that Min [X] Company should bear totals RMB 10,944,521, far higher than Min [X] Company's registered capital of RMB 1,000,000, and Min [X] Company had ceased production entirely after the case came to light, with the available balance of its corporate account being only RMB 18,261.05. The above facts showed that the high degree of commingling of personality between Huang [X]hai, Huang [X]fen, and Huang [X]long and Min [X] Company had caused Min [X] Company to lose its ability to repay its environmental tort debt, and that Min [X] Company was unable to perform its obligation of ecological environment damage compensation that it should bear. This satisfied the requirements for shareholders to bear joint and several liability under Article 20, paragraph 3 of the Company Law of the People's Republic of China, and Huang [X]hai, Huang [X]fen, and Huang [X]long should bear joint and several liability for Min [X] Company's environmental tort debt.

Relevant Legal Provisions

Article 93 of the Yangtze River Protection Law of the People's Republic of China.

Articles 83 and 1235 of the Civil Code of the People's Republic of China.

Article 20 of the Company Law of the People's Republic of China.

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