judgedate

2001.03.02

caseid

2000(Ju)222

reporter

Minshu Vol. 55, No. 2

casetitle

Judgment on the duty of care of a rental business operator when it enters into a rental contract for, and delivers, karaoke equipment to be used exclusively to screen or play musical works in order to show or play them directly to the public

casename

Case seeking an injunction of copyright infringement, etc.

caseresult

Judgment of the Second Petty bench, partially quashed and decided by the Supreme Court and partially dismissed with prejudice on the merits

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court_second

Tokyo High Court, Judgment of November 29, 1999

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summary_judge

Where a rental business operator enters into a rental contract for karaoke equipment and where the equipment is to be used exclusively to screen or play musical works in order to show or play them directly to the public, the rental business operator, on the grounds of good sense, has a duty of care not only to inform the other party to the rental contract that the said other party should execute a copyrighted work license agreement with the copyright holders of such musical works but also to deliver the karaoke equipment only after confirming that such other party has executed, or has applied for the execution of, such a copyrighted work license agreement with such copyright holders.

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references

Articles 22 and 22-2 and Chapter VII (“Infringement of Rights”) of the Copyright Act, and Articles 709 and 719 of the Civil Code

Copyright Act

Article 22 The author of a work has the exclusive right to give a stage performance or musical performance of the work with the purpose of having it seen or heard directly by the public (hereinafter referred to as "publicly").

Article 22-2 The author of a work has the exclusive right to publicly present a work via an on-screen presentation.

Civil Code

Article 709 A person who has intentionally or negligently infringed any right of others shall be liable to compensate any damages resulting in consequence.

Article 719 (1) If more than one person has inflicted damages on others by their joint tortious acts, each of them shall be jointly and severally liable to compensate for those damages. The same shall apply if it cannot be ascertained which of the joint tortfeasors inflicted the damages.

(2) Any abettor or aider shall be deemed to be one of the joint tortfeasors.

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maintext

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1. Of the judgment of prior instance, the portion concerning the appellee shall be changed as follows:

The judgment of the first instance shall be changed as follows:

(1) The appellee shall pay to the appellant 7,539,239 yen and an amount calculated at the rate of 5% per annum of the above amount for the period from March 13, 1997 to the date of payment.

(2) All of the other claims by the appellant against the appellee shall be dismissed.

2. The total cost of the suit shall be divided into five equal parts, one of which shall be

borne by the appellant and the remainder by the appellee.

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reason

Reasons for the petition for acceptance of final appeal filed by the counsels for the appeal, TANAKA Yutaka, HORII Keiichi and FUJIWARA Hiroshi

I. The facts and other circumstances related to the case which duly became final and binding in the judgment of prior instance is as described below:

1. The appellant has controlled the musical works listed in the list of karaoke songs shown in the exhibit to the judgment of the first instance and those listed in the supplement thereto (hereinafter referred to as the "Controlled Works") by being assigned for trust purposes the copyrights in the Controlled Works by the copyright holders thereof. From the time when this case occurred, the appellant has been the sole music copyright intermediary society in Japan which is assigned for trust purposes the copyrights in, and controls, most of the musical works screened or played by karaoke equipment.

The appellee is a limited company engaged in the business of renting and selling commercial karaoke equipment in areas mainly in the southern part of Ibaraki Prefecture. Person D is one of the partners running restaurants "E" and "F" (hereinafter referred to as the "Restaurants").

2. The appellee entered into a rental contract for karaoke equipment with D for restaurant E on September 30, 1991 and another for restaurant F on December 27, 1991 (hereinafter referred to as the "Rental Contracts"), and delivered a set of laser disc karaoke equipment to D for each of the Restaurants. A document for the Rental

Contract contains a statement to the effect, “If the renter intends to use the Property for business purposes, the renter is required by the appellant to execute a copyrighted work license agreement. The renter is asked to please handle the execution of such agreement at its responsibility.” Although the appellee also gave an oral explanation of this requirement to D at the time of execution of each of the Rental Contracts, the appellee failed to confirm, before delivery of the aforementioned karaoke equipment, that D had executed, or had made an application for the execution of, a copyrighted work license agreement. During the periods from the respective dates of execution of the Rental Contracts to June 8, 1995, D and his partners screened lyrics and music that were Controlled Works at the respective Restaurants without receiving a license from the appellant and allowed customers and employees to sing, by playing laser discs by operating the aforementioned karaoke equipment rented from the appellee, thereby creating ambience of the Restaurants with the intention of increasing business profits.

