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judgedate

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2001.06.08

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caseid

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2000(O)929, 2000(Ju)780

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reporter

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Minshu Vol. 55, No. 4

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casetitle

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Judgment on matters that must be proven for the international jurisdiction of Japanese courts to be affirmed based on the provisions of the Code of Civil Procedure on the venue for the place of tort, in a suit for damages based on tort

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casename

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Case claiming demanding a declaratory judgment to confirm copyrights, etc.

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caseresult

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Judgment of the Second Petty bench, quashed and remanded

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court\_second

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Tokyo High Court, Judgment of March 16, 2000

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summary\_judge

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1. In a suit for damages based on tort filed against a defendant who has no address or the like in Japan, it suffices, in principle, to prove an objective fact that acts committed by the defendant in Japan caused damage to the plaintiff's legal interest for the international jurisdiction of Japanese courts to be affirmed based on the provisions of the Code of Civil Procedure on the venue for the place of tort.
2. With respect to a claim between the parties between which the international jurisdiction of Japanese courts is affirmed over another claim based on a certain ground for jurisdiction, a close relationship must be found between the two claims in order for the international jurisdiction of Japanese courts to be affirmed over the first-mentioned claim based on the provisions of the Code of Civil Procedure on the venue for joint claims.

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references

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(For 1 and 2)

Chapter II ("Court") of Part I of the Code of Civil Procedure

(For 1)

Article 5, item (ix) and Article 247 of the Code of Civil Procedure, and Article 709 of the Civil Code

(For 2)

The main clause of Article 7 and Article 136 of the Code of Civil Procedure

Code of Civil Procedure

Article 5 Actions listed in the following items may be filed with the court that has jurisdiction over the place specified in the respective items:

(ix) An action relating to a tort: The place where the tort took place

Article 7 Where two or more claims are to be made by a single action, such action may be filed with the court which shall have jurisdiction over one of those claims pursuant to the provisions of the preceding three articles; provided, however, that with regard to an action brought by two or more persons or an action brought against two or more persons, this shall apply only in the case specified in the first sentence of Article 38.

Article 136 Two or more claims, only if they shall be made through the same kind of court proceedings, may be made by filing a single action.

Article 247 When making a judgment, the court, in light of the entire import of the oral argument and the result of the examination of evidence, and based on its free determination, shall decide whether or not the allegations on facts are true.

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.

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maintext

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The judgment of prior instance is quashed and the judgement of the first instance is revoked.

This case is remanded to the Tokyo District Court.

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reason  
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I. Reasons for final appeal submitted by the counsel for the appeal, MATAICHI Yoshio

While a civil case may be appealed to the Supreme Court only in the cases specified in Article 312, paragraphs (1) and (2) of the Code of Civil Procedure, the reasons for final appeal submitted in this case, which allege that the reasons for the judgment of prior instance were inadequate, substantially allege factual errors or mere violations of law, and do not constitute any of the grounds specified in the aforementioned paragraphs.

II. Reasons for the petition for acceptance of final appeal filed by the counsel for the appeal, MATAICHI Yoshio

1. An outline of the facts found from the records is as follows:

(1) The appellant is the copyright holder in Japan of the works listed in the Second List of the Exhibit to the judgment of the first instance (hereinafter referred to as the “Works”) and, under the Berne Convention for the Protection of Literary and Artistic Works (hereinafter referred to as the “Berne Convention”), also holds the copyrights in the Works in the Kingdom of Thailand, a member state of the Berne Convention. The appellant has granted to Stock Company D a license to use the Works in Japan and certain countries in Southeast Asia. The appellee is a natural person residing in the Kingdom of Thailand and does not have any business office or the like or conduct any business activities in Japan.

(2) There is an agreement that is attached to the First List of the Exhibit to the judgment of the first instance (hereinafter referred to as the “Agreement”). The Agreement contains provisions to the effect that as of March 4, 1976, E Enterprise Company Limited (whose representative is F) exclusively granted to the appellee, who was the president of G Film Company Limited (hereinafter referred to as “G Film Company”), the rights to distribute, produce, reproduce and otherwise handle the Works in all countries other than Japan for an indefinite period.

