SPC Guiding Case No. 3: Case of Pan Yumei and Chen Ning for bribery

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

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Keywords

Criminal / crime of accepting bribes / bribery through a "jointly-run" company / bribery through low-price purchase of housing / promised benefits / calculation of the amount of bribes / concealment of bribery and return of illicit gains

Holding

1. Where a state functionary takes advantage of the convenience of his or her position to seek benefits for a petitioner and, together with the petitioner, obtains "profits" in the name of a "jointly-run" company, without actually contributing capital or participating in operation and management, the conduct shall be punished as acceptance of bribes.

2. Where a state functionary, knowing that another person has a matter to entrust, accepts property from that person, this is deemed to constitute a promise to "seek benefits for that person"; whether benefits were actually sought for or obtained does not affect the determination of acceptance of bribes.

3. Where a state functionary takes advantage of the convenience of his or her position to seek benefits for a petitioner and purchases housing or other items from the petitioner at a price clearly lower than the market price, the conduct shall be punished as acceptance of bribes, and the amount of the bribe shall be calculated on the basis of the difference between the local market price at the time of the transaction and the price actually paid.

4. Where a state functionary returns property after accepting it because a person or matter connected with the bribery has been investigated, in order to conceal the crime, this does not affect the determination of the crime of acceptance of bribes.

Basic Facts

Between August and September 2003, the defendants Pan Yumei and Chen Ning respectively took advantage of the conveniences of their positions as Secretary of the Working Committee of the Maigaoqiao Subdistrict and Director of the Maigaoqiao Subdistrict Office in Qixia District, Nanjing, Jiangsu Province, to provide assistance to Chen XX, the general manager of a Nanjing real estate development company, in obtaining 100 mu of land at a low price in the Maigaoqiao Entrepreneurship Park. On September 3, they separately registered Nanjing Duohe Industry and Trade Co., Ltd. ("Duohe Company") together with Chen XX in the names of their relatives, for the purpose of "developing" the above land. Pan Yumei and Chen Ning neither actually contributed capital nor participated in the operation and management of the company. In June 2004, Chen XX transferred the company and its land to a Nanjing sports goods company in the name of Duohe Company. Pan Yumei and Chen Ning each accepted RMB 4.8 million given by Chen XX in the name of sharing in the distribution of profits. In March 2007, because Pan Yumei had been placed under investigation, Chen Ning arranged, while on a business trip in the United States, for his driver to return RMB 800,000 to Chen XX. After the case was discovered, the illicit gains of Pan Yumei and Chen Ning and the proceeds of those illicit gains were all recovered in accordance with the law.

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From February to October 2004, the defendants Pan Yumei and Chen Ning respectively took advantage of the conveniences of their positions as Secretary of the Working Committee of the Maigaoqiao Subdistrict and Director of the Maigaoqiao Subdistrict Office to provide assistance to a Nanjing real estate development company in purchasing land in the Maigaoqiao Entrepreneurship Park, and on four occasions each accepted RMB 500,000 given by the company's general manager, Wu XX.

In the first half of 2004, the defendant Pan Yumei took advantage of the convenience of his position as Secretary of the Working Committee of the Maigaoqiao Subdistrict to provide assistance to a Nanjing development company in obtaining a reduction of RMB 1 million in fees for the transfer of the Jinqiao Tower project, and, when purchasing a property developed by the other party, accepted payment by the company's general manager, Xu XX, of the price difference and related taxes and fees of over RMB 610,000 (the housing price including taxes and fees was RMB 1,210,817, of which Pan paid RMB 600,000). In April 2006, because the procuratorial organ had learned from the accounts of Xu XX's company that Pan Yumei had paid only part of the price for the housing, Pan Yumei repaid Xu XX RMB 550,000.

In addition, from before the Spring Festival of 2000 through December 2006, the defendant Pan Yumei took advantage of the convenience of his position to successively accept RMB 2.01 million and USD 490,000 from Gao XX, a Party branch secretary of the Maigaoqiao Subdistrict Office and concurrently general manager of a Nanjing trading company, and USD 10,000 from Fan XX of a Zhejiang real estate group's Nanjing real estate company. From 2002 to 2005, the defendant Chen Ning took advantage of the convenience of his position to successively accept RMB 210,000 from Gao XX, a Party branch secretary of the Maigaoqiao Subdistrict Office, and RMB 80,000 from Liu XX, a deputy director of the Maigaoqiao Subdistrict Office.

In sum, the defendant Pan Yumei accepted bribes of over RMB 7.92 million and USD 500,000 (equivalent to RMB 3,981,234), totaling over RMB 11.902 million; the defendant Chen Ning accepted bribes of RMB 5.59 million.

Judgment

On February 25, 2009, the Nanjing Intermediate People's Court of Jiangsu Province rendered Criminal Judgment (2008) Ning Xing Chu Zi No. 49, finding the defendant Pan Yumei guilty of the crime of accepting bribes and sentencing him to death with a two-year reprieve, deprivation of political rights for life, and confiscation of all personal property; and finding the defendant Chen Ning guilty of the crime of accepting bribes and sentencing him to life imprisonment, deprivation of political rights for life, and confiscation of all personal property. After the judgment was pronounced, Pan Yumei and Chen Ning appealed. On November 30, 2009, the Jiangsu Provincial High People's Court, on the same facts and grounds, rendered Criminal Ruling (2009) Su Xing Er Zhong Zi No. 0028, dismissing the appeal and affirming the original judgment, and approving the first-instance criminal judgment sentencing the defendant Pan Yumei to death with a two-year reprieve, deprivation of political rights for life, and confiscation of all personal property for the crime of accepting bribes.

