

Date	June 22, 2016	Court	Intellectual Property High Court, Second Division
Case number	2014 (Ne) 10019, 2014 (Ne) 10023		
<p>– A case in which the court held that one of the heirs of a famous painter, who filed this action as the party in charge of procedural acts (procedural party) after he/she had been appointed as the manager of undivided common property by a summary interlocutory proceedings order under the French Civil Code before filing, has standing to sue, recognizing the transfer of copyrights from the members of the plaintiff association, which is incorporated in the French Republic, based on its general convention; based on these grounds, the court found that the use of photographs pertaining to the plaintiffs' copyrights in an auction catalogue published by the defendant does not fall under the reproduction of works in "pamphlets" as provided in Article 47 of the Copyright Act or the category of quotation provided in Article 32 of said Act, and recognized that there was an infringement of the right of reproduction.</p>			

References: Article 815, Article 815-6, paragraph (1), and Article 1873-6, paragraph (1) of the French Civil Code, Article 331-2 of the French Intellectual Property Code; Article 7, Article 13, Article 14, and Article 17 of the Act on General Rules for Application of Laws, Article 118 of the Code of Civil Procedure, Article 32, Article 47, Article 47-2, and Article 117 of the Copyright Act

Summary of the Judgment

1. In this case, [i] the plaintiff association incorporated in the French Republic alleges that it received the transfer of copyrights concerning art pieces from its members and it manages said copyrights as the copyright owner; and [ii] with respect to the copyrights to the art pieces of the deceased Pablo Picasso (hereinafter referred to as "Picasso"), Plaintiff 1 alleges that he/she is the manager of undivided common property based on Article 1873-6 of the French Civil Code and has the right to represent said property in a lawsuit as a procedural party. The plaintiffs asserted that the defendant was infringing the plaintiffs' copyrights (right of reproduction) by using photographs of art pieces of the members of the plaintiff association and those of Picasso in a catalogue the defendant issued for an auction held by the defendant without obtaining any permission for use from the plaintiffs. Based on these allegations, the plaintiffs claimed against the defendant compensation for damages based on tort or claimed return of unjust enrichment if said act was conducted in bad faith.

2. There are many issues in this case, among which the major ones are: [i] whether

Plaintiff 1 has standing to sue; [ii] the meaning of the word "apport" stated in the general convention of the plaintiff association; [iii] whether the use of photographs in the catalogue in question (the "Catalogue") falls under the reproduction of works in "pamphlets" as provided in Article 47 of the Copyright Act; and [iv] whether said use of photographs falls under a case referred to in Article 32 of the Copyright Act.

3. In this judgment, the court held as follows. The question of whether a person has standing to sue or not should be determined from the viewpoint of who should be granted a right to conduct a suit as a procedural party so that a legal dispute is solved in an effective and proper manner through litigation proceedings. From this point of view, when it comes to the issue of procedural laws, this case should be governed by the procedural law of the forum, that is, the Code of Civil Procedure of Japan, although it should be noted that said Code is not intended to allow any person to allege another person's rights or legal relationships without any restrictions (see Article 54 of the Code of Civil Procedure). So, unlike the case where the rules concerning a procedural party are provided for by the procedural law, if a procedural party is to be vested with the right to manage and dispose of the subject matter of a suit based on a legal relationship under the substantive law, it is necessary to take into consideration the content of said substantive law which provides for the relationship between the procedural party and the real party in interest, in the process of determining whether the procedural party should be vested with such right of management and disposal and right to conduct a suit from the perspective of the law of the forum. As with this case, when the procedural party's right to conduct a suit is based on the premise that a certain legal relationship exists under the substantive law, the substantive law that governs said legal relationship must be referred to.

The right to conduct a suit was granted to Plaintiff 1 when Plaintiff 1 was appointed as a manager from among the heirs to Picasso's art pieces by an order given by Tribunal de grande instance de Paris through summary interlocutory proceedings, which were conducted as the right holders of undivided common property, who concluded an agreement regarding the non-division of right based on Article 1873-1 of the French Civil Code, failed to reach an agreement on the appointment of the manager as provided in Article 1873-5, paragraph (1) of the French Civil Code. Based on this premise, the court examined whether standing to sue can be granted to such a manager explained above under the Code of Civil Procedure of Japan. With respect to this question, the court referred to the following provisions and made legal interpretation as follows: [i] the appointed party system provided in Article 30 of the Code of Civil Procedure allows persons who share common interests to appoint from among them a