G Film Company has not been registered in the Kingdom of Thailand, although a corporation named H Film Limited Partnership has been registered there.

(3) Around July 1996, the appellant sent to the appellee a letter intending to confirm that the appellee, who is the president of G Film Company, had an exclusive right to use the Works in the relevant geographic regions including the Kingdom of Thailand in accordance with the Agreement (hereinafter referred to as the “Letter”).

(4) In April 1997, I Law Office located in Hong Kong, as an agent of G Film Company, sent to Stock Company D and its subsidiary as well as to Stock Company J Enterprises which had been negotiating a merger with Stock Company D, a warning letter to the effect that since G Film Company held the copyrights in the Works or had been exclusively granted from the appellant a license to use the Works, Stock Company D’s use of the Works in Hong Kong and Singapore and its subsidiary’s use of the Works in the Kingdom of Thailand breached G Film Company’s exclusive rights of use (hereinafter referred to as the “Warning Letter”). Around the same time, the Warning Letter reached the respective business offices of the aforementioned companies in Japan.

(5) In December 1997, after the present suit had been filed, the appellant filed with a court in the Kingdom of Thailand a suit against the appellee and three others

demanding, among others, an injunction of acts of infringement of the copyrights in the Works by the appellee and the three others in the Kingdom of Thailand, alleging that the appellee held no copyrights in the Works in the Kingdom of Thailand and had not obtained from the appellant any license to use the Works, and that the Agreement had been forged by the appellee. This suit is pending in a court in the Kingdom of Thailand as a criminal case and a criminal-related civil case (hereinafter referred to as the “Thai Suit”). In the Thai Suit, the appellee has alleged that the copyrights in the Works are owned jointly by the appellee and the appellant in the Kingdom of Thailand.

2. In the present case, the appellant demands that the appellee: (i) compensate the appellant for damage caused by a tort on the ground that the appellant’s business operations were hindered as a result of the delivery of the Warning Letter to Japan (hereinafter referred to as “Claim (i)”); (ii) acknowledge that the appellee has no copyrights in the Works in Japan (hereinafter referred to as “Claim (ii)”); (iii) acknowledge that the Agreement was not truly concluded (hereinafter referred to as “Claim (iii)”); (iv) acknowledge that the appellant holds the copyrights in the Works in the Kingdom of Thailand (hereinafter referred to as “Claim (iv)”); (v) acknowledge that the appellee has no right to use the Works (hereinafter referred to as “Claim (v)”); and (vi) stop informing third parties in Japan that the appellee has the exclusive rights to use the Works outside Japan and that conducting transactions involving copyrights in the Works with the appellant outside Japan would infringe the appellee’s exclusive rights to use the Works (hereinafter referred to as “Claim (vi)”).

3. The court of first instance dismissed this action. The court of prior instance also concluded that this action should be dismissed ruling, in summary, as follows:

(1) In order for a court in Japan to decide whether or not it has international jurisdiction based on a tort, the court must first find that the tort existed. The court

should not affirm the existence of the tort based solely on the plaintiff's allegations; instead, it is appropriate for the court to affirm its international jurisdiction based on the tort after the court has tentatively examined evidence to the extent necessary to decide on its jurisdiction and only if it is sure, at least to a certain extent, that the tort existed.

Considering the contents of the Letter as well as the fact that the Agreement is likely to have been truly concluded, it is tentatively found that the appellee has been granted from the appellant an exclusive license to use the Works in all countries other than Japan, and the appellee's delivery of the Warning Letter to the appellant cannot be considered, as between the appellee and the appellant, to constitute an unreasonable infringement of, or an unlawful intervention in, the valid contractual relationship between the appellant and Stock Company D. Thus, as far as the present evidence can show, the court cannot find that the appellee's tort existed; instead, it is more likely that such tort did not exist.

Therefore, the court cannot find that Japanese courts have international jurisdiction under a tort over Claim (i).

