SPC Guiding Case No. 223: Zhang [X]long v. Beijing [X]die Culture Communication Co., Ltd., Cheng [X], and Ma [X] (Infringement of the Right to Network Dissemination of Works)

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

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Keywords

Civil litigation / infringement of the right to network dissemination of works / jurisdiction / place of the infringing act

Holding

The place where the consequence of infringement of the right to network dissemination of works occurs is uncertain and shall not be used as the basis for determining jurisdiction. When determining the jurisdiction over a civil dispute concerning infringement of the right to network dissemination of works, Article 15 of the Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Civil Disputes over Infringement of the Right to Network Dissemination of Information shall apply, that is, the case shall be under the jurisdiction of the people's court of the place of the infringing act or of the defendant's domicile.

Basic Facts

The plaintiff Zhang [X]long brought a lawsuit before the Qinhuangdao Intermediate People's Court of Hebei Province, at the place of his domicile, on the ground that the defendants Beijing [X]die Culture Communication Co., Ltd., Cheng [X] and Ma [X] had published and used, without authorization, his copyrighted photographic art works on relevant websites, infringing his right to network dissemination of the works. The defendant Ma [X] raised an objection to jurisdiction on the ground that Article 15 of the Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Civil Disputes over Infringement of the Right to Network Dissemination of Information ("the Network Dissemination Provisions") should apply to determine jurisdiction, and that Qinhuangdao City, being the place of the plaintiff's domicile, was not the place of the infringing act or the defendant's domicile, and requested that the case be transferred to the Beijing Internet Court, which is at the place of the infringing act and the defendant's domicile, for trial.

Judgment

On June 2, 2021, the Qinhuangdao Intermediate People's Court of Hebei Province rendered Civil Ruling (2021) Ji 03 Zhi Min Chu No. 27, dismissing the objection to jurisdiction raised by Ma [X]. Ma [X] was dissatisfied with the first-instance ruling and appealed. On August 24, 2021, the Hebei Provincial High People's Court rendered Civil Ruling (2021) Ji Min Xia Zhong No. 66, revoking the first-instance ruling and transferring the case to the Beijing Internet Court for trial. After review, the Beijing Internet Court and the Beijing Municipal High People's Court considered that the Hebei Provincial High People's Court's transfer of the case to the Beijing Internet Court for trial was improper, and accordingly reported to the Supreme People's Court for designation of jurisdiction. On August 22, 2022, the Supreme People's Court rendered Civil Ruling (2022) Zui Gao Fa Min Xia No. 42, determining that the case be tried by the Beijing Internet Court.

Reasoning

The Supreme People's Court held that Article 25 of the Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China provides: "The place where an act of infringement through an information network is committed includes the place of computers and other information equipment on which the alleged infringing act is committed, and the place where the consequence of infringement occurs includes the domicile of the infringed person." The "act of infringement through an information network" in this provision targets acts infringing general civil rights through an information network. However, the "right to network dissemination of information" is a statutory right enjoyed by copyright owners under Article 10, paragraph 1, of the Copyright Law of the People's Republic of China, that is, "the right to provide works to the public by wired or wireless means so that the public may obtain the works at a time and place individually chosen by them." Based on the nature and characteristics of the right to network dissemination of information, once an act infringing the right to network dissemination of information occurs, it results in "the public being able to obtain the works at a time and place individually chosen by them," and the geographical scope involved in the infringing act is uncertain. Therefore, Article 15 of the Network Dissemination Provisions provides: "Civil disputes over infringement of the right to network dissemination of information shall be under the jurisdiction of the people's court of the place of the infringing act or of the defendant's domicile. The place of the infringing act includes the place of the network servers, computer terminals and other equipment on which the alleged infringing act is committed. Where the place of the infringing act and the defendant's domicile are both difficult to determine or are outside the territory, the place of the computer terminals and other equipment on which the plaintiff discovered the infringing content may be regarded as the place of the infringing act." Therefore, Article 15 of the Network Dissemination Provisions is a special provision on the jurisdiction over civil disputes over infringement of the right to network dissemination of information, targeting this specific type of civil right. When determining the jurisdiction over a civil dispute concerning infringement of the right to network dissemination of information, Article 15 of the Network Dissemination Provisions shall be the basis.

In this case, Qinhuangdao City was the place of the plaintiff's domicile, and did not fall within the place of the infringing act or the defendant's domicile under Article 15 of the Network Dissemination Provisions. Nor did this case involve the exceptional circumstance under Article 15 of the Network Dissemination Provisions where "the place of the infringing act and the defendant's domicile are both difficult to determine or are outside the territory." Therefore, the Qinhuangdao Intermediate People's Court of Hebei Province had no jurisdiction over this case, and the Hebei Provincial High People's Court's transfer of the case to the Beijing Internet Court was not improper.

Relevant Legal Provisions

Article 29 of the Civil Procedure Law of the People's Republic of China.

Articles 24 and 25 of the Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China.

Article 15 of the Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Civil Disputes over Infringement of the Right to Network Dissemination of Information.

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