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Liu Guochu v. Ye Yushan

Citation: The Sichuan Province Higher People's Court's Civil Judgment No. Chuanfanminshangzi 7/1990

Date of judgment: December 1, 1990

Procedural history

Liu Guochu sued Ye Yushan, in the Sichuan Province Chongqing City Intermediate People's Court, for infringement of his copyright in the Group Sculptures of Gele Mountain Martyrs. The first-instance court found Ye Yushan was the copyright owner of the Group Sculptures of Gele Mountain Martyrs and not infringing Liu's right. Liu Guochu appealed to the Sichuan Province Higher People's Court.

Issue

Whether one who was involved in making copyrighted works enjoys the copyright.

Facts

In September 1981, Ye Yushan was invited by the Chongqing Committee of the Communist Youth League, et al. to create the Group Sculptures of Gele Mountain Martyrs without remuneration to be paid thereto, and Liu Guochu was assigned by the above entities to be in charge of the liaison work in connection with the project. In November 1981, Ye Yushan finished and put on display his first draft of said group sculptures, and illustrated the theme and process of his creation; Liu Guochu displayed the model of the Group Sculptures of Gele Mountain Martyrs made to illustrate the location and environment of the group sculptures. In 1982, Ye Yushan finished the second draft of the group sculptures on the basis of the first. Later Ye Yushan and Liu Guochu directed workers to make the enlarged framework according to the basic shape required in the two

drafts. Ye Yushan often gave his instruction on the work or made some revisions of it. Liu Guochu participated in making the framework under Ye Yushan's direction and made some suggestions, some of which were adopted by Ye Yushan that were in line with the theme of creation and the way of depiction. In the early 1983, the enlargement was completed. Ye Yushan et al. made enlargement again, and put a finishing touch on the works of the Group Sculptures of Gele Mountain Martyrs in 1986.

The first-instance court held that the copyright in the Group Sculptures of Gele Mountain Martyrs was owned by Ye Yushan.

Liu Guochu appealed, claiming his right of co-authorship in the works on the ground that he had worked on the creation of the work in cooperation with Ye Yushan.

Rule of law

Article 94 of the General Principles of the Civil Law *Citizens and legal persons shall enjoy the copyright, and shall be entitled to sign their names as authors, issue and publish their works, and obtain remuneration under the law.*

Reasoning

The work of Group Sculptures of Gele Mountain Martyrs was designed and created by Ye Yushan who was entrusted by the entities that first invited him to undertake the project, and Ye Yushan independently made the first draft. Besides, Ye Yushan personally engaged in and guided the work on the enlargement of the group sculptures. The enlargement was the same as the first draft in the theme, overall structure, basic shape and way of depiction, with little substantial changes made. Also, the changes in the enlargement represented improvements made under Ye Yushan's direction, and with his own participation and acceptance. Accordingly, Ye Yushan was the proprietor of the copyright in the group sculptures.

Liu Guochu was not invited to create the work, nor did he conclude a contract orally or in writing with Ye Yushan for cooperation in the creation. While involved in and made some suggestions on the preparation of the enlargement, it was up to Ye Yushan to decide whether to accept the sug-

gestions or not. Accordingly, Liu Guochu was not a co-proprietor of the copyright in the group sculptures in suit.

Holding

Ye Yushan was the sole proprietor of the copyright in the group sculptures in suit, and Liu Guochu did not enjoy the copyright in the works.