

84

Hong Kong Pei Run International Co., Ltd. v. Beihai Zhongding Co., Ltd. et al.

Citation: The Supreme People's Court's Civil Judgment No. Zhizhongzi 12/1999

Date of judgment: January 2, 2001

Procedural history

Due to the dispute over the contract for licensing the copyright in the motion picture entitled *Heroic Blood on Kunlun Pass*, Chen Dunde, the Beihai Zhongding Co., Ltd. (Zhongding), Guilin Energy Development Group Corporation (EDGC), Guangxi Farm and Industry Products Shopping and Marketing Service Center (the Center), Guangxi Senior Citizen Travel Corporation (SCTC), Guilin City Overseas Travel Corporation (GOTC), Guilin Changhong Trading Corporation (Changhong) and Binyang County People's Government (Binyang Government) sued the Hong Kong Pei Run International Co., Ltd. (Pei Run) and Nanning Tai'an Property Development Corporation (Tai'an) in the Guangxi Zhuang Autonomous Region Higher People's Court. In the first-instance judgment it was decided that the plaintiffs were paid RMB 6,500,000 yuan, Pei Run appealed to the Supreme People's Court.

Issue

Whether a copyright licensing contract concluded by a natural person who is not a copyright proprietor is valid?

Facts

The Guangxi Movie Studio (GMS) concluded an agreement with Chen Dunde concerning the motion picture entitled *Heroic Blood on Kunlun Pass* (the Movie), in which it was agreed that Chen Dunde, as producer, organized a preparatory group, took charge of, and began to work on financ

ing, preparing equipment, selecting the cast and making play revision. Chen Dunde paid the GMS some managerial fees. In return, the GMS granted Chen Dunde the right to distribute the movie for two years when the movie was produced and passed the censorship by the Motion Picture Bureau. Chen, as producer, took care of the distribution of the movie copies and assumed the sole responsibility for the profits and losses. For the profits made from the distribution of the movie copies in the third and fourth years, the two parties would each get half of them; after the fourth year, the GMS would take back the right of distribution in the movie. The producer would make investment in the by-products of the movie, and 40% of the profits would go to the GMS.

After that, Chen Dunde concluded, in the name of the movie production team, contracts on fundraising for the movie with Zhongding, EDGC, the Center, SCTC, GOTC, Changhong, Binyang Government and Guangxi Liuzhou Communications School, in which it was agreed that the eight legal entities jointly invested a total of RMB 10 million yuan for the production and that the right of the domestic and overseas distribution of the movie in the first four years would be jointly owned by the production team, i.e. all the investors.

On June 22, 1995, Chen Dunde, as the producer, and Yang Xuequan as the representative of the investors, (Party A) entered into a contract with Pei Run (Party B), under which Party A assigned the right to distribute the movie, the by-products and all the relevant rights and interests to Party B.

The first-instance court held that Chen Dunde was the independent producer of the movie, organized the preparatory team and produced the movie with the investment of the seven entities, such as Zhongding et al.. Under the Agreement with the GMS, Chen Dunde enjoyed the four-year right in the distribution of the movie. In this period, Chen Dunde and Yang Xuequan, representing the investors, concluded an assignment contract with Pei Run. Both parties to the contract were entitled to conclude the contract, and at the time when the contract was concluded, Pei Run had already predicted the risk from the assignment of the right to distribute the movie in suit. The plaintiffs did not act in deception, and the contract was legally valid.

Pei Run argued in its appeal that as a natural person, Chen Dunde, who was not the proprietor of

the copyright in the movie, nor did he have the right to act as an agent, was not in a position to serve as the “producer” in legal sense, so he was not entitled to conclude the contract.

Rule of law

Article 15 of the Copyright Law as of 1990 *The director, playwright, lyricist, composer, cameraman and other authors of a cinematographic, television or video-graphic work shall enjoy the right of authorship in the work, while the other rights included in the copyright shall be enjoyed by the producer of the work.*

Reasoning

The “producer” of a cinematographic work in the meaning of the Copyright Law refers to the copyright proprietor. In the present case, the producer of the movie in suit was the GMS. Under the Agreement reached between the GMS and Chen Dunde, Chen was the “independent producer”, which was not one in the meaning of the Copyright Law, but a popular term that emerged in the course of development and reform of the comprehensive diversification of investment in movie production in China referring to an organizer of financing and actual production.

The agreement was valid made under the Agreement by the GMS, as the copyright proprietor of the movie in suit, on assigning the right of distribution and other relevant rights and interests of the property right in the copyright.

Chen Dunde concluded the Agreement with the GMS, on the basis of his representing the entities making the investment, and secured the right of distribution of the movie within a certain period of time. He, as the proprietor of the right, had the right to conclude the contract with Pei Run for them to enter into the civil relationships in connection with the matters of distribution of the movie and sharing the benefits therefrom.

Zhongding and other six entities were the real investors of the movie. Under the contract Chen Dunde concluded with the seven entities, they shared the four-year right of distribution and the relevant rights and interests in the movie. Chen Dunde and the seven investors, as one party, sold, in a lump sum, their relevant rights and interests in the movie to Pei Run by way of concluding the

contract with Pei Run. Both parties were entitled to conclude the contract, and the contract that the appellees sold, in a lump sum, their relevant rights and interests in the movie to Pei Run under the contract was a valid agreement. Whether Chen Dunde had the copyright in the movie or the right to distribute it as an agent did not have any impact on his entitlement to conclude the contract. The relevant property right the seven investors enjoyed in the movie on the basis of their investment and their agreement with Chen was not necessarily based on their legal relationship with the GMS.

Holding

Chen Dunde was not the copyright proprietor, but based on the fact that he, representing the entities making the investment, concluded the Agreement with the GMS, and secured the right of distribution of the movie for a certain period of time he had the right to conclude the contract with Pei Run for them to enter into the civil legal relationships in connection with the matters of distribution of the movie and sharing the benefits therefrom.