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Guangzhou International Huaqiao Investment Corporation v. Jiangsu Changjiang Motion Picture Industry Co., Ltd.

Citation: The Supreme People's Court's Civil Judgment No. Minsanzhongzi 3/2001

Date of judgment: January 17, 2002

Procedural history

The Guangzhou International Huaqiao Investment Corporation (Huaqiao) sued, in the Jiangsu Province Higher People's Court, the Jiangsu Changjiang Motion Picture Industry Co. Ltd. (Changjiang) for breach of the contract it concluded with Changjiang for licensing the right of distribution of the motion picture in suit. In the first-instance judgment, it was established that Changjiang concealed the box-office revenue, and its act constituted breach of the contract. Huaqiao and Changjiang respectively appealed to the Supreme People's Court.

Issue

1. Whether a licensing contract for showing the motion picture concluded by a company that had no Motion Picture Production and Distribution Licenses with another party was valid?
2. Determination of the party under the burden to prove the amount of the box-office revenue concealed by the licensee.
3. Whether the imposition of the damages ten times the concealed amount of the box-office revenue was contrary to the law?

Facts

Huaqiao concluded, in 1997, a contract with the Nanjing Motion Picture Studio (the Studio) to jointly produce the motion picture entitled *Be Mother and Son again in Next Life* (the motion picture in suit). Huaqiao would solely make the investment for the production, and own the copyright in the motion picture to be produced.

Huaqiao did not have the motion picture production and distribution licenses.

In 1998, Huaqiao licensed Changjiang to show the motion picture in suit in 13 cities of Jiangsu Province, and the two parties concluded the Contract for Sharing the Box-office Revenue and for Distributing and Showing the Motion Picture, in which it was agreed that Changjiang was required to check the truthfulness of the box-office revenue made from the motion picture in suit as reported by the motion picture companies and cinemas in various cities and counties. If Huaqiao found any concealment of the box-office revenue, Changjiang should be liable for damages ten times the concealed amount.

In the first-instance judgment, the contract was found valid. Since it was not compatible with the principle of compensation of actual damages as set forth in the Chinese Contract Law to claim damages ten-times the actual damages, the amount of damages was determined, according to the circumstances of the case, at over RMB 1.76 million yuan, five times the concealed amount of the box-office revenue.

Rule of law

Article 3 of the Provisional Provisions Concerning Motion Pictures Trade *The seller in the trade of motion pictures must have the Motion Picture Production License or the Motion Picture Distribution License issued by the Government agency.*

Reasoning

1. While, having no motion picture production and distribution licenses, Huaqiao was not directly involved in producing and distributing the motion picture in suit. The parties that actually had the licenses. Beside the motion picture in suit had passed the censorship and was issued the li

cense to show the motion picture by the competent administrative agency. Huaqiao's licensing Changjiang to distribute the motion picture in suit and sharing the box-office revenue did not, at all, affect the normal order of the motion picture market, nor impede the administration of the motion picture industry. Furthermore, the Provisional Provisions Concerning Motion Pictures Trade were regulatory documents of administrative rules, and not the basis as expressly set forth in the law for confirming the validity of contracts. Therefore, Huaqiao was entitled to conclude the contract in suit. The contract for showing the motion picture and distributing the box-office revenue concluded between Huaqiao and Changjiang was expression of their own will, and not one as prohibited by the law and regulations in China; hence, it should be established as valid under the law.

2. Determination of concealment of box-office revenue of the motion picture in suit and the specific amount was the key issue in the case. Determination of who should be under the burden of proof was the prerequisite for the ascertainment of the facts in the case. It was expressly agreed in the contract that Huaqiao could claim damages ten times the amount of concealment if found. Under the doctrine of equal rights and obligations, it should meet its burden of proof as agreed in the contract. The people's court should review and verify the relevant evidence, and was not to meet the burden of proof for Huaqiao.

3. It was difficult to find out all the amount of concealment according to the specific circumstances and the agreement between the interested parties, and even so, the agreed liability for damages ten times the concealment rendered it impossible for Huaqiao to find out the amount of the concealment. But it might still recover its financial injury to a large extent. For that reason, finding out the amount of the concealed box-office revenue was not required for the trial of the present case.

The interested parties' agreement on the imposition on Changjiang the damages ten times the concealment was not prohibited under the law. Meanwhile, given the actual circumstances of the distribution and showing of motion pictures then, it was objectively difficult for Huaqiao to adduce evidence to prove the amount of concealment; hence the imposed liability for the damages ten times the concealment was aimed at finding out the exact amount of concealment, and the true

amount was likely to be in excess of the amount. For that reason, this agreement was not unfair. Accordingly, in the case, the agreement on the damages ten times the concealment was a valid one, and should serve as the basis on which Changjiang's liabilities for breach of the contract in the form of concealment was determined.

Holding

1. A licensing contract for showing the motion picture could be valid even though the licensor to the contract was not granted the Motion Picture Production and Distribution Licenses.
2. In the case, the Huaqiao, the licensor, should be under the burden of proof according to the license agreement.
3. The agreement on the damages ten times the concealment was not contrary to the relevant law, and it should serve as the basis on which the Changjiang's liabilities for breach of the contract was determined.