person as a party to stand as a plaintiff or defendant on behalf of all; joint heirs are interpreted to fall under the category of "persons who share common interests" above; [ii] while each co-owner is able to independently carry out acts of preservation for property in co-ownership (Article 252 of the Civil Code), each co-owner is, in principle, allowed to use the property in co-ownership in proportion to his/her share (Article 249 of the Civil Code); it is interpreted that this principle also applies to the right to claim damages based on tort regarding the property in co-ownership; [iii] the law provides for an agreement regarding the indivisibility of property in co-ownership among co-owners (the proviso to Article 256, paragraph (1) of the Civil Code); [iv] claims can also be made indivisible based on an agreement between the parties (Article 428 of the Civil Code); [v] inherited property belongs to heirs in co-ownership (Article 898 of the Civil Code); and [vi] the court may appoint a manager of inherited property with respect to necessary disposition for the preservation of said inherited property (Article 918 of the Civil Code). These provisions and legal interpretations are found to have similar purposes to those of the provisions of the French Civil Code regarding agreements on the indivisibility of right and on the manager of said undivided property. Based on these findings, the court concluded that it conforms to Japanese laws and regulations if an heir who is appointed as a manager by the court files an action with respect to an intellectual property right, a quasi-real right, included in undivided property, on which heirs have agreed on its indivisibility, and thus it is also possible to recognize a reasonable necessity for granting Plaintiff 1 with a right to conduct a suit from the viewpoint of the Code of Civil Procedure of Japan.

From the viewpoint of the effect of a final and binding judgment rendered by a foreign court, too, neither of the requirement for a service upon the defendant (item (ii)) or the requirement for a mutual guarantee (item (iv)) is required because the summary interlocutory proceedings order in question cannot be regarded as a judgment on a case that is categorized as a dispute. Even assuming *arguendo* that these requirements were required, it is not found to cause any problem when considering the fact that all of the heirs to Picasso's art pieces are involved in the procedures and in terms of the requirements for the recognition of a foreign judgment defined by the judicially created doctrine of France.

The defendant alleged that Plaintiff 1 does not have standing to sue based on Article 117 of the Copyright Act, but the court held that the agreement on indivisible common property is not found to be invalid with respect to the copyrights based on the grounds that [i] said Article merely reflects provisions and interpretations concerning co-ownership or tort as provided in the Civil Code based on the effects of quasi-real

rights, including copyrights and moral rights of an author, etc. as provided in Article 112 of the Copyright Act; and [ii] it is impossible to interpret Article 117 of the Copyright Act as a mandatory provision that has an effect to prohibit co-owners from concluding any agreement that contains provisions on substantial relationship of rights or exercise of rights that are different from what is prescribed in said Article.

4. Next, the court found that, while juridical acts that give rise to claims in relation to the transfer of copyrights upon joining the plaintiff association should be governed by the French laws in accordance with Article 7 of the Act on General Rules for Application of Laws, changes in the control relationship over a copyright as a quasi-real right should be governed by the Japanese laws in accordance with Article 13 of the Act on General Rules for Application of Laws. Based on this premise, the court examined the meaning of the word "apport" that appears in the general convention on the admission to the plaintiff association by referring to the use of this word in other contexts in the French Civil Code and the use of the word "cédent," which is also used in relation to transfer in the French Intellectual Property Code, while also examining the meaning of "apport" in this case by referring to the interpretations of the word "apport" used by other copyright management organizations, etc. As a result, the court found that it is reasonable to interpret that "apport" takes the form of an investment in an organization and it externally means the transfer of property, but, between an organization and its members, the word is used with conditions or reservations that are internally agreed. Based on these findings, the court recognized the transfer of copyrights to the plaintiff association from its members.

5. Furthermore, in relation to Article 47 of the Copyright Act, the court held that the Catalogue is not found to fall under the category of "pamphlet" as provided in Article 47 of the Copyright Act based on the following grounds: [i] the Catalogue was distributed to the members of the defendant regardless of whether or not they intend to attend to the auction in question (the "Auction") or the preview; [ii] the Catalogue was not mainly intended for explaining or introducing the work to persons viewing it, because its main purpose was to help the receivers of the Catalogue decide on participation in bidding and to help them set a bid price by specifying art pieces to be sold and purchased at the Auction and informing them of the authenticity and details of the art pieces, which cannot be immediately recognized based on anything other than the names of the artists and the lot numbers.

6. With respect to Article 32 of the Copyright Act, the court held that the use of the photographs is not found to be a reasonable quotation based on social norms as it is impossible to find reasonable necessity for using the photographs of the art pieces in

their size in the Catalogue along with information, including the lot numbers, names of the artists, titles of art pieces, expected winning bid prices and details of the art pieces, etc. (the "Information, etc.") because of the following grounds: [i] the purpose of reproduction of photographs in the Catalogue as explained above; [ii] it is difficult to find that the photographs used in the Catalogue were mainly intended for the display of the Information, etc. because the sizes of many of the photographs used on each page of the Catalogue are often larger than the sizes of the Information, etc. and are so large that each of them can independently be appreciated as an art piece; [iii] apart from the distribution of the Catalogue, a preview was conducted to provide an opportunity to see the art pieces to be sold at the Auction.