(2) With respect to Claim (ii), Japanese courts have international jurisdiction since it is evident that the relevant copyrights in Japan exist in Japan. However, the only fact alleged by the appellant as a ground for its interest in having the appellee acknowledge Claim (ii) is that the appellee has alleged in the Thai Suit that the copyrights in the Works are owned jointly by the appellee and the appellant. This is not sufficient to consider that the dispute over the ownership of the copyrights in the Works in Japan is ripe enough to deserve a resolution by a lawsuit. Therefore, the court cannot find that the appellant has interest in having the appellee acknowledge Claim (ii).

(3) It is unreasonable and impermissible to affirm the international jurisdiction of Japanese courts over the other claims based on Claim (ii) which is inevitably dismissed.

(4) Even assuming that the international jurisdiction of Japanese courts can be affirmed over any of Claims (i) through (vi), forcing the appellee, which has no business office or other establishment in Japan and conducts no business activities there, to respond to this suit in a court in Japan separately from the Thai Suit would constitute an extremely excessive burden on the appellee and would be inconsistent with the idea of fairness between the parties and that of fair and prompt justice, since the appellant is guaranteed legal measures to protect its own rights in this case and has actually battled over similar issues in the Thai Suit as those disputed in this suit. Therefore, exceptional circumstances exist based on which the international jurisdiction of Japanese courts should be denied.

4. However, the rulings of the court of prior instance described above are unacceptable for the following reasons:

(1) [Summary 1] In a suit for damages based on tort filed against a defendant who has no address or the like in Japan, it is reasonable to understand that it suffices, in principle, to prove an objective fact that acts committed by the defendant in Japan caused damage to the plaintiff's legal interest for the international jurisdiction of Japanese courts to be affirmed based on the provisions of the Code of Civil Procedure on the venue for the place of tort (Article 5, item (ix) of the Code of Civil Procedure, whose predecessor provisions applicable to this case are Article 15 of the former Code of Civil Procedure). This is because, if this fact exists, it is generally reasonable to make the defendant respond to a case on the merits and, also from the viewpoint of the division of judicial function in the international community, there is sufficient legal

relevance to justify the exercise by Japanese courts of their jurisdiction.

Regarding Claim (i), it is evident that the objective fact was that the appellant's business operations were hindered as a result of the appellee causing the Warning Letter to be delivered to the addressee companies in Japan. Therefore, the international jurisdiction of Japanese courts should be affirmed with respect to Claim (i).

The court of prior instance denied the international jurisdiction of Japanese courts over the place of tort with respect to Claim (i), on the grounds that in order for the international jurisdiction of Japanese courts to be affirmed over a claim for damages based on tort, the existence of the tort must be proven at least to a certain degree of certainty based on tentative examination of evidence (hereinafter referred to as "Tentative Proof"), and that the appellee's aforementioned acts were tentatively justified. The Court understands: (a) that the above ruling was based on the assumption that in order for the international jurisdiction of Japanese courts to be affirmed based on the provisions of the Code of Civil Procedure on the venue for the place of tort, the existence of the tort, including the fact that the alleged tort cannot be justified, must be affirmed in some way; (b) that, in so affirming the existence of the tort, it would be inappropriate to affirm its existence based solely on the plaintiff's allegations, because this might result in the occurrence of cases where the defendant is forced to respond to a suit in Japan even if there is actually no legal relevance between the case and Japan; (c) that requiring, in contrast, the same level of evidence as in a case on the merits to affirm the existence of the tort would be inconsistent with the basic structure of the litigation system in which the court's decision on whether or not it has jurisdiction over the case as a requirement for litigation is a logical prerequisite for the court to examine the merits; and (d) that, based on the above understanding,

the court of prior instance adopted, in order to resolve this inconsistency, the approach whereby the existence of the tort is affirmed based on Tentative Proof. As describe above, however, the assumption described in (a) above is wrong although the understanding described in (b) and (c) is correct and, therefore, there is no reason to dare to take the approach described in (d). In addition, it is actually inappropriate to decide whether or not the tort existed based on Tentative Proof, because the level of proof required is unclear, which is likely to result in more varied criteria for judgment between courts than in conventional proof, making it extremely difficult for the parties, particularly the defendant located in a foreign country, to predict the outcome. Eventually, we must say that the above ruling by the court of prior instance is illegal in that it erred in the interpretation and application of law.

