

Date	September 6, 2013	Court	Osaka District Court, 21st Civil Division
Case number	2013 (Yo) 20003		– A case in which, with regard to a petition filed by the garden designer who designed a garden made on the site of a commercial complex (obligee) against the land owner who intended to construct a large-scale structure on the site (obligor), to seek a provisional disposition to determine a provisional status to prohibit the continuation of the construction of the structure based on his/her moral rights of author (right to maintain integrity), the court recognized the obligee as an author of the garden, but dismissed his/her petition by analogically applying Article 20, paragraph (2), item (ii) of the Copyright Act.

Summary of the Decision

1. In this case, the obligee, who is a famous garden designer who designed the garden made in a commercial complex located in Osaka City, "Shin Umeda City" (floor area: approximately 41,600 square meters) ("Garden"), claimed him/herself as the author (Article 2, paragraph (1), item (ii) of the Copyright Act) of the Garden, and with regard to the project launched by the owner of the site of the Garden to construct on that site a structure invented by a famous architect titled "Wall of Hopes" ("Structure"), the obligee alleged that the construction of the Structure constitutes a modification against the author's intent (Article 20, paragraph (1) of said Act), and sought prohibition of the continuation of the construction project. The construction plan of the Structure is to construct a steel-framed structure of about 78 meters in length, 3 meters in width and 9 meters in height, and display plants on the walls of the Structure using planters and nets, thereby greening the wall surface.

The major issues are: [i] whether the Garden meets the definition of a work as provided in the Copyright Act; [ii] whether the construction of the Structure constitutes a modification against the author's intent; and [iii] whether the construction of the Structure would be permitted by applying directly or analogically the provisions on a modification of an architectural work (Article 20, paragraph (2), item (ii) of the Copyright Act).

As preconditions for making a determination on these issues, the court first found facts based on *prima facie* evidence regarding, among other matters, the outline of Shin Umeda City as a commercial complex, the actual conditions of the obligee's involvement in the process to construct this complex from planning to completion of construction, the constituent elements of the Garden and how the obligee's individuality is reflected in these elements, and the size and place of construction of the Structure which is designed to symbolize the concept of wall greening. On the basis of these facts,

the court held as follows. With regard to issue [i], the court regarded the whole of Shin Umeda City, which is a commercial complex, as a "city," and recognized the garden area consisting of plants, trees, ponds, etc. and the garden-related facilities (e.g. waterways), both situated on the site of the Garden, as constituting works in the meaning under the Copyright Act, which materialize the environmental concepts of the complex as a whole, such as a proactive attitude to reproduce a natural environment and achieve circulation of water, by way of specific facilities and the designs thereof (the court did not determine which examples of the works included in those indicated in Article 10, paragraph (1) of said Act apply to the respective works disputed in this case). With regard to issue [ii], the court found that since the construction of the Structure would make it difficult to recognize the basic concept of the Garden and cause considerable changes to the landscape, impressions and aesthetic sense produced by the Garden, the construction of the Structure constitutes a "modification" to the Garden.

Then, the court further held as follows. Although the Garden has aesthetic features, the primary purpose of making the Garden is to make Shin Umeda City, which is a commercial complex, look more beautiful and attractive and cause it to gain more popularity among people, and finally attract more visitors to the complex, and thus it is more like something that is actually used. Furthermore, if the owner of the land where the Garden is situated is prevented from using the land for any other purposes other than making the Garden from now on by reason that the Garden is a copyrighted work, this would be a serious restriction on the land ownership. In consideration of these points, the court determined it to be reasonable to analogically apply Article 20, paragraph (2), item (ii) of the Copyright Act, which has as its basis the coordination between the right to maintain integrity of a copyrighted work and the ownership of real property. In addition, the court ruled that a modification by the owner under said item is not completely free from restriction but it may be possible to consider that a modification could be restricted if there are special circumstances in which the modification is found to be against the principle of good faith in relation to the author, and yet, the construction of the Structure cannot be deemed to fall under the case where such special circumstances exist. In conclusion, the court upheld the obligor's defense and dismissed the obligee's petition.

2013 (Yo) 20003 Case of Seeking Provisional Disposition to Prohibit the Continuation of Construction of Structure

Decision

Obligee: P1

Obligor: Sekisui House, Ltd.

Main text

1. This petition shall be dismissed.
2. The obligor shall bear the petition costs.

Reasons

No. 1 Petition

The obligor shall cease construction of the structure specified in the attached Details of the Structure in the garden occupying the colored part of Attached Drawing 1 within the land specified in the attached list of real estates.

No. 2 Outlines of the case

In this case, the obligee alleged that he is the author who designed the garden in a commercial complex, Shin Umeda City in the Kita Ward of Osaka City, and filed a petition based on the moral rights of author (the right to integrity) against the obligor, who planned to construct a structure called "Wall of Hopes" in said garden, seeking a provisional disposition to determine a provisional status prohibiting the construction to continue.

1. Presumed Facts (Undisputed facts and the prima facie facts easily proven by the prima-facie evidence presented below and by the entire import of hearing)

(1) Parties concerned (Exhibits Ko 1 and 3, and the entire import of hearing)

A. The obligee is a garden designer engaged in designing gardens in the course of trade and is the representative of the stock company Environmental Dynamics Architect ("EDA").

