SPC Guiding Case No. 56: Han Fengbin v. Inner Mongolia Jiujun Pharmaceutical Co., Ltd. et al. (Product Liability Dispute — Jurisdiction Objection)

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Keywords

Civil litigation / objection to jurisdiction / period of retrial

Holding

Where a party did not raise an objection to jurisdiction during the period for submitting a statement of defense in the first-instance trial, and raises the objection to jurisdiction at second instance or upon remand for retrial following retrial, the people's court shall not examine it.

Basic Facts

In the case of Han Fengbin, plaintiff, against the defendants Inner Mongolia Jiujun Pharmaceutical Co., Ltd. ("Jiujun Pharmaceutical"), Shanghai Yunzhou Commercial Building Co., Ltd. ("Yunzhou Commercial Building"), Shanghai Media Group ("Shanghai TV"), and Dalian Hongyan Pharmacy Co., Ltd. ("Hongyan Pharmacy"), a dispute over compensation for damages caused by product quality, the Intermediate People's Court of Dalian City, Liaoning Province rendered Civil Judgment (2007) Da Min Quan Chu Zi No. 4 on September 3, 2008. Jiujun Pharmaceutical, Yunzhou Commercial Building and Shanghai TV were dissatisfied and appealed to the Higher People's Court of Liaoning Province. That court rendered Civil Judgment (2008) Liao Min Yi Zhong Zi No. 400 on May 24, 2010. After the judgment became legally effective, the retrial applicants Jiujun Pharmaceutical and Yunzhou Commercial Building applied to the Supreme People's Court for retrial.

On December 22 of the same year, the Supreme People's Court rendered Civil Ruling (2010) Min Shen Zi No. 1019, deciding to take up the case for retrial, and on August 3, 2011 rendered Civil Ruling (2011) Min Ti Zi No. 117, revoking the first-instance and second-instance civil judgments and remanding the case to the Intermediate People's Court of Dalian City, Liaoning Province for retrial. In the retrial, Jiujun Pharmaceutical and Yunzhou Commercial Building raised an objection to jurisdiction.

Judgment

On February 29, 2012, the Intermediate People's Court of Dalian City, Liaoning Province rendered Civil Ruling (2011) Da Shen Min Zai Chu Zi No. 7, holding that its retrial of the case was conducted upon the instruction of the Supreme People's Court, and that one of the defendants, Hongyan Pharmacy, had its domicile in Zhongshan District, Dalian City, Liaoning Province, and therefore ruled to dismiss the objection to jurisdiction raised by Jiujun Pharmaceutical and Yunzhou Commercial Building. Jiujun Pharmaceutical and Yunzhou Commercial Building appealed. On May 7, 2012, the Higher People's Court of Liaoning Province rendered Civil Ruling (2012) Liao Li Yi Min Zai Zhong Zi No. 1, holding that when Han Fengbin brought the lawsuit in the Intermediate People's Court of Dalian City, he had already named Hongyan Pharmacy, whose domicile is in Dalian City, as one of the defendants, and that in the course of the original trial he had submitted the relevant evidence of purchasing the medicine at Hongyan Pharmacy, which had undergone cross-examination at trial. Hongyan Pharmacy was therefore a proper defendant, and the Intermediate People's Court of Dalian City had jurisdiction over the case; it accordingly ruled to dismiss the appeal and

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affirm the original ruling. Jiujun Pharmaceutical and Yunzhou Commercial Building subsequently applied separately to the Supreme People's Court for retrial. On March 27, 2013, the Supreme People's Court rendered Civil Ruling (2013) Min Zai Shen Zi No. 27, dismissing the retrial applications of Jiujun Pharmaceutical and Yunzhou Commercial Building.

Reasoning

The effective judgment held as follows. As to the period for a party to raise an objection to jurisdiction, Article 127 of the Civil Procedure Law of the People's Republic of China (the "Civil Procedure Law") expressly provides that a party that has an objection to jurisdiction shall raise it during the period for submitting a statement of defense. A party that does not raise an objection to jurisdiction and responds to the action by filing a defense shall be deemed to have accepted that the people's court accepting the action has jurisdiction. It follows that where a party did not raise an objection to jurisdiction during the period for submitting a statement of defense in the first-instance trial, and raises the objection to jurisdiction only at second instance or retrial of the case, then, under the principle of the constancy of jurisdiction, the jurisdiction over the case has already been determined, and the people's court shall not examine it. In this case, Jiujun Pharmaceutical and Yunzhou Commercial Building were parties whose case was ruled to be remanded to the first-instance court for retrial through the trial supervision procedure, and they raised the objection to jurisdiction only during the retrial by the first-instance court. At the very first first-instance trial, the complaint of the plaintiff Han Fengbin was served on Jiujun Pharmaceutical and Yunzhou Commercial Building, and they did not raise any objection to jurisdiction during the period for filing a defense, indicating that they had already accepted the jurisdiction of the first-instance court and that jurisdiction had been determined. Moreover, the case went through first instance, second instance and retrial, and the procedures it had undergone still had procedural effect and could not be reversed. This case is one remanded to the first-instance court for retrial through the trial supervision procedure. Although it is tried under the first-instance procedure, a case remanded for retrial is not an initial-trial case, and jurisdiction over the case had long been determined. As to jurisdiction, because the civil procedure commences with the plaintiff's filing of the action, jurisdiction over the case should be determined by reference to the time of filing; a court that had jurisdiction over the case at the time of filing shall not have its jurisdiction affected by changes in the facts establishing jurisdiction that occur during the course of the proceedings. Once the case is brought to the people's court, accepted and filed by the people's court, and the complaint served on the defendant, and the defendant did not raise an objection to jurisdiction during the period for filing a defense, this indicates that the court of jurisdiction over the case has been determined, and thereafter the court of jurisdiction shall not be changed on account of changes in the party's domicile or habitual residence or changes in the administrative division. On the premise that jurisdiction has been determined, a party is no longer entitled to raise an objection to jurisdiction. If a party could still raise an objection to jurisdiction in a retrial, it would undoubtedly place the already-stable proceedings in an uncertain state, undermining the stability and orderliness of the proceedings, delaying the litigation, not only reducing litigation efficiency and wasting judicial resources, but also being unfavorable to the resolution of the dispute. Therefore, on the basis of the principle of the constancy of jurisdiction, the certainty of the proceedings, and the requirements of fairness and efficiency, an objection to jurisdiction raised again by a party in a retrial case cannot be supported. Accordingly, the objection to jurisdiction raised by Jiujun Pharmaceutical and Yunzhou Commercial Building in this case had no legal basis, and the original ruling dismissing their objection to jurisdiction was not improper.

In conclusion, the retrial applications of Jiujun Pharmaceutical and Yunzhou Commercial Building did not satisfy the circumstances requiring retrial under Article 200(6) of the Civil Procedure Law. Therefore, pursuant to Article 204(1) of that Law, it was ruled to dismiss the retrial applications of Jiujun Pharmaceutical and Yunzhou Commercial Building.

(Judges of the effective judgment: Zhang Zhihong, Ning Sheng, Jia Yaqi)

Relevant Legal Provisions

Article 127 of the Civil Procedure Law of the People's Republic of China.

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