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## Case of Appeal Involving Trade Secret Infringement by Su Dongling et al.

*Citation: The Shenyang City Intermediate People's Court's Criminal Judgment No. Shenxingerzhongzi 259/2007*

*Date of judgment: November 6, 2007*

### **Procedural history**

The People's Procuratorate of the Shenyang High-tech Development District instituted public prosecution in the Shenyang High-tech Development District People's Court, accusing Su Dongling, Chen Zhongzheng, He Hongxu and Cai Yunliang of committing a crime of infringing trade secret. The criminal offence was established in the first-instance judgment. Su Dongling, et al. appealed to the Shenyang City Intermediate People's Court.

### **Issue**

Under the circumstance where a rightholder did not bring supplementary civil action in criminal proceedings in the people's court, whether civil damages could be imposed and property disposed of in the criminal judgment?

### **Facts**

Chen Zhongzheng was an employee of the Shenyang Science Instruments Development Center Co., Ltd. affiliated to the China Academy of Sciences (Shenyang Instruments), so were He Hongxu and Cai Yunliang.

In 2005, Su Dongling, Chen Zhongzheng, He Hongxu and Cai Yunliang jointly set up a company, with the capital they had jointly put respectively at 25%, 45%, 15% and 15%, the Shenyang Boyuan Science Instruments Co., Ltd. (Boyuang) with its business scope identical with, and products dealt in similar to, those of the Shenyang Instruments, and used the economic information at

their disposal and the reproduced technical drawings to do business for profits.

Baoyuan concluded contracts, with the Beijing Science and Technology University, et al., on design and manufacture of non-standard instruments and equipment worth RMB 3.45 million yuan, inflicting the Shenyang Instruments direct economic injury of RMB 1.039 million yuan.

In the first-instance judgment, it was held that Su Dongling and Chen Zhongzheng had committed the crime of trade secret infringement; they were respectively sentenced to fixed-term imprisonment of one year and six months with a reprieve of one year and six months, and imposed a fine of RMB 15,000 yuan; He Hongxu and Cai Yunliang had committed the crime of trade secret infringement; they were, respectively sentenced to fixed-term imprisonment of one year with a reprieve of one year, and imposed a fine of RMB 10,000 yuan. The four should pay for the damages of RMB 1.039 million yuan to the Shenyang Instruments according to the proportion of the capital they put in the corporation they had jointly set up. Meanwhile, order was also issued by the court to seize and detain Boyuan's suspected infringing articles and equipment, and return the same to the Shenyang Instruments, freeze, seize and detain and confiscate the tools, such as computers used for criminal purpose according to law.

Su Dongling, Chen Zhongzheng and He Hongxu mainly argued in their appeal that, when neither the procuratorial organization nor the infringer brought supplementary civil action, nor civil litigation instituted during the court trial, it was procedurally undue for the former court to have decided on the imposition of the civil damages in a criminal judgment.

### **Rule of law**

Article 1, paragraph one, of the Supreme People's Court's Provisions Concerning Issue of Scope of Supplementary Civil Action in Criminal Litigation *Any party suffering physical losses because of criminal infringement of his personal right or because of damage to or destruction of his property by a criminal may bring the supplementary civil action in criminal proceedings.*

### **Reasoning**

Su Dongling, Chen Zhongzheng, He Hongxu and Cai Yunliang had obtained and used the

rightholder's trade secret by unfair means, which had inflicted serious injury to the rightholder; their acts had constituted the crime of infringing said trade secret, and they should be punished therefor. However, the decision on civil damages and property disposal made in the former criminal judgment was legally groundless for these reasons. First of all, the rightholder in the present case did not bring a supplementary civil action in the people's court, that is, the party was missing that had brought the civil action. Besides, the present case fell outside the provision on the supplementary civil action of Article 1, paragraph one of the above Supreme People's Court's Provisions. Next, the act at issue was one of infringement of the rights and interests in the intellectual property of the trade secret owner, not one of disapprobation or disposal of the infringer's property, nor was the equipment seized and detained illegally acquired as it did not consist of all the infringing parts or components. Therefore, it was not a case to which the provision on confiscating and returning property as set forth in Article 64 of the above Supreme People's Court's Provisions should apply. Finally, the money under the contract that was frozen was that for the transaction of the Boyuan and its clients that were not involved in the present case. The civil relationship between them should not be regulated with the criminal judgment made in the case. In conclusion, it was undue to have made the decision on civil damages and property disposal in the criminal judgment.

### ***Holding***

Where a rightholder did not bring a supplementary civil action with a criminal action, decision on civil damages and property disposal in the criminal judgment should not be made.