B. The obligor is a stock company established to engage in the business of subcontracting and carrying out construction work.

(2) Outline of Shin Umeda City (Exhibits Otsu 1 and 8)

A. Shin Umeda City is a commercial complex established on the land specified in the attached List of Real Estates (hereinafter referred to as "Land 1," etc. according to said list and collectively referred to as "the Lands"). Shin Umeda City consists of high-rise hotels, small buildings, and above-ground and underground parking areas, centered on the high-rise "Umeda Sky Building." Also, other than the areas used to construct buildings and structures, there is a garden consisting of green areas, foot paths, and other landscapes. The garden roughly consists of two sections called "Hanano/Shin

"Satoyama" (flower field/new village forest) and "Naka-shizen no Mori" (natural forest) as of the date of the filing of the petition. Moreover, Shin Umeda City also has fountains (water columns), a canal, and other garden-related facilities. (All of these facilities are hereinafter collectively referred to as "the Garden" for the sake of convenience. It should be noted that the parties concerned do not share the definition of the Garden.)

Shin Umeda City fully opened in July 1993 and will celebrate its 20th anniversary this year.

B. The Lands have an approximately rectangular shape, spreading about 240 meters from north to south and about 180 meters from east to west. There is a pathway from east to west at approximately one third southward from the north end (the southern part is slightly larger). If the Lands are divided by this pathway:

(A) The northern part is almost entirely used as the aforementioned garden Hanano/Shin Satoyama, with a parking area and a pathway to and from the parking area at the northwest corner;

(B) In the center of the Lands sits the aforementioned Umeda Sky Building. Said building consists of two high-rise buildings situated symmetrically from east to west across the north-south centerline. These two buildings are connected at their top floors (40th floors), and the connected part is called the "Floating Garden Observatory."

(C) In the southern part, high-rise hotels are situated on the west side and Naka-shizen no Mori is situated in the middle. On the east side sits small buildings called "Gāden" and "Sankun Gāden."

C. The total size of the Lands is about 41,800 square meters. Excluding the land on which buildings are situated, the remaining area of the Lands is about 26,400 square meters (the "Site").

(3) Construction of the Garden (Exhibits Ko 9, 30 to 36, 39-1 and 39-2)

A. On October 7, 1988, the obligor commissioned EDA, for which the obligee served as the representative, to prepare a basic concept of the environmental design for the Shin Umeda City Development Project. Subsequently, the obligor commissioned EDA to prepare a basic plan for the project on April 20, 1989 and to propose a specific process for implementation of said project in around December 1989 in the name of the Sekisui House/Aoki Construction Shin Umeda City Development Council (the "Development Council").

B. As of May 31, 1991, EDA prepared a design titled "Shin Umeda City Environment Landscape Basic Design" concerning areas other than those on which buildings would be built in Shin Umeda City, and the company submitted deliverables to the obligor or the Development Council in accordance with the aforementioned commission

agreements. On June 20, 1991, EDA was commissioned by the Development Council to modify the basic plan due to an expansion of the area covered by the environmental design. On around September 30, 1992, EDA was commissioned by the obligor and Aoki Construction to supervise their respective construction sites so that the environmental design would be reflected in the construction sites.

C. The Garden was constructed and landscaped in accordance with the aforementioned design prepared by EDA.

(4) Renovation of the "Hanano/Shin Satoyama" Area (Exhibits Otsu 4 and 5)

In around July 2006, the obligor started renovating the northern part of Shin Umeda City (the part specified in (2)B.(A) above) in order to create a garden consisting of a wooded area, bamboo forest, terraced rice fields, vegetable fields, tea plantation, etc., which was named as "Shin Satoyama." (This renovation shall be hereinafter referred to as "Renovation 2006." The relevant area before the renovation shall be referred to as "Former Hanano." The same area after the renovation shall be referred to as "Shin Satoyama.")

(5) Plan for constructing the structure in question (Exhibits Ko 5 and Otsu 6)

A. The obligor received a proposal from an architect, P2, and planned to construct a big green monument named "Wall of Hopes" ("the Structure") on the site of Shin Umeda City. In June 2013, the obligor announced to the public that the Structure specified in the attached Details of the Structure would be constructed. Takenaka Corporation was commissioned by the obligor to construct the Structure and started construction with a plan to complete it by the end of September 2013.

B. According to the plan, the Structure is to be made of steel with a concrete foundation, extending 78 meters in length, 2 meters in width (3 meters, if the planters and planted zone are included) and 9.35 meters in height. The Structure is to be built closely along the west side of the existing canal situated between the pathway to the parking area for large buses, etc. on the north east of the Lands and the road on the east side of the Lands. The Structure is to be situated north to south across the space above Hanauzu (small pond). (In relation to the existing facilities, the Structure is planned to extend from the south end of the pathway leading to the parking area situated in almost the north end of the Lands to nearly a point on the extension line of the north side of the Sky Building.)

The Structure is planned to have two opening spaces down to the ground (3 meters in height and 5 meters in height, respectively) in the area across Hanauzu and the area around a pathway. In addition, the Structure is to have five more opening spaces that do not expand to the ground.

The Structure is scheduled to hold planters and stainless nets on both sides of the

wall, on which climbing plants, perennials, and small or midsize trees are to be planted. C. The Structure is to be situated mostly on Land 9 and Land 11, which are owned or jointly owned by the obligor.