3. On or after June 9, 1995, the appellee learned that a provisional disposition order that had been sought by the appellant prohibiting D from using the karaoke equipment was executed on D, and it was only then the appellee became aware that D and his partners had not executed a copyrighted work license agreement with the appellant. However, since D covenanted that he would settle the matter responsibly without causing trouble to the appellee, on September 9, 1995 the appellee re-entered into a rental contract for karaoke equipment with D for each of the Restaurants and delivered a set of online karaoke equipment to D for each of the Restaurants. Until December 20, 1996 at restaurant E and until October 20, 1995 at restaurant F, D and his partners played songs that were Controlled Works without receiving a license from the appellant and allowed customers and employees to sing, by operating the aforementioned karaoke equipment rented from the appellee, thereby creating

ambience of the Restaurants with the intention of increasing business profits.

4. The amount receivable by the appellant from the Restaurants for their use of works constituting Controlled Works is 73,542 yen per month per restaurant.

II. In this case, the appellant claims against the appellee damages equivalent to royalties, alleging that the appellee's acts constitute a joint tort with the copyright infringement by D and his partners.

III. The court of prior instance found negligence on the part of the appellee for the period in and after September 1995 and granted the appellant's claim for damages. However, the court of prior instance denied negligence on the part of appellee for the period up to June 8, 1995, by ruling as follows:

1. A karaoke equipment rental business operator has a general duty of care to give consideration so that karaoke equipment will not be used as a means to infringe copyrights. Usually, this duty of care should be deemed fulfilled if the karaoke equipment rental business operator, at the time of execution of a rental contract, provides the other party to the contract with oral or written guidance to the effect that the said party is legally obligated to execute a copyrighted work license agreement. Then, if it is reasonably foreseeable that the other party to the contract may not execute a copyrighted work license agreement or if exceptional circumstances exist that give rise to a suspicion that no copyrighted work license agreement may have been executed since the execution of the rental contract, the karaoke equipment rental business operator must take measures to prevent copyright infringement, such as by refraining from delivering the karaoke equipment to the other party to the contract until a copyrighted work license agreement has been confirmed to have been executed

or by withdrawing the karaoke equipment if it has been delivered. In general, however, the karaoke equipment rental business operator has no duty of care to confirm, after execution of the rental contract and before delivery of the karaoke equipment, that the other party to the contract has made an application to the appellant for execution of a copyrighted work license agreement or to check, from time to time after delivery of the karaoke equipment, whether or not such agreement has been executed.

2. A document for the Rental Contract contains a warning that a copyrighted work license agreement should be executed with the appellant. This was also explained orally by the appellee to D. Furthermore, it is not found that, at the time of execution of the Rental Contract, sufficient exceptional circumstances existed that gave rise to a suspicion that D had no intention to execute a copyrighted work license agreement, or that, after the execution of the Rental Contract, sufficient exceptional circumstances existed that gave rise to a suspicion that D may have executed no copyrighted work license agreement since the execution of the Rental Contract. For these reasons, no breach of duty of care existed for the period up to June 8, 1995.

IV. However, the ruling of the court of prior instance described above is not acceptable, for the following reasons:

1. If the owner of a restaurant or the like places at the restaurant laser disc karaoke equipment with function of screening lyrics and music which are musical works or online karaoke equipment with function of screening lyrics which are, and playing pieces of music which are, musical works (hereinafter either referred to as the "Karaoke Equipment"), encourages customers to sing, screens or plays lyrics and pieces of music (which are musical works) of customers' choices by the Karaoke Equipment, allows customers and employees to sing with the accompaniment of such

pieces, and otherwise uses the Karaoke Equipment to screen or play musical works in order to show or play them directly to the public, thereby creating ambience with the intention of making business profits, then such owner is, unless he has obtained a license from the copyright holders of these musical works, inevitably liable for a tort due to infringement of the right to perform or screen lyrics and pieces of music as a result of his customers' and employees' singing and the Karaoke Equipment's screening or playing of such lyrics and pieces of music (see Supreme Court, 1984 (O) 1204, Judgment of the Third Petty bench of March 15, 1988, Minshu Vol. 42, No. 3, p. 199).

