SPP Guiding Case No. 227: Protest Case — Yang Mou v. a Chengdu Medical Aesthetics Company (Service Contract Dispute)

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SPP Guiding Case No. 227 (Procuratorial Example No. 227)

Keywords

Supervision of effective civil judgments; medical aesthetics; consumer fraud; indivisible goods or services; base amount for punitive damages.

Holding

In a consumer fraud dispute, where only part of the goods or services provided by the operator constitutes fraud, if the fraudulent goods or services constitute the core and essential part of the whole goods or services and are indivisible from the whole, the operator shall bear punitive damages based on the overall price of the goods or services it provided, rather than bear punitive damages only in respect of the fraudulent part. Where a procuratorial organ discovers that a people's court has erred in determining the scope of punitive damages for consumer fraud, it shall exercise supervision in accordance with the law.

Basic Facts

On March 16, 2018, Yang Mou purchased from a medical aesthetics company in Chengdu a "comprehensive rhinoplasty and nasal repair" medical aesthetics service at a price of RMB 40,000. When receiving Yang Mou, the staff of the Chengdu medical aesthetics company explained that the price difference between domestic expanded polytetrafluoroethylene (e-PTFE) implants and imported e-PTFE implants was not significant, but that imported e-PTFE implants felt more natural, so Yang Mou chose to use an imported e-PTFE implant. The order on Yang Mou's mobile phone also showed that the product purchased was "imported e-PTFE autologous rib comprehensive rhinoplasty plus nasal repair, etc."

On March 18, 2018, the Chengdu medical aesthetics company performed rhinoplasty repair surgery for Yang Mou, using a domestic e-PTFE implant produced by a Shanghai medical materials company. Because Yang Mou was dissatisfied with the post-operative nasal tip shape, on February 26, 2019, the Chengdu medical aesthetics company performed nasal tip plasty for Yang Mou again. In early March of the same year, Yang Mou developed post-operative infection symptoms. On October 9 of the same year, Yang Mou requested post-operative improvement, and the Chengdu medical aesthetics company performed rhinoplasty for Yang Mou again.

In January 2020, Yang Mou filed a lawsuit with the Qingyang District People's Court of Chengdu (the court of first instance), on the grounds that the Chengdu medical aesthetics company, in the course of providing medical aesthetics services, violated the contract by using a domestic e-PTFE implant without authorization, constituting consumer fraud, and requested an order that the company bear punitive damages at three times the medical aesthetics service price of RMB 40,000. The court of first instance held that the company and Yang Mou had reached an agreement on the use of imported e-PTFE material for the rhinoplasty repair surgery when establishing the medical aesthetics service contract, but the company actually used domestic e-PTFE material, constituting consumer fraud, and that pursuant to Article 55 of the Law of the People's Republic of China on the Protection of Consumer Rights and Interests, it should bear liability at three times the surgery fee. Accordingly, it ordered the company to compensate Yang Mou RMB 120,000.

After the first-instance judgment, the company appealed to the Chengdu Intermediate People's Court (the court of second instance). The court of second instance held that the company had indeed committed fraud

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in failing to provide the imported e-PTFE implant as agreed, but that the other medical aesthetics services had already been performed and Yang Mou had not submitted evidence proving fraud in the other items, so the scope of treble damages should be limited to the e-PTFE implant portion. Accordingly, it ordered the company to compensate Yang Mou RMB 19,500 at three times the price of the e-PTFE implant.

After the second-instance judgment, Yang Mou applied for retrial to the Sichuan Provincial High People's Court and was rejected.

Judgment

Acceptance and review. Yang Mou, dissatisfied with the effective judgment, applied for supervision to the Chengdu Municipal People's Procuratorate. Upon review, the Chengdu Municipal People's Procuratorate considered that the second-instance judgment's limitation of the company's treble damages for consumer fraud to the e-PTFE implant portion was an erroneous application of law, and that there was no basis for calculating punitive damages based on the e-PTFE implant price of RMB 6,500. It accordingly requested the Sichuan Provincial People's Procuratorate to lodge a protest.

Supervision opinions. On November 8, 2021, the Sichuan Provincial People's Procuratorate lodged a protest with the Sichuan Provincial High People's Court. It argued that the agreement reached between Yang Mou and the company was to receive comprehensive nasal reshaping services. Although the "surgery notification form" submitted by Yang Mou in the first instance listed surgical items including "nasal septum extension", "columella extension" and "nasal tip reconstruction", the surgery performed on Yang Mou was the carving and suturing of the e-PTFE implant with her own costal cartilage to form a complete nose, which was a medical aesthetics service; Yang Mou could not and had no need to purchase the e-PTFE implant separately. Yang Mou's payment voucher also proved that she received nasal medical aesthetics, and the three surgical items should not be calculated separately. The "medical aesthetics project price list" and "payment receipt" submitted by the company were unilaterally provided and not recognized by Yang Mou, and could not prove that the various surgeries she received could be independently and separately charged. By passing off a domestic e-PTFE implant as an imported one, the company violated the principle of good faith and should bear punitive damages. The second-instance judgment's splitting of the overall medical aesthetics service and calculating the treble damages based only on the e-PTFE implant price was erroneous in its determination of the scope of punitive damages; the company should bear treble damages based on the full price of RMB 40,000 paid by Yang Mou.

Result of supervision. On March 23, 2022, the Sichuan Provincial High People's Court adopted the protest opinions of the Sichuan Provincial People's Procuratorate and rendered a retrial judgment: the second-instance judgment was revoked, and the first-instance judgment — ordering the Chengdu medical aesthetics company to compensate Yang Mou RMB 120,000 — was affirmed.

Reasoning

(1) The punitive damages system for consumer fraud may apply to consumer-type medical aesthetics services. In a consumer-type medical aesthetics service contract, the patient does not undergo disease diagnosis and treatment for therapeutic and corrective purposes, but rather receives services and purchases products to satisfy personal living consumption needs of beautifying appearance, which is consistent with the characteristics of a consumer; a medical aesthetics service institution receives the service consideration paid by the patient and obtains profits through medical aesthetics services, which has the characteristics of an operator. Therefore, where consumer fraud exists in a dispute over a consumer-type medical aesthetics service contract, the punitive damages system under Article 55 of the Law of the People's Republic of China on the Protection of Consumer Rights and Interests may apply.

(2) The scope of punitive damages for consumer fraud shall be determined comprehensively in light of the agreed content of the contracting parties, the purpose of the contract and the position of the fraudulent part in the goods or services. In a consumer fraud dispute, when determining whether an operator bears punitive

damages based on the price of all goods or services or based on the price of the fraudulent part, the focus of review shall be the agreement of the parties and the position of the fraudulent goods or services in the overall goods or services. Where the goods or services purchased by the consumer form an indivisible whole, and the fraudulent goods or services cannot exist independently of the whole and constitute the core and essential part, the operator shall bear punitive damages based on the price of the overall goods or services rather than based on the price of the fraudulent part. In performing their duties, procuratorial organs shall accurately apply the punitive damages rules for consumer fraud, and where they discover that a people's court has erred in determining the scope of punitive damages, they shall exercise supervision in accordance with the law.

Relevant Legal Provisions

Article 55 of the Law of the People's Republic of China on the Protection of Consumer Rights and Interests.

Articles 200 and 208 of the Civil Procedure Law of the People's Republic of China (as amended in 2017, applicable to this case; now Articles 211 and 219 of the 2023 amendment).

Article 90 of the Rules for Civil Litigation Supervision by People's Procuratorates.

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