2. Issues

- (1) Whether the Garden meets the definition of "work" (Article 2, paragraph (1), item (i) of the Copyright Act)
- (2) Whether the obligee is the author of the Garden
- (3) Whether the construction of the Structure constitutes a modification against the author's intent (Article 20, paragraph (1) of the Copyright Act)
- (4) Whether the construction of the Structure would be permitted by applying directly or analogically the provisions on a modification to an architectural work (Article 20, paragraph (2), item (ii) of the Copyright Act) or would be permitted as an unavoidable modification (item (iv) of said paragraph)
- (5) Whether the exercise of the obligee's moral rights of author constitutes an abuse of rights
- (6) Whether the right should be subject to provisional remedy

(omitted)

No. 3 Court decision

1. According to prima-facie evidence (in addition to the evidence mentioned below, Exhibit Ko 1 was submitted as overall evidence; any prima-facie evidence with a branch number would be included as well), the facts presented in No. 2, 1. above, and to the entire import of hearing, the following facts can be found to a certain extent.

(1) Personal history, etc. of the obligee

The obligee has been involved in designing famous gardens in Japan, such as the Expo'70 Commemorative Park, and recognized as a garden designer and landscape architect, having won awards such as the one from the Japanese Institute of Landscape Architecture. The obligor itself introduced the obligee as an architect "who is highly respected as an environmental designer with innovative ideas" in a brochure for Umeda Sky Building (Exhibit Otsu 1).

EDA was a company established by the obligee to carry out the obligee's projects and had about 15 employees at the time when EDA was involved in the Shin Umeda City Project.

(2) Development of Shin Umeda City and the involvement of the obligee (Exhibits Ko 2, 7, 30 to 36, 39-1 and 39-2, and Otsu 1)

A. The Lands were owned by the obligor, Aoki Construction, and two other companies. In 1987, the aforementioned four companies agreed that the Lands should not be developed by each company independently, but should be developed as a whole as a joint project. They established the Development Council and designated the obligor as the organizer. The Development Council adopted the concept that the Shin Umeda City Development Project should aim to create a "city" that functions in an integrated manner instead of merely building skyscrapers.

B. A staff member of the Development Council asked the obligee's opinions as to how to create an ideal environmental design for the Lands based on the past works, etc. of the obligee. According to the obligee's opinions, EDA prepared an estimate sheet dated July 21, 1988 for devising a basic concept for the environmental design of Shin Umeda City, which listed all of the important points that should be taken into consideration. On October 7, 1988, the obligor commissioned EDA to prepare a basic concept for the environmental design of Shin Umeda City and promised to pay 6.5 million yen as a commission fee (Exhibit Ko 30).

C. By December 1988, the Development Council established a directors' union consortium with the participation of the obligor and Aoki Construction as construction companies, and P3, who is an architect serving as an artistic director, as well as the obligee serving as an environmental director. The purpose of establishing the directors' union consortium is to hold discussions from the perspectives of construction and environment in a comprehensive manner and make appropriate decisions.

D. EDA prepared the specifications of a basic plan for the environmental design dated February 1, 1989, presenting that the following would be necessary: [i] an analysis of the framework of Shin Umeda City, [ii] establishment of a city axis, [iii] a principle for creation of each zone, [iv] consideration of a plan for Naka-shizen, [v] a plan for deciding the layout of environment-creating elements, [vi] a plan for installing environmental equipment, [vii] a basic plan for environmental design, and [viii] an estimate for the environment creation cost. EDA proposed to prepare a master plan by the end of February 1989, a basic plan by the end of April 1989, and presentation materials by the end of May 1989. On April 20, 1989, the obligor commissioned EDA to carry out the task of preparing a basic plan for the environmental design of Shin Umeda City in accordance with the aforementioned specifications and paid 18.72 million yen as a commission fee (Exhibit Ko 31).

E. As of April 1989, EDA prepared the "Explanation of the Master Plan for Environment Creation" (Exhibit Ko 9) for the Shin Umeda City Development Project. In this Master Plan, the obligee described a plan to use nature in a manner that is close

to its wild condition as the framework of the city and to express symbolized forms of nature, i.e., the universe, life, and the ecosystem (the cycle and circulation of the nature), more specifically, considering that the Sky Building is a temple from which water flows into Naka-shizen no Mori," which represents nature and life, and circulates to the forest in the northern part.

F. In around December 1989, the Development Council commissioned EDA to carry out the following tasks and paid 7.21 million yen as a commission fee (Exhibit Ko 32): [i] creating a design for Hanano no Nonohana (flowers in a field) that recreates a natural landscape at low costs by using wild flowers and conducting research on the growth of those flowers; [ii] conducting research for the introduction of squirrels; and [iii] deciding how to bring the environmental design into reality, e.g., supervising the procurement of trees. Additionally, the following supervisory tasks were also commissioned at the commission fee of 13,493,000 yen: [iv] holding discussions with persons in charge of execution designs, such as architects, about designs to choose a space production method for Shin Umeda City; [v] providing overall supervision for the task of extracting the important elements of environmental design and the task of giving guidance for creation of execution designs; [vi] preparing a design for planting; [vii] preparing a basic plan for renovation of nearby parks; and [viii] estimating the exterior construction costs and the maintenance costs. At that time, a detailed agreement was made as to what part of the environmental design should be conducted by Aoki Construction and Takenaka Corporation, i.e., the construction side, and what part should be conducted by EDA, i.e., the environment side (Exhibit Ko 33).