2. [Summary] It is reasonable to understand that if a Karaoke Equipment rental business operator enters into a rental contract for Karaoke Equipment and if such equipment is to be used exclusively to screen or play musical works in order to show or play them directly to the public, the Karaoke Equipment rental business operator, on the grounds of good sense, has a duty of care not only to inform the other party to the rental contract that the said other party should execute a copyrighted work license agreement with the copyright holders of such musical works but also to deliver the Karaoke Equipment only after confirming that such other party has executed, or has applied for the execution of, such a copyrighted work license agreement with such copyright holders. This is because such a duty of care should be affirmed when the following factors are comprehensively taken into account: (1) considering that most of the musical works screened or played by Karaoke Equipment are protected by copyrights, Karaoke Equipment can generally be regarded as equipment that is likely to cause the owner of a restaurant using Karaoke Equipment to infringe copyrights as described in section 1 above, unless he has obtained a license from the copyright holders of such musical works; (2) copyright infringement is a criminal offense that violates penal provisions (Article 119 et seq. of the Copyright Act); (3) a Karaoke

Equipment rental business operator makes business profits by renting out Karaoke Equipment which is likely to cause copyright infringement as described above; (4) it is a commonly known fact that in general, the owners of restaurants using Karaoke Equipment are not always likely to execute a copyrighted work license agreement, and a Karaoke Equipment rental business operator should foresee the likelihood of copyright infringement unless it has been able to confirm that the other party to a rental contract has executed, or has applied for the execution of, a copyrighted work license agreement: and (5) a Karaoke Equipment rental business operator can easily check whether or not the other party to a rental contract has executed, or has applied for the execution of, a copyrighted work license agreement and, by doing so, the Karaoke Equipment rental business operator can take measures to prevent copyright infringement.

3. If we apply the above arguments to this case, since it is obvious that D intended to use the Karaoke Equipment to screen or play Controlled Works in order to show or play them directly to the public, the appellee had a duty of care to prevent D and his partners from infringing copyrights, by confirming, before delivery of the Karaoke Equipment pursuant to the Rental Contract, that they had executed, or had applied for the execution of, a copyrighted work license agreement. However, the appellee only informed D of a requirement that a copyrighted work license agreement be executed with the appellant and, without confirming that D had executed, or has applied for the execution of, such a copyrighted work license agreement, carelessly delivered the Karaoke Equipment to D, thereby breaching the duty of care imposed on the appellee on the grounds of good sense as described above. Since this resulted in the copyright infringement by D and his partners, it is inevitable to find that an adequate causation exists between the appellee's failure to fulfill the aforementioned duty of care and the

appellant's damage incurred by the copyright infringement by D and his partners.

Therefore, the above-described ruling of the court of prior instance that the appellee had no duty of care for the period up to June 8, 1995 erred in the interpretation and application of law, and this illegality obviously affects the conclusion of the judgment of prior instance. The gist of the argument of the petition for appeal is thus well-grounded.

V. Next, we will decide on the amount of damage to be compensated for by the appellee.

The amount of damage incurred by the appellant is 73,542 yen per month. The duration of the copyright infringement was, as described above: at restaurant E, a period of 44 months and 10 days which commenced on September 30, 1991 and ended on June 8, 1995, and a period of 15 months and 12 days which commenced on September 9, 1995 and ended on December 20, 1996; and at restaurant F, a period of 41 months and 13 days which commenced on December 27, 1991 and ended on June 8, 1995 and a period of one month and 12 days which commenced on September 9, 1995 and ended on October 20, 1995. Accordingly, the amount of damage incurred by the appellant is 4,391,168 yen and 3,148,071 yen for restaurants E and F, respectively, for a total of 7,539,239 yen (with any fraction less than one yen resulting from the per-diem calculation being discarded).

Therefore, the appellant's claims against the appellee made in this case are accepted as well-grounded to the extent of 7,539,239 yen and that payment is sought of delay damages at the rate of 5% per annum as set in the Civil Code for the period from March 13, 1997, which is after the date of tort, and to the date of payment. The rest of the appellant's claims should be dismissed as unreasonable.

VI. For the reasons explained above, the judgment of the first instance that is inconstant with the above should be changed as described above and, of the judgment of prior instance, the portion concerning the appellee shall be changed as set forth in paragraph 1 of the main text of this judgment.

Accordingly, the Court unanimously decides as set forth in the main text.

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presiding

Justice KAMEYAMA Tsugio

Justice KAWAI Shinichi

Justice FUKUDA Hiroshi

Justice KITAGAWA Hiroharu

Justice KAJITANI Gen

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note_other

(This translation is provisional and subject to revision.)