

73

Gao Xiaohua v. Chongqing Chen Kezhi Cultural and Art Communication Co., Ltd., et al.

Citation: The Chongqing City Higher People's Court's Civil Judgment No. Yugaofaminzhongzi 129/2006

Date of judgment: October 29, 2006

Procedural history

Gao Xiaohua and Lei Zhuhua sued, in the Chongqing City No. 1 Intermediate People's Court, the Chongqing Chen Kezhi Cultural and Art Communication Co., Ltd. (Chen Kezhi) for plagiarizing their work of oil painting. In the first-instance judgment, it was decided that Chen Kezhi's act did not constitute an infringement. Gao Xiaohua appealed to the Chongqing City Higher People's Court.

Issue

Whether drawing on the objective, historical facts or natural geomorphology depicted in another person's work constituted plagiarism and infringement.

Facts

To bid for the half-view painting exhibition project on the theme "Catastrophic Bombardment of Chongqing" held by the "Chongqing · China Three Gorges Museum" Gao Xiaohua and Lei Zhuhua created together the oil painting entitled "Catastrophic Bombardment of Chongqing" to bid for the project. Later, Chen Kezhi entered another oil painting also entitled "Catastrophic Bombardment of Chongqing" for the second round tendering; Chen Kezhi was previously exposed to Gao Xiaohua's work.

The first-instance court held that infringement by plagiarism was one form of infringement by reproduction. One of the basic principles for judging an infringement by reproduction was to determine whether the allegedly infringing work contained the original creation of the copyright owner's original work in a non-creative manner. The similar theme and contents of the two works in suit were not subject matters protected under the Copyright Law. The plaintiffs' painting presented by selecting particular geomorphologic features was in a very distinct style, but they did not enjoy the exclusive right to use it. The two works in suit not exactly identical in global composition, and different in local presentation indicated the originality of the defendant's work, and showed that the work was not one that contained the original creation of the plaintiffs' work in a non-creative manner. For this reason, the defendant did not infringe their work by plagiarism.

Gao Xiaohua argued in his appeal, that the two oil paintings were identical or similar in terms of conception, form and composition of creation. While the natural geomorphologic features was not susceptible to the protection of the Copyright Law, the appellant's intellectual presentation and depiction of it in his work should be protected under the Law.

Chen Kezhi defended that, while the two works depicted the same historical event, they were different in creative conception, forms of presentation and composition.

Reasoning

While it could be determined that Chen Kezhi had been exposed to Gao Xiaohua's work, and it was possible for it to draw on Gao Xiaohua's creative conception, it was necessary, to determine infringement by plagiarism, to decide on whether Chen Kezhi reproduced, in its work, the original form of expression of Gao Xiaohua's work. In the present case, it should be affirmed that Gao Xiaohua had made efforts to find the scene, and choose the perspective. But the Copyright Law protected the original form of expression in a work, not the objective historical events or natural geomorphology. The oil painting in suit depicted the natural geomorphology of Chongqing, the geographic feature of the objectively existent Yuzhong Peninsula, which, lying in the public domain, was not susceptible to the protection under the Copyright Law. It was improper to protect the scene and the perspective of the painting as the original form of expression under the Copyright Law. Therefore, Chen Kezhi did not reproduce, in its work, the original form of expression of Gao

Xiaohua's work, nor did Chen Kezhi's work constitute an infringement of Gao Xiaohua's work by plagiarism.

Holding

The objective historical events or natural geomorphologic features lay in the public domain, and were not susceptible to the protection under the Copyright Law. Merely drawing on the objective historical events or natural geomorphology of another party's work did not constitute an infringement by plagiarism.