G. As of May 31, 1991, EDA prepared the Shin Umeda City Environment Landscape Basic Design. Regarding Shin Umeda City except for the areas in which buildings were constructed, said Design shows the basic shapes of lands and the layout of trees, plants, benches, etc., designates the materials for pavement, etc., and decides the layout of the fountains, canal, ponds, Hanauzu, etc., which create water circulation, and the specific structures thereof by presenting a two-dimensional diagram, cross-section diagram, three-dimensional diagram, elevation plan, common detail plan, and partial detail plan. The seal of the obligee is affixed to each of the diagrams and plans (Exhibit Ko 39).

H. On June 20, 1991, the Development Council commissioned EDA to conduct the tasks of conducting a follow-up study on the experiment of growing flowers and reviewing the basic plan due to an expansion of the areas subject to the environmental design. The Development Council paid 4,729,500 yen to EDA as a commission fee. Furthermore, on around September 30, 1992, the obligor and Aoki Construction discussed how to share other construction work, how to create a desirable waterscape,

and how to select and set up various materials in the course of carrying out outdoor construction work for Shin Umeda City in the area managed by each party. They also commissioned EDA to provide supervision to reflect the image of the environmental design on the construction site and paid 17.51 million yen and 3.09 million yen as commission fees, respectively (Exhibits Ko 35 and 36).

(3) Commencement of the operation of Shin Umeda City (Exhibits Otsu 1, 8, and 9 to 16)

A. As mentioned in the section titled "Presumed Facts" above, the Garden was created and landscaped based on the aforementioned basic design, etc., and Shin Umeda City commenced operation in July 1993. Shin Umeda City is a commercial complex with the following facilities, etc. in addition to the facilities mentioned in the section titled "Presumed Facts" above.

(A) The Umeda Sky Building has the "Floating Garden Observatory," which has an observatory, viewing area, and a sky restaurant. The east and west high-rise buildings have offices, a sports club, clinics, showrooms, movie theaters, multipurpose halls, shops, a bus terminal, etc.

The central park underneath the "Floating Garden Observatory" is used as a space for various events throughout the year.

(B) On the east side of Naka-shizen no Mori sit Sankun Gāden, Gāden 5, and other small buildings, as well as restaurant districts such as Takimi Koji and Star Pocket.

B. Awards given to Shin Umeda City (Exhibits Ko 17 and 38)

Shin Umeda City was given the Urban Landscape Award, Osaka Green Urban Design Award (1993), Osaka Urban Landscape Osaka Prefectural Governor Award, and Seki Hajime Urban Creation Award for Excellence.

Among these awards, the Osaka Green Urban Design Award was given to both the obligee and EDA, as specified as the designer, for their efforts to integrate the dramatic system of nature into the large-scale skyscrapers.

(4) Renovation 2006 and the measures taken by the obligee (Exhibits Ko 4 and 26, and Otsu 4, 5 and 20)

A. Initially, Former Hanano consisted of facilities created based on the image of a wild field with a lot of flowers, including pathways, fountains, a canal, ponds, etc. with wild flowers and plants in between those facilities. However, after Renovation 2006 specified in the section titled "Presumed Facts (4)" above, the facilities were changed into an area created based on the image of a village forest in a rural area by changing the pond at the end of the canal into terraced rice fields and the areas of plants and flowers into wooded areas, a vegetable field, tea plantation, etc. However, the land shape as well as the

shapes and layout of the pathways, fountains, and canal have not been changed.

B. Regarding the change from Former Hanano to Shin Satoyama, the obligee sent the obligor a letter of complaint, saying that it is outrageous for the obligor to have suddenly made such change (this can be interpreted to refer to the act of changing the field of flowers into the fields of other plants, etc. without changing the framework, i.e., the pathways and canal) without giving the designer any prior notice. The letter also criticized the obligor for not notifying the obligee in advance and not giving the obligee sufficient time to psychologically prepare for the change, because the obligee was involved in the construction of Former Hanano and was entitled to be treated in a polite and reasonable manner. At the same time, in said letter, the obligee mentioned that Former Hanano is owned by the obligor and that the obligor is not directly liable to send a prior notice to the designer about a plan for renovation.

(5) Backgrounds of the commencement of the construction of the Structure (Exhibits Ko 10 and 14, and Otsu 6 and 21 to 25)

A. In October 2012, the representative director and chairperson of the obligor received a proposal concerning a plan for the construction of the Structure from P2, agreed with the proposal, and started actions for the realization of the proposal.

On December 19, 2012, after the media reported about the aforementioned plan, the obligor found it necessary to explain the aforementioned plan to the obligee for the sake of courtesy. On December 21, 2012, the obligor explained the plan to the obligee.

At this stage, the Structure was planned to be situated on the south side of Shin Satoyama so that the green wall would stand in the direction of west to east. In response, the obligee presented a counterproposal to construct the Structure on the north side rather than the south side.

