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Yan Yong v. Yongcheng City Cultural Relics and Tourism Administration

Citation: The Henan Province Higher People's Court's Civil Judgment No. Yufaminsanzhongzi 7/2006

Procedural history

Yan Yong sued, in the Henan Province Shangqui City Intermediate People's Court, the Yongcheng City Cultural Relics and Tourism Administration (YCRT) and the Yongcheng City Mangdanshan Tourism Development co., Ltd. (Mangdangshan), for infringement of the copyright of his father Yan Hongjun in the Tablet of "Founding Emperor of Han Dynasty Cutting Snake Tablet" (the Tablet). In the first-instance judgment, Yan Yong was found not enjoy the copyright in the Tablet. Yan Yong appealed to the Henan Province Higher People's Court.

Issue

1. Whether the reproduction of an ancient tablet was a work as mentioned in the Copyright Law?
2. Whether the reproducer of the ancient tablet enjoyed the copyright in the reproduced tablet?
3. Whether the profile of the figure on the reproduced tablet constituted a work as mentioned in the Copyright Law?

Facts

The Founding Emperor of Han Dynasty Cutting Snake was a legend about the uprising led by Liu Bang, founding emperor of the Han Dynasty, after killing a snake. The Tablet was erected in 1571

in Yongcheng County in memory of this uprising. It had been eroded by the weather for hundreds of years. In 1982, the former Shangqui Prefecture Government and the Yongcheng County People's Government allocated special fund for the reconstruction of the Tablet. Yan Shumei was assigned to put in all the missing words in the inscription on the Tablet, and Zheng Zhixiao to write the inscription in his own calligraphy. Yan Hongjun, the plaintiff's father, carved the Tablet with the inscription and the base thereof after the shape of the original Tablet and the inscription written by Zheng Zhixiao by artificial cutting, engraving and polishing, for which he was remunerated RMB 800 yuan then. The Tablet was erected at the crossroads downtown. On the Tablet, lit by the light of vehicles passing by, was seen a vivid figure shadow in a pose of drawing sword to cut a snake in 1984. In 1992, the cultural relics department built walls around the Tablet, selling tickets for visit to the Tablet. Later, the YCRT was in charge of the business operation. In July 2004, the YCRT transferred the right of operation to the Mangdangshan.

Yan Yong alleged that Yang Hongjun should enjoy the copyright in the Tablet, and YCRT and Mangdangshan's acts of building the walls and selling tickets for visiting the Tablet seriously infringed the legitimate rights and interests of the legitimate heir to the copyright.

The first-instance court held that on the tablet Yan Hongjun re-carved the profile of the figure lit at night was clearly not the result of Yan Hongju's conscientious act, nor was the profile of the figure a product of independent conception and creation, but a natural phenomenon discovered by chance. Yan Hongjun re-carved the Tablet after the original Tablet according to the requirement of the relevant administrative agencies, of which the global shape, structure and the content of inscription were in existence before and which required no extension of the imagination. For this reason, the reproduced Tablet was not an origin work, so it was not one susceptible to the protection under the Copyright Law; hence Yan Hongju did not enjoy the copyright in the Tablet.

Rule of law

Article 3 of the Copyright Law *For the purposes of this law, the term "works" includes, among other things, works of literature, art, natural sciences, social sciences, engineering and technology, which are created in any of the following forms: ...*

Rule 2 of the Implementing Regulations of the Copyright Law *The term “works” used in the Copyright Law shall refer to original intellectual creations in the literary, artistic and scientific domain, insofar as they are capable of being reproduced in a certain tangible form.*

Rule 4 of the Implementing Regulations of the Copyright Law *The works as mentioned in the Copyright Law and these Regulations shall refer to the following: ... (8) works of fine art are two-dimensional or three-dimensional works created in lines, colours or other media which, when being viewed, impart aesthetic effect, such as works of painting, calligraphy and sculpture;...*

Reasoning

1. Whether the Tablet reproduced in 1982 was a work in the sense of the Copyright Law?

The Tablet in suit was a reproduction of the Tablet erected in 1571, offering a wonderful view with aesthetic appeal, which conformed to the basic features of a work as mentioned in the Copyright Law, and should be protected thereunder.

2. Whether Yan Hongjun enjoyed the copyright in the reproduced Tablet?

Whether Yan Hongjun should enjoy the copyright in the Tablet should be determined depending on whether he had put in his original conception or not when carving the Tablet. The evidence from both parties before court showed that the reproduction of the Tablet in 1982 was sponsored by the local government, with funds allocated thereby. In the course of carving, according to the specific requirements and standards of carving of the Yongcheng County Cultural Center and Mangshan Commune, Yan Shumei put in all the missing words in the inscription, Zheng Zhixiao wrote the inscription in his own calligraphy, and Yan Hangjun carved the Tablet with the inscription and base thereof after the form of the original ancient Tablet. On the Tablet was explicitly stated that the Tablet was reproduced by the Shangqui Prefecture Government and Yongcheng County People’s Government. For this reason, although the Tablet was carved with his cutting, engraving and polishing, what he carved as a whole was not based on Yan Hongjun’s own original idea and creation, rather, a reconstruction of the original one left in history. Yan Hongjun’s reproduction of the Tablet embodied a legal relationship in terms of provision of labor, and his labor

was remunerated correspondingly. Therefore, Yan Hongjun should not enjoy the copyright in the Tablet.

3. Whether the profile of the figure on the Tablet was original?

The evidence from Yan Yong did not prove that the profile of the figure on the Tablet was conceived beforehand, and created by Yan Hongjun by his cutting, engraving and polishing or expressed by such means; it did not possess originality; there was no evidence showing that, after the completion of the Tablet, Yan Hongjun indicated, in a certain manner, that the above-mentioned phenomenon was related to his conscientious creation. Besides, the profile of the figure on the Tablet did not have the characteristic of a reproduction in any tangible form. Therefore, Yan Yong's argument that the profile of the figure was Yan Hongjun's creative work was not tenable.

Since Yan Hongjun should not enjoy the copyright in the reproduced Tablet, and the profile of the figure on the Tablet could not be determined as an independently created work in the sense of the Copyright Law, Yan Yong's claim to inherit the right in the reproduced Tablet was factually and legally groundless.

Holding

1. The Tablet reproduced in 1982 offered a wonderful view with aesthetic appeal, which conformed to the basic features of a work as mentioned in the Copyright Law, and should be protected thereunder.
2. The Tablet Yan Hongjun re-carved was not original, and he did not enjoy the copyright in it.
3. No evidence proved that the profile of the figure on the Tablet was conceived beforehand, and created by Yan Hongjun by his cutting, engraving and polishing or expressed by such means; it did not possess originality. Besides, the profile did not feature a tangible form of reproduction; hence, it did not constitute a work.