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## Guangdong Province Luoding City Linchan Chemical Engineering Plant et al. v. Zhuzhou Beneficiation Reagent Plant

*Citation: The Supreme People's Court's Civil Judgment No. Zhizhongzi 5/1999*

*Date of judgment: May 9, 2000*

### **Procedural history**

The Hunan Province Zhuzhou Beneficiation Reagent Plant (Zhuzhou Plant) sued, in the Hunan Province Zhuzhou City Intermediate People's Court, the Guangdong Province Luoding City Linchan Chemical Engineering Plant (Luoding Plant) and Liu Xianchi for joint infringement of its trade secret. After Luoding Plant raised opposition to the jurisdiction dispute, the case was transferred to the Hunan Province Higher People's Court. In the first-instance judgment, it was held that the Luoding Plant and Liu Xianchi infringed Zhuzhou Plant's trade secret. Luoding Plant and Liu Xianchi appealed to the Supreme People's Court; in the second-instance judgment, the former judgment was reversed and the case remanded. Upon retrial of the case, the first-instance court still held that infringement of trade secret was constituted. Luoding Plant and Liu Xianchi appealed, again, to the Supreme People's Court.

### **Issue**

Whether the lawsuit was instituted beyond the limitation of action?

### **Facts**

In May 1991, Luoding Plant bought from Liu Xianchi, employee of Zhuzhou Plant, all the secret technology of the equipment for making a drug (by the name "huangyao" in Chinese), and made the related equipment later.

In June 1992, Zhuzhou Plant reported to the Zhuzhou Plant Beiqu People's Procuratorate against Liu Xianchi for his crime of selling its technical information and embezzlement.

On December 20, 1994, the Zhuzhou Plant Beiqu People's Procuratorate sent Zhuzhou Plant a written prosecutorial suggestion for the latter to sue Liu Xianchi and Luoding Plant in the people's court for their infringement.

On December 20, 1994, Zhuzhou Plant sued, in the people's court, Luoding Plant and Liu Xianchi for their contributory infringement of the trade secret relating to the equipment for making the drug in suit.

Upon retrial of the case, the first-instance court, again, decided that the infringement of the trade secret was constituted.

Luoding Plant and Liu Xianchi appealed, arguing that Zhuzhou Plant's lawsuit against Luoding Plant instituted on December 20, 1994 was in excess of the limitation of action.

### **Rule of law**

Article 135 of the General Principles of the Civil Law *Except as otherwise stipulated by law, the limitation of action regarding applications to a people's court for protection of civil rights shall be two years.*

Article 137 *A limitation of action shall begin when the infringer knows or should know that his rights have been infringed.*

Article 140 *A limitation of action shall be discontinued if suit is brought or if one party claims for or agrees to fulfillment of its obligations. A new limitation of action shall be counted from the time of the discontinuance.*

### **Reasoning**

Concerning limitation of action

While Luoding Plant bought from Liu Xianchi, in May 1991, the technical secret and then made the relevant equipment, and Zhuzhou Plant did not sue Luoding Plant until December 1994, before the procuratorial authority made its procuratorial suggestion in December 1994, there was no evidence proving that Zhuzhou Plant then clearly knew about the infringement of its right by Luoding Plant. For this reason, Zhuzhou Plant's action brought on December 20 of the same year did not go beyond the limitation of action.

Besides, Zhuzhou Plant reported Liu Xianchi to the procuratorial authority, waited for the result, and then brought the civil action. In this case, the limitation of action should be deemed to be discontinued when Zhuzhou Plant made the report.

Therefore, Zhuzhou Plant's lawsuit against Luoding Plant and Liu Xianchi did not go beyond the limitation of action.

***Holding***

Zhuzhou Plant's lawsuit against Luoding Plant and Liu Xianchi brought on December 20, 1994 did not go beyond the limitation of action.