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Case of Appeal Involving Trade Secret Infringement by Li Zhiting

Citation: The Beihai City Intermediate People's Court's Criminal Judgment No. Beixingzhongzi 101/2007

Date of judgment: December 29, 2007

Procedural history

The Guangxi Zhuang Autonomous Region Hepu County People's Procuratorate instituted a public prosecution in the Guangxi Autonomous Region Hepu County People's Court, accusing Li Zhiting of infringing the trade secret of the Guangxi Hongyan Foodstuff Co., Ltd. (Hongyan) and committing the crime of infringing the trade secret; Hongyan brought a supplementary civil action, as well. In the first-instance judgment, it was decided that Li Zhiting had committed the crime of infringement of the trade secret, and should pay damages in compensation of Hongyan's economic losses. Li Zhiting appealed to the Guangxi Zhuang Autonomous Region Beihai City Intermediate People's Court.

Issue

Conviction and sentencing of a crime of infringing trade secret and determination of the amount of supplementary civil damages

Facts

In April 2002, Hongyan concluded a technology assignment contract with MIDI, a French corporation, under which the latter assigned the technology related to foie gras, and provided training for the former's employees, with assignment fees of over 220,000 euro (RMB 1.86 million yuan); Hongyan spent over RMB 490,000 yuan on the technical training program. Hongyan kept as its trade secret all the information and/or data of the technology, production flow and process for making foie gras, and adopted a series of secret-keeping measures, whereby it required all the de

partments or divisions and employees of the company to keep the above as trade secret.

Li Zhiting began to work in Hongyan in November 2001, taking charge of the veterinarian-related technical work in the production process.

In February 2004, Li Zhiting concluded, in private, a contract for technical service with the Qingyuan Company, and later, began to work for the Qingyuan Company, using Hongyan's production and management technology to make foie gras for the Qingyuan Company. The Qingyuan Company paid Li Zhiting a total of RMB 180,000 yuan as his technical service fee.

The first-instance court held that:

1. Hongyan's production technology, technical process and business operational information for making foie gras were the result of its technical cooperation with MIDI, investment in the foie gras project and development of industrialization, which were different from the known production technology and information of foie gras and which had practical applicability, brought Hongyan economic benefits, and afforded its dominant position in the market competition. They were trade secrets Hongyan protected by taking measures for keeping them as such.
2. Li Zhiting's act constituted the crime of the infringing the trade secret by acting in violation of Hongyan's requirements to keep the trade secret, disclosing and using the trade secret he had had access to when working for Hongyan, thus, causing great economic losses to Hongyan. He was sentenced to fixed-term imprisonment of two years, and fined RMB 200,000 yuan.
3. Since it was difficult to determine Hongyan's losses suffered because of the infringement of its trade secret or the profits the Qingyuan Company made by using the trade secret Li Zhiting disclosed, Hongyan's economic losses suffered amounted to RMB over 2.35 million yuan as calculated with reference to Hongyan's R&D costs of the trade secret. i.e. the technology assignment fee of RMB 1.86 million yuan it paid, plus over RMB 490,000 yuan it had put in training its employees for the introduction of the technology. This was the amount of damages Li Zhiting should pay to Hongyan, the plaintiff of the supplementary civil action.

Rule of law

Article 219, paragraph one (3), of Criminal Law *Whoever commits any of the following acts of infringing trade secrets and thus causes heavy losses to the rightholder of the trade secret shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined; if the consequences are especially serious, he shall be sentenced to fixed-term imprisonment of not less than three years, but not more than seven years and shall also be fined: ... (3) violating the agreement on or requirements for keeping trade secret, disclosing, using or allowing any other party to use them.*

Reasoning

The second-instance court held, on the basis of the evidence accepted in the first-instance hearing, that:

1. Honyan's production technology, technical process and business operational information for making foie gras was Hongyan's trade secret. Li Zhiting's argument in his appeal that Hongyan's production technology and management method for making foie gras was known technology was not true to the fact, and was not accepted.

2. Li Zhiting had access to, and obtained Hongyan's trade secret while working for Hongyan. Li Zhiting's argument in his appeal that it was impossible for him to access the production technology when he was working for Hongyan was not true to the fact, and was not accepted.

3. Since it was difficult to determine Hongyan's losses suffered because of the infringement or the profits the Qingyuan Company made by using the trade secret Li Zhiting disclosed, the former court's calculations of Hongyan's economic losses made with reference to the technology assignment fee Hongyan paid and the training fees spent to introduce the technology was not contrary to law.

Holding

The first-instance judgment was made on the conviction of the appellant Li Zhiting with the facts clearly ascertained, with due conviction and procedure, with right application of law, and in line with the acts, circumstances and extent of the injury inflicted because of the committed crime.