B. The obligor had the discussion with P2 and prepared a proposal to construct the Structure on the north side of Shin Satoyama and a proposal to additionally construct a green wall also north to south on the east side of Shin Satoyama (around the current location). On January 7, 2013, the obligor had a discussion with the obligee once again. What happened after this discussion is not completely clear. (An employee of the obligor testified that the drawing submitted as Exhibit Ko 14 was prepared on January 7 and that a decision to construct the Structure on the east side was made on January 28 (Exhibit Otsu 21). However, Exhibit Ko 14 specifies the date (February 17) and venue of the discussion and also mentioned a plan for situating the Structure within Shin Satoyama. This indicates the possibility that said employee's testimony concerning the discussion between obligee and the obligor is not accurate.) By April 2013 at the latest, the construction plan to situate the Structure in the current location was prepared. On

June 17, 2013, the obligor put out a press release concerning the plan for the construction of the Structure. At that time, as mentioned in the section titled "Presumed Facts," Takenaka Corporation started construction of the Structure.

In the aforementioned press release, the obligor explained that the Structure was to be connected to Shin Satoyama and Naka-shizen no Mori, and would expand the space to be integrated consequently into the Garden.

(6) Obligee's interpretation of the canal and Hanauzu (Exhibits Ko 7, 8 and 21)

The obligee explained the water circulation in Shin Umeda City in his book, etc. as follows. The water starts to run from the nine waterfall columns at the north end of Naka-shizen no Mori and goes through the valley and canal in Naka-shizen no Mori. It is then guided underground temporarily and comes back out at the Uzumaki Fountain, situated around the southeast end of the Lands. Then it goes northward along the approximately straight canal near the road on the east side of the Lands, continues down to Hanauzu, comes up from Former Hanano as spring water, flows into a small river, and is thus recirculated. This explanation shows that Hanauzu is situated around the most downstream part of the canal and that the water circulated through urban areas goes through Hanauzu and reaches the rural world symbolized by Former Hanano or Shin Satoyama. The obligee also presented his understanding that a new building is to be constructed in Former Hanano, although he is not sure when it will happen (Exhibit Ko 7).

The facilities such as the canal and Hanauzu are treated as public open areas (corresponding to an open area or open part as specified in the Osaka-shi Sougou Sekkei Kyoka Toriatsukai Youkou Jisshi Kijyun (Osakai City general design license standards)) and are to be used by people who want to go for a stroll or relax.

2. Determinations concerning the related issues

(1) Issue (1) (Whether the Garden meets the definition of "work" (Article 2, paragraph (1), item (i) of the Copyright Act) and Issue 2 (Whether the obligee is the author of the Garden)

A. Copyrightability

(A) According to the explanation presented in 1. above, the Garden was created based on the idea to consider Shin Umeda City as a whole to be one city and also the concept that the facilities as a whole represent an environmental concept embodied in the landscapes mimicking wild nature and water circulation. The aforementioned concept was turned into reality by carefully arranging and designing Former Hanano, Naka-shizen no Mori, Uzumaki Fountain at the south end, the canal along the road on the east side, and Hanauzu. Since the Garden can be considered to express the designer's

thoughts and sentiments, the Garden should be considered to be copyrightable.

(B) The obligor submitted *prima-facie* evidence (Exhibits Otsu 28 to 31) by saying that the structure of the Garden and the expression of water circulation are commonplace.

However, even if individual components, such as a pond and a fountain, can be considered to be commonplace, the Garden, which expresses nature in a part of the commercial complex in a manner that integrates nature with the skyscrapers in the complex, can be considered to be creative and should not be regarded as commonplace. Thus, the obligor's allegation is unacceptable.

B. Author

(A) As mentioned above, it was EDA that concluded agreements with the obligor or the Development Council. Also, the basic plan and other documents were prepared by EDA. However, it was the obligee's thoughts and sentiments based on which the aforementioned concept was developed. Therefore, the obligee can be considered to be the author of the Garden.

(B) The obligor alleged that the provision concerning employee's works (Article 15, paragraph (1) of the Copyright Act) is applicable. However, in consideration of various facts mentioned in 1.(1) above, such as the facts that EDA is a small corporation established by the obligee for the purpose of implementing the plan, that EDA has never been indicated as the sole designer of the Garden, and that the obligor indicated the obligee himself as the environmental director of Shin Umeda City, EDA cannot be considered to be the author of the Garden. Thus, the obligor's allegation is unacceptable.

C. Scope of the work

(A) The obligee alleged that the Site as a whole, in other words, the Lands excluding the areas on which buildings were built, can be considered to be a work of the obligee.

As mentioned above, the obligee was commissioned to create an environmental plan for Shin Umeda City as a whole. However, if the obligee's work is interpreted to include the pathways and open spaces that cannot be necessarily regarded as a part of the Garden, the scope of the work would be found to be excessively broad. The scope of the copyrightable work should be limited to the Garden, consisting of the garden area (including plants, trees, ponds, etc. that were arranged as an expression of the thoughts and sentiments of the obligee) and the garden-related facilities (such as a canal), as well as to other facilities closely related to the Garden. It is reasonable to evaluate the Garden as a whole within said scope of the work.

