

Judgments of Tokyo District Court, 46th Civil Division

Date of the Judgment: 2005.6.23

Case Number: 2003 (Wa) No.13385

Title (Case):

→ The case that confirmed that, regarding two bronze statues produced more than 30 years ago, a person other than the one indicated on a pedestal is the real creator and holds the moral right

→ The case that did not recognize there being a need to advertise an apology according to the Article 115 of the Copyright Law for infringements of the moral right but deemed acceptable the request that the person indicated on the pedestal could inform the owners of the bronze statues that he is not the producer according to the Article

→ The case that did not admit applications of time prescription or the doctrine of lapse of a right with respect to claims based on the moral right

Summary of the Judgment:

In the present case, X, a sculptor, was asked by Y to produce one bronze statue (completed in 1968) of NAKAHAMA Manjiro (passing by the name of John Manjiro) located at the Cape Ashizuri Park in Tosashimizu City of Kochi prefecture and another bronze statue (completed in 1970), and produced the statues; however, the name of Y was indicated on the pedestal of each of the statues, so X, with respect to the statues, demanded Y to confirm that X had the moral right (right of use of his name) (first claim for relief), to inform the owners (or managers) of the bronze statues that the producer of the bronze statues was X and that the indication should be changed to X's name (second and third claim for relief), and to advertise an apology (fourth claim for relief). Y alleged and contended that each of the bronze statues were produced by Y and that X only helped to produce each of the bronze statues.

The judgment found that although the indication of the name on the pedestal effected the presumption that Y was the creator of each of the bronze statues according to Article 14 of the Copyright Law, the development process of production for each of the bronze statues overcame that presumption; thus it found that the person who created the overall impression of each of the bronze statues was X, and it confirmed that the creator of the statues should be X, and that X held the moral right for the statues. Additionally, with respect to the advertisement of apology according to the Article 115 of the Copyright Law, the judgment held that because the social honor or the reputation of the real creator X had not been harmed, even after the lapse of about 30 years since the bronze statues were produced and because X, on the grounds of the

relationship between the clients of the bronze statues and Y, gave silent consent to the situation that X's name was not made public as the producer, it was not appropriate to admit the request for the advertisement of apology at the moment.

On the other hand, regarding the claim for informing as the "appropriate measure" of the Article 115 of the Copyright Law, the judgment held:

The owners of the bronze statues should currently recognize that the creator of the bronze statues is the defendant (same as Y); however, the [actual] creator of the bronze statues is the plaintiff (same as X). In consideration of this and the background of this case, the plaintiff should be allowed, as "appropriate measure to ensure ... as the creator" of the Article 115 of the Copyright Law, to demand of the defendant who is indicated as the producer on the bronze statues to inform the owners of the bronze statues that the plaintiff is the creator of the bronze statues. Namely, in this case, this informing ensures the plaintiff as the creator, prevents disputes between the plaintiff and owners of the bronze statues in advance, and corresponds to the "appropriate measure" of the Article.

However, in this request to inform, the parts of "I hereby request your city to erase the indication of 'Y' on a pedestal of a bronze statue of NAKAHAMA Manjiro and to amend to the indication of 'X' " in the list of informing 3 and the parts of "I hereby request your bank to erase the indication of 'A' (the alphabetical notation of Y) on the pedestal of the bronze statue of OKANO Hideo and to amend to the indication of 'X' " in the list of informing 4 are not simply informing facts but they are also informing mechanisms that contain demands of actions for counterparts, and because the defendant does not have a right to demand such actions of the owners of the bronze statues, it is not appropriate to order the defendant to demand the actions for the counterparts. Additionally, with regard to Y's allegation that if Y demanded the contents of the request for informing the owners of the bronze statues, and if the owners were not forced to carry out the demands, these contents could not be decided in the main text of the judgment. The judgment held:

If the judgment allows the defendant (same as Y) to inform the owners of the bronze statues about the fact of the specific content, the content of obligations imposed on the defendant are clear; therefore the defendant's allegation is not appropriate. Because the Article 115 of the Copyright Law deems it acceptable to request a correction to the name indicated already, according to the right of use of his name, there is no reason not to deem it acceptable to request to inform owners of the copyrighted works about the fact regarding the creator as the preliminary step to claiming the correction of indication.

Furthermore, relating to Y's other allegation that if the right of the creator was admitted to X, X could enforce the right to the use of his name by himself; thus it was a vindictive charge to force the obligation by the request to inform on the part of

the defendant, so it was not appropriate. The judgment held:

Considering the background of this case, although the defendant promised to pay a reward to the plaintiff for producing [the statues]; and after having requested to produce the bronze statues, had them produced actually, and thanked the plaintiff greatly, the defendant has recently alleged that the person who produced the bronze statues was the defendant and that the plaintiff was only an assistant; therefore the plaintiff's pride was harmed significantly, and also considering the circumstances, mentioned above, the acceptance of the request to inform prevents disputes between the plaintiff and owners of the bronze statues in advance, when it is allowed to make the defendant inform owners of the bronze statues about the fact as a measure to ensure the plaintiff as the creator, this should not be found as a vindictive charge against the defendant.

Thereby, the judgment rejected the allegation of Y.

In addition, regarding an allegation of extinctive prescription, the judgment held that because moral right did not have the nature of assignment or inheritance, and the term of protection was not decided, the moral right of the bronze statues was not barred by extinctive prescription and because Y not only knew that the bronze statues were continuing to be displayed in public but also displayed the indication that Y was the producer on the bronze statues, and because the display of the bronze statues in public had made the right of use of X's name infringed so far, X's right of the request to inform was not extinguished by prescription. Furthermore, in regard to the doctrine of lapse of a right, the judgment held that even if X had connived at the indication that Y was the producer of the bronze statues, considering backgrounds that Y's calling X an assistant harmed X's pride and brought about this case, and that Y had continued to go against an agreement with X, X's enforcement of the rights did not violate good faith; thus, the allegation of Y was rejected.

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