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Shandong Province Tai'an City Suburbs Fuli Chemical Engineering Plant v. Wuhan Chemical Engineering Institute

Citation: The Supreme People's Court's Civil Judgment No. Zhizhongzi 20/1999

Date of judgment: July 18, 2000

Procedural history

The Shandong Province Tai'an City Suburbs Fuli Chemical Engineering Plant (Fuli) sued, in the Shandong Province Higher People's Court, the Wuhan Chemical Engineering Institute (WCEI), claiming damages for its breach of the technology assignment contract. In the first-instance judgment, both parties were held liable for the damages, with decision made that both share the losses at the ratio of 6:4. The WCEI appealed to the Supreme People's Court.

Issue

Division of the liability for breach of technology assignment contract

Facts

On March 9, 1995, Fuli concluded with the WCEI, an Agreement on Assignment of dL-NPX, in which specific requirements were made regarding the data of the technology from the WCEI.

Upon concluding the Agreement, the WCEI submitted to Fuli the technical data, including a set of dL-NPX block flowchart (draft) and a list of equipment. On the basis of the draft block flowchart, Fuli drew three flowcharts, bought equipment, and hired a local construction team to have commenced the construction and reconstruction of the old buildings in the absence of regular design and without going through the formalities of examination and approval of the construction by the

relevant authorities.

Later, the WCEI sent technicians, on several occasions, to Fuli to work on the installation and testing of the equipment. Upon repeated tests, they failed to make products of the required quality specified in the technical solution the WCEI provided.

The first-instance court held that the WCEI's technology, which was not well developed, inflicted economic losses to Fuli, causing the equipment and facilities for making dL-NPX that were newly made or re-made to lie idle and the waste of raw materials. Besides, the WCEI did not give proper instruction to Fuli; it sent technicians to work on the installation and testing of the equipment instead; hence, it should be mainly liable for the technology assignment and trial production. Besides, Fuli should also be held liable, to an extent, for the economic losses since upon receiving the technical data from the WCEI, it failed to entrust a proper design entity with the design according to the State's relevant regulations, and failed to submit its drawings to the competent authorities for examination and approval, which made it impossible to find out the technical flaw or problem and resulted in blind construction of the new workshops and reconstruction of the old ones. Accordingly, both parties were held liable for the injury at the ratio of 6:4..

Rule of law

Article 32 of the Implementing Regulation of the Technology Contract Law as of 1989 *In case of change or dissolution of a technology contract, the party at fault shall pay the other party in compensation of his or its injury; and if both parties are faulty, each shall bear their corresponding liabilities.*

Reasoning

The WCEI's technology fell short of the requirements under the contract after several pilot tests. Besides, where its assigned technology failed to meet the requirements in said tests, the WCEI gave instructions to Fuli to buy, install and test the equipment, and blindly carried out the trial production. Likewise, without completing the pilot testes and normal design, and going through the formalities of construction approval, Fuli bought the equipment and hired the local construction team to undertake the construction. Therefore, both parties should be equally liable for the re-

sultant losses.

Holding

Both parties should be equally liable for the losses inflicted for failure to execute the contract.