(B) The obligor alleged that the Garden should not be evaluated as a whole and that it is necessary to evaluate whether or not each section of the Garden divided by pathways, etc. can be considered to be creative. Based on this premise, the obligor alleged that the

section in which the Structure was scheduled to be constructed consists only of common elements such as a canal and cannot be considered to be creative at all. Thus, the obligor alleged that the obligee may not exercise the right to integrity. However, in light of the holding mentioned above, the obligor's allegation is unacceptable.

D. Influence of Renovation 2006

The obligor alleged that the obligee is not the author on the grounds of Renovation 2006. While the point of the allegation is not clear, the allegation could be interpreted to be saying that, even though the copyright was granted to the obligee based on the initial design, due to a large-scale renovation of 2006, in which Former Hanano was changed to Shin Satoyama, the obligee lost the copyright for the Garden as a whole, or saying that the obligee may not exercise the right to integrity in consideration of the facts that, on the premise of the aforementioned allegation that the creativeness of the Garden should be evaluated for each section thereof divided by pathways, etc., the section in which the Structure is situated is no longer copyrightable and that the obligee may not exercise the right to integrity for Shin Satoyama situated in the west side of the Structure, since the obligee is no longer the author.

However, as mentioned in 1.(4) above, Renovation 2006 changed the ponds to terraced rice fields and the field of flowers and plants into a field of vegetables without changing the basic land shape, such as the pathways and canal. Thus, it is impossible to interpret that the obligee is no longer the author of the Garden due to said renovation. Furthermore, as mentioned above, it is not reasonable to divide the Garden into multiple sections and evaluate the copyrightability of each section. Therefore, the obligor's allegation is unacceptable.

(2) Issue (3) (Whether the construction of the Structure constitutes a modification against the author's intent (Article 20, paragraph (1) of the Copyright Act)

A. Modification

The Structure was scheduled to be constructed as specified in the section titled "Presumed Facts (5)" above. The Structure is situated on the west side of the canal, almost facing the canal in such a way that the Structure crosses the space above Hanauzu.

The pathway on which the Structure is situated is visited by people who want to watch the water circulate from the canal to Hanauzu, or who want to go for a stroll, relax, etc. Therefore, said pathway can be considered to be closely related to the garden and garden-related facilities and should be included in the scope of the Garden.

The way the Structure is situated does not directly cause physical modification to the canal and Hanauzu. However, due to the construction of the Structure, the canal

would be spatially separated from Shin Satoyama, which would block the upper part of Hanauzu, which had been opened. As a result, it will become difficult for people around the area where the Structure is situated to perceive the basic concept of the Garden, i.e., the water's movement through Naka-shizen no Mori and the canal, traveling down to Hanauzu and circulating to Former Hanano (Shin Satoyama). Since the Structure is large (more than 9 meters in height and 78 meters in length), the construction of the Structure would significantly change the landscape, image, aesthetic quality, etc. of the Garden.

On these grounds, the construction of the Structure should be considered to constitute a modification to the Garden. The obligor alleges that the construction does not constitute a modification or that the construction is so slight that it doesn't constitute a modification that is considered to infringe the right to integrity, but such allegation is unacceptable in light of the aforementioned court's holdings.

B. Obligee's intention

The obligor's allegation implies that the obligee gave implicit consent to the modification to the Garden in light of the nature of the Garden as a work and the content of the letter of complaint sent from the obligee against Renovation 2006.

However, the aforementioned agreements concluded between the obligor and EDA or the Development Council and EDA do not have any provisions concerning copyright. (Therefore, under these circumstances, where there was no *prima-facie* showing with regard to the provisions of these agreements concerning how to handle the relevant rights, it is inevitable to presume that the relevant rights were expected to be handled based on laws and regulations.) Meanwhile, the obligee's reaction to Renovation 2006 as a whole can be summarized as "complaint," which cannot be interpreted to contain the obligee's implicit consent to any future modification.

C. Summary

In view of the aforementioned facts, the construction of the Structure should be considered to constitute a modification to the Garden against the intention of the obligee, i.e., the author of the Garden.

(3) Issue (4) (Whether the construction of the Structure would be permitted by applying directly or analogically the provisions on a modification to an architectural work (Article 20, paragraph (2), item (ii) of the Copyright Act) or would be permitted as an unavoidable modification (item (iv) of said paragraph))

A. Analogical application of Article 20, paragraph (2), item (ii) of the Copyright Act

As mentioned above, the Garden can be found to have an aesthetic quality by re-creating nature and adopting a unique concept, i.e., water circulation.

However, the Garden is expected to be used by people who want to enter it for a walk or rest. The purpose of the construction of the Garden can be interpreted to create such area in the city in order to improve the aesthetic appearance, customer appeal, and attractiveness of Shin Umeda City, which is a commercial complex, and eventually to increase the number of customers. Thus, it can be said that the Garden was constructed not for the sole purpose of appreciating the aesthetic quality thereof as art, but for the purpose of being used in reality.

Even though the Garden exists on the Lands owned by the obligor, etc., if the owner is permanently prohibited to use the Lands for any purpose other than the Garden on the grounds that the Garden is a work, it would impose significant restrictions on the ownership of the Lands. Since the Garden comprises a part of the commercial complex, Shin Umeda City, and is operated together with Umeda Sky Building and other buildings, any renovation, etc. of the Garden should be considered to be inevitable to deal with deterioration, market changes, economic situations, etc. If any modification to the Garden is prohibited, it would impose significant restrictions on the exercise of the ownership of the Lands or on the implementation of the Shin Umeda City Development Project.