Reasoning

The effective judgment of the court held as follows.

Regarding the defense opinion of the defendants Pan Yumei and Chen Ning and their defenders that the RMB 4.8 million in "profits" obtained by the two defendants and Chen XX through jointly establishing Duohe Company to develop the land should not be determined as bribes: Upon examination, Pan Yumei then served as Secretary of the Working Committee of the Maigaoqiao Subdistrict, and Chen Ning then served as Director of the Maigaoqiao Subdistrict Office, and both bore leadership or coordination duties with respect to investment promotion and land transfer in the Maigaoqiao Entrepreneurship Park. Each of them took advantage of his own positional convenience to provide assistance to Chen XX in obtaining land in the Entrepreneurship Park at a low price, which constituted taking advantage of the convenience of position to

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seek benefits for another person. During this period, Pan Yumei and Chen Ning discussed with Chen XX the establishment of a company to develop the above land. The registered capital of the company came entirely from Chen XX; Pan Yumei and Chen Ning neither actually contributed capital nor participated in the operation and management of the company. Therefore, the RMB 4.8 million that Pan Yumei and Chen Ning respectively obtained in the name of jointly establishing a company with Chen XX to develop the land was not the so-called company profit, but rather part of the proceeds obtained after using the convenience of position to enable Chen XX to obtain the land at a low price and resell it. This reflected the essence of the exchange of power for money in the crime of accepting bribes, constituted disguised bribery under the name of a jointly-run company, and should be punished as acceptance of bribes.

Regarding the defense opinion of the defendant Pan Yumei and his defender that Pan Yumei had not actually sought benefits for Xu XX: Upon examination, when petitioner Xu XX gave bribes to Pan Yumei, he requested a reduction of RMB 1 million in fees in the transfer of the Jinqiao Tower project. Pan Yumei, knowing that Xu XX had a matter to entrust, accepted the bribe; although the entrusted matter was not realized, "seeking benefits for another person" includes the acts of promising, implementing, and realizing benefits at different stages, and as long as any one of them exists, it constitutes seeking benefits for another person. A promise to "seek benefits for another person" may be determined from an express or implied declaration of intent to seek benefits for another person. Where Pan Yumei accepted property from another person while knowing that the person had a matter to entrust, this should be deemed a promise to seek benefits for that person; whether benefits were actually sought for or obtained is merely a matter of circumstance and does not affect the determination of acceptance of bribes.

Regarding the defense opinion of the defendant Pan Yumei and his defender that Pan Yumei's purchase of Xu XX's property should not be determined as bribery: Upon examination, the market price of the property purchased by Pan Yumei, including taxes and fees, should have been over RMB 1.21 million in total, but Pan Yumei paid only RMB 600,000, clearly lower than the local market price at the time of the transaction. Pan Yumei took advantage of the convenience of his position to seek benefits for the petitioner and purchased the property from the petitioner at a price clearly lower than the market price. This was a means of concealing the essence of the exchange of power for money in bribery by paying a certain amount in form, and should be punished as acceptance of bribes, with the amount of the bribe calculated on the basis of the difference between the local market price at the time of the transaction and the price actually paid.

Regarding the defense opinion of the defendant Pan Yumei and his defender that, because Pan Yumei had paid the price difference for the property to Xu XX before the case was discovered, it should not be determined as bribery: Upon examination, in April 2006, before the case was discovered, Pan Yumei repaid Xu XX RMB 550,000 of the price difference for the property developed by Xu XX, nearly two years after his low-price purchase of the housing in the first half of 2004, and did not promptly repay the substantial price difference. Pan Yumei's repayment was an act of returning illicit gains performed for the purpose of concealing the crime, after Xu XX had been summoned by the procuratorial organ in connection with another case and the procuratorial organ had learned from the accounts of Xu XX's company that Pan Yumei had paid only part of the price for the housing. Therefore, Pan Yumei's repayment of the housing price difference to conceal the crime did not affect the determination of his crime of accepting bribes.

In summary, the above defense opinions raised by the defendants Pan Yumei and Chen Ning and their defenders could not be established and were not adopted. Pan Yumei and Chen Ning, as state functionaries, each took advantage of the convenience of their own positions to seek benefits for others and accepted property from others, each constituting the crime of accepting bribes, and the amounts of the bribes were especially huge. However, in light of the fact that both defendants truthfully confessed their crimes after being brought to justice with a good attitude toward admitting guilt, voluntarily confessed the same kind of remaining crimes not yet known to the judicial authorities, returned part of the illicit gains before the case was discovered, and cooperated in the recovery of all the illicit gains after the case was discovered — all

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circumstances warranting lighter punishment — the courts of first and second instance rendered the above judgments in accordance with the law.

Relevant Legal Provisions

Article 385, paragraph 1 of the Criminal Law of the People's Republic of China.

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