(2) Regarding Claim (ii), it is evident that the forum for the location of property as referred to in the Japanese Code of Civil Procedure (Article 5, item (iv) of the Code of Civil Procedure and Article 8 of the former Code of Civil Procedure) is in Japan, since the property as the subject matter of the claim exists in Japan.

In the meantime, since copyrights are protected mutually by member states under the Berne Convention, if we assume that the appellee owns the copyrights in the Works jointly with the appellant in the Kingdom of Thailand, the appellee's joint copyrights in the Kingdom of Thailand should be protected in Japan as well. The fact that the appellee has alleged in the Thai Suit that it has the joint ownership of the copyrights in the Works in the Kingdom of Thailand is sufficient to support the ripeness of the dispute over Claim (ii) and, in turn, the appellant's interest in having Claim (ii) acknowledged. The judgment of prior instance, which denied the appellant's interest in having Claim (ii) acknowledged, is illegal in that it erred in the interpretation and application of law.

Therefore, the international jurisdiction of Japanese courts over Claim (ii) should be affirmed.

(3) Claims (iii) through (vi) have all been consolidated with Claims (i) and (ii).

[Summary 2] It is appropriate to understand that, with respect to a claim between the parties between which the international jurisdiction of Japanese courts is affirmed over another claim based on a certain ground for jurisdiction, a close relationship must be found between the two claims in order for the international jurisdiction of Japanese courts to be affirmed over the first-mentioned claim based on the provisions of the Code of Civil Procedure on the venue for joint claims (the main clause of Article 7 of the Code of Civil Procedure and Article 21 of the former Code of Civil Procedure). This is because, even if the international jurisdiction of Japanese courts is affirmed over a certain claim between the parties, consolidating into the action another claim that has no close relationship with the original claim is not appropriate from the viewpoint of the reasonable division of judicial function in the international community, and also because any such consolidation may complicate and prolong the suit.

If we apply the above arguments to this case, Claims (iii) through (vi) all reflect the dispute over whether or not the appellant has the ownership of, or the exclusive rights to use, the copyrights in the Works and are, as such, considered to deal with the same issue as, and to have a close relationship with, Claims (i) and (ii). Therefore, the international jurisdiction of Japanese courts should be affirmed with respect to Claims (iii) through (vi) as well.

(4) Since the claims made in this suit and those made in the Thai Suit are not the same and the two suits have different subject matters, making the appellee subject to the jurisdiction of Japanese courts over this suit is not inconsistent with the idea of fairness between the parties and that of fair and prompt justice, even though one of the

points at issue in the Thai Suit is whether or not the appellee has the exclusive rights to use the Works and this issue is in common with this suit. The Court does not find any other exceptional circumstances under which the international jurisdiction of Japanese courts should be denied over this suit.

5. Conclusion

As explained above, the international jurisdiction of Japanese courts should be affirmed over Claims (i) through (vi) and, with respect to Claim (ii), the appellant's interest in action should be affirmed. The ruling of the court of prior instance and that of the court of first instance that this action by the appellant should be dismissed both contain violations of law that obviously affect their respective judgments. The gist of the argument of the petition for appeal is well-grounded in that it is consistent with the above. Therefore, without making judgments on other points, the Court quashes the judgment of prior instance, revokes the judgment of the first instance, and remands this case to the court of first instance to have it examine the case on the merits.

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

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presiding

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Justice KAWAI Shinichi

Justice FUKUDA Hiroshi

Justice KITAGAWA Hiroharu

Justice KAMEYAMA Tsugio

Justice KAJITANI Gen

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note\_other

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(This translation is provisional and subject to revision.)