As described above, in order to consider the Garden to be copyrightable, it would be necessary to make adjustments with the freedom of the owner of the Lands to exercise rights. A garden is a fixture of a land, could be copyrightable, and is expected to be used in reality. In this sense, a garden is similar to a building for which the copyright owner's rights and the building owner's rights need to be adjusted. Thus, it can be interpreted to be reasonable to analogically apply Article 20, paragraph (2), item (ii) of the Copyright Act to this case.

B. Remodeling

The construction of the Structure can be interpreted to be equivalent to "remodeling," as specified in Article 20, paragraph (2), item (ii) of the Copyright Act, since the Structure will be constructed without physically changing the existing facilities, such as the canal and Hanauzu. The obligee alleged that the construction of the Structure does not constitute "remodeling" under the Building Standards Act. However, in view of the fact that the Garden is not a building itself and that it is not necessary to consider the provisions of the Copyright Act in the same manner as those of the Building Standards Act, the obligee's allegation is unacceptable.

C. Applicability of Article 20, paragraph (2), item (ii) of the Copyright Act

Examining the applicability of Article 20 of the Copyright Act, paragraph (1) specifies that the author of a work has the right to preserve the integrity of the work so

that the work does not have to suffer any alteration, cut, or other modification against the author's intention. Paragraph (2), item (ii) of said Article specifies that the provision mentioned in the preceding paragraph does not apply to any modification to an architectural work by means of extension, rebuilding, repair, or remodeling.

The Copyright Act specifies that, even if the right to integrity is granted for an architectural work, any modification to the architectural work by means of extension, rebuilding, repair, or remodeling would not constitute infringement of the right to integrity without any particular conditions in light of the necessity for adjustments between the holder of the right to integrity and the owner of the building, who has the right to make economic use of it. As long as this principle can be interpreted to be analogically applicable to the relationship between the author of the Garden and the owners of the Lands, the act of modifying the Garden by constructing the Structure cannot be considered to constitute infringement of the obligee's right to integrity.

D. Obligee's allegation

(A) The obligee alleged that Article 20, paragraph (2), item (ii) of the Copyright Act would be applicable only if [i] the modification were an extension of facilities to an extent necessary from a financial, practical perspective and [ii] the modification were not made arbitrarily based on a personal preference. The construction of the Structure fails to meet both of these conditions. Thus, the obligee alleged that item (ii) of said paragraph does not apply to this case.

However, the literal interpretation of said item has revealed that said item does not impose such conditions as mentioned above. Furthermore, such conditions, i.e., permitting the owner of a copyrightable architectural work to extend or otherwise modify the building without infringing the right to integrity of the copyright holder only if the modification is made to the extent necessary from a financial, practical perspective and only if the modification is not made arbitrarily based on a personal preference, would impose unreasonable restrictions on the right of the owner of the building and is therefore found to be unreasonable.

On these grounds, it can be interpreted that the owner of a building can extend, rebuild, repair, or remodel the building as long as said item does not explicitly impose special restrictions. This interpretation should be applied analogically to the relationship between the obligee and the obligor in this case.

The obligor's allegation, which adopted this interpretation, is well-grounded, whereas the obligee's allegation, which is against this interpretation, is unacceptable.

(B) Even if the owner of a building is permitted to make an extension or other modifications to the building, it is not reasonable to interpret that any type of

modification is permitted unconditionally. It can be interpreted that, if there are special circumstances under which the modification is considered to be against good faith in relation to the author, the aforementioned permission would not be given. The obligee alleged that the Structure is a monument being constructed under the project planned personally by P2 him/herself, and that the Structure lacks practical purposes, financial benefits, and necessity. This allegation can be interpreted to have been made based on the aforementioned interpretation; but in light of the facts mentioned in 1. above, the obligee's allegation is still unacceptable.

It is possible to point out that, since the Garden is integrated into the commercial complex, Shin Umeda City, the obligee must have understood that it is necessary to renovate the facilities in accordance with the market trends and latest fashion, that, since the initial stage of designing the Garden, the obligee has predicted that a new structure would be built in the future in Former Hanano, that, at the time of Renovation 2006, the obligee made a statement that could be interpreted as saying that the obligee would tolerate a modification to a certain extent, and that, in the course of deciding the location to construct the Structure, the obligor listened to the obligee's opinions and reflected them in the construction to a certain extent. In view of these facts, it cannot be said that there were special reasons to believe that the obligor betrayed good faith in relation to the obligee, i.e., the author of the Garden.

E. Summary

As described above, while the construction of the Structure constitutes a modification to the Garden against the intention of the obligee, i.e., the author of the Garden, the act of construction would not constitute infringement of the right to integrity since Article 20, paragraph (2), item (ii) of the Copyright Act can be applied analogically to this case.

3. Conclusion

On these grounds, regarding the right that should be subject to provisional remedy, it can be said that there was *prima facie* showing with regard to the obligor's defense. Therefore, without needing to examine any other issues, the obligee's petition shall be dismissed.

September 6, 2013

Osaka District Court, 21st Civil Division

Presiding judge: TANI Yuko

Judge: MATSUAMI Takashi

Judge: MATSUKAWA Mitsuyasu

(Attachment)

List of Real Estates

1. Address: Oyodonaka 1, Kita Ward, Osaka City

Lot number: 1-1

Classification: Residential land

Acreage: 227.00 square meters

2. Address: Oyodonaka 1, Kita Ward, Osaka City

Lot number: 1-2

Classification: Residential land

Acreage: 274.44 square meters

3. Address: Oyodonaka 1, Kita Ward, Osaka City

Lot number: 1-3

Classification: Residential land

Acreage: 151.96 square meters

4. Address: Oyodonaka 1, Kita Ward, Osaka City

Lot number: 1-4

Classification: Residential land

Acreage: 47.70 square meters

5. Address: Oyodonaka 1, Kita Ward, Osaka City

Lot number: 1-5

Classification: Residential land

Acreage: 4581.22 square meters

6. Address: Oyodonaka 1, Kita Ward, Osaka City

Lot number: 1-10

Classification: Residential land

Acreage: 118.90 square meters

7. Address: Oyodonaka 1, Kita Ward, Osaka City

Lot number: 1-11

Classification: Residential land

Acreage: 118.90 square meters

8. Address: Oyodonaka 1, Kita Ward, Osaka City

Lot number: 1-16

Classification: Residential land

Acreage: 196.33 square meters

9. Address: Oyodonaka 1, Kita Ward, Osaka City

Lot number: 1-17

Classification: Residential land

Acreage: 6831.56 square meters

10. Address: Oyodonaka 1, Kita Ward, Osaka City

Lot number: 1-18

Classification: Residential land

Acreage: 8325.54 square meters

11. Address: Oyodonaka 1, Kita Ward, Osaka City

Lot number: 1-20

Classification: Residential land

Acreage: 15623.80 square meters

12. Address: Oyodonaka 1, Kita Ward, Osaka City

Lot number: 1-21

Classification: Residential land

Acreage: 299.09 square meters

13. Address: Oyodonaka 1, Kita Ward, Osaka City

Lot number: 1-22

Classification: Residential land

Acreage: 4780.89 square meters

14. Address: Oyodonaka 1, Kita Ward, Osaka City

Lot number: 1-23

Classification: Residential land

Acreage: 226.28 square meters

(Attachment)

Details of the Structure

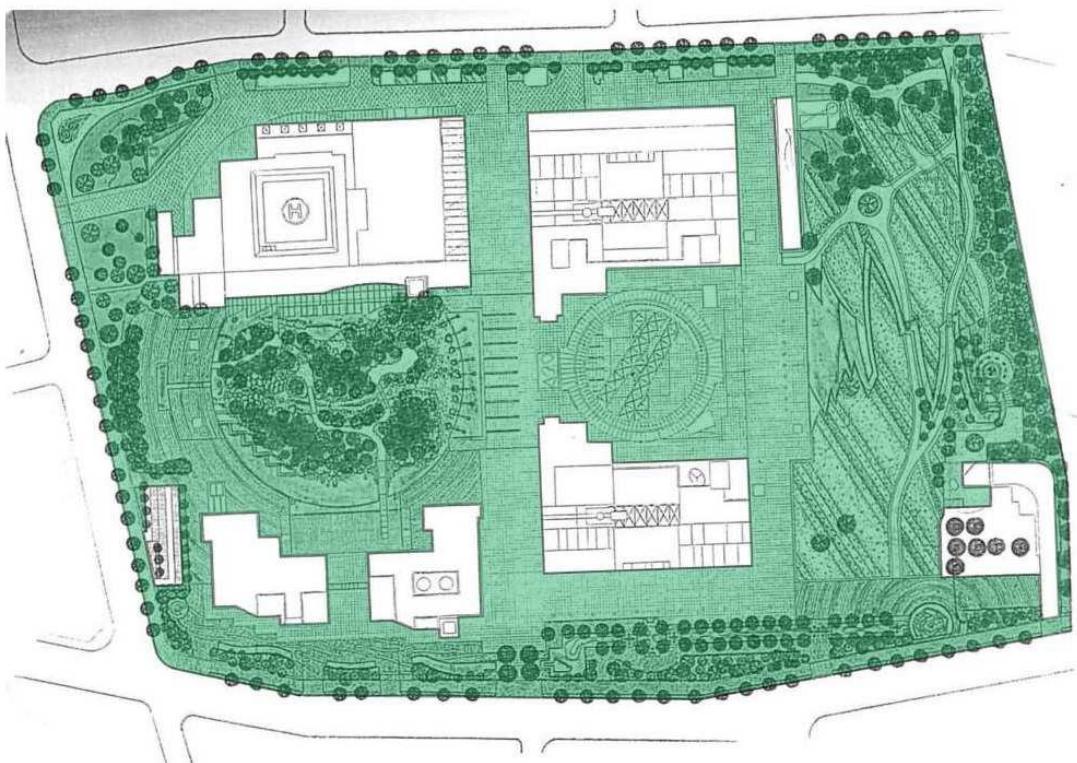
Location: The area enclosed by the straight lines between A, B, C, D and A in Attached Drawing 2

Height: 9.35 meters

Length: 78 meters

Width: 2 meters

(Attached Drawing 1)



(Attached Drawing 2)

