Judgment rendered on April 11, 2003
2001 (Ju) 216
Indication of parties Omitted

Main text

The decisions that were issued against the appellant in the prior instance judgment shall be reversed.

The decisions described in the preceding paragraph shall be remanded to the Tokyo High Court.

Reasons

Concerning Reasons 2-2 through 4 of the reasons for Petition for Acceptance of Final Appeal, as presented by the attorneys for the appeal; namely, OKUNO Masahiko and MARUYAMA Atsuro

1. The outline of the facts which were confirmed in the court of prior instance is as follows.

(1) The appellant is a corporation that engages in planning and shooting and the like of animations and the like. The appellee is a designer and a national of the People's Republic of China.

(2) From around 1992, the appellee has been employed by a Hong Kong corporation that runs an animation production studio, and the appellee has wanted to acquire the skills for producing Japanese animations. The appellant's representative director, who invests in the aforementioned Hong Kong corporation, learned of the appellee and decided to help the appellee realize his/her wish.

The appellee came to Japan on July 15, 1993 and left Japan on October 1 of the same year. Then, the appellee paid another visit to Japan on the 31st of the same month and left Japan on January 29, 1994. Moreover, the appellee came to Japan on May 15 of the same year and has been living in Japan ever since. While the first and second visits to Japan were made on a so-called tourist visa, the third visit to Japan was made on a so-called work visa (hereinafter, the visits are respectively referred to as "First Visit" and so on).

(3) Immediately after the First Visit and ever since, the appellee has lived in the appellant's employee housing unit where meals are served (with the costs paid by the appellant), and has worked at the appellant's office. The appellant paid to the appellee a sum of 120,000 yen as a basic salary for each month during

the period from August 1993 until February of the next year, which covers the periods of the appellee's stay in Japan during the First and Second Visits as well as the periods during which the appellee returned to his/her country following each visit (in addition to the aforementioned sum, a sum of 50,000 yen was paid as special allowance for August 1993). However, employment insurance premiums and income tax and the like were not deducted from the aforementioned basic salaries. Every time the aforementioned payment was made, the appellant issued to the appellee a salary payment slip indicating a breakdown of the payment. At the time, the appellee's attendance at work was not managed by means such as time-clock cards, absence report, and signing out report.

(4) During the period from around July 1993, which is the time of the First Visit, until around November 1994, which is after the Third Visit, the appellee created the pictures, as shown on the List of Properties attached to the prior instance judgment, for use as characters in the animation works and the like which had been planned by the appellant. Of these pictures, those numbered 1 to 6, 8, 9, and 19 to 23 on the List of Properties (hereinafter collectively referred to as "Pictures") were created prior to the appellee's Third Visit to Japan.

The appellant used the Pictures to create a 70 mm computer-generated station simulation ride film called "D" (hereinafter referred to as "Animation Work"), and screened the Animation Work at theme parks in Japan. The appellee's name does not appear in the Animation Work as the author of the Pictures.

(5) The appellee submitted to the appellant a notice of resignation dated June 6, 1996.

2. In this case, the appellee filed a suit against the appellant, based on the copyright and the moral right of an author for the Pictures, seeking injunction of distribution and the like of the Animation Work as well as damage compensation. The appellant claimed that since the appellee created the Pictures while at work and under an employment contract with the appellant, the author of the Pictures is the appellant, as per the provisions of Article 15, paragraph (1) of the Copyright Act.

3. The court of prior instance determined as follows and partially approved the claims made by the appellee.

It cannot be acknowledged that an employment contract was established

between the appellant and the appellee before the Third Visit in light of the following facts; namely, that the appellee had not obtained the so-called work visa at the time of the First and Second Visits; moreover, it cannot be acknowledged that the appellant had explained the working conditions to the appellee by indicating the work rules; there is no clear, objective evidence to support the establishment of an employment contract, such as the existence of a written employment contract; employment insurance premiums and income tax and the like were not deducted from payments; and the appellee's attendance at work was not managed by means such as time-clock cards. As such, the Pictures were not created by the appellee as a person working for the appellant, and therefore it cannot be said that the appellant is the author of the Pictures, and thus the appellant's production of the Animation Work constitutes infringement of the appellee's copyright and moral right of an author.

4. However, the above decision by the court of prior instance cannot be accepted, for the following reasons.

(1) Article 15, paragraph (1) of the Copyright Act stipulates that if a work is made by an employee of a corporation, etc. in the course of duty under the supervision and at the initiative of the corporation, etc., the author is the corporation, etc. as prescribed in the aforementioned paragraph in consideration of the fact that the work is made public under the name of the corporation, etc. In order to make a corporation, etc. the author as stipulated in the aforementioned paragraph, the person who created the work must be an "employee of the corporation, etc.," and it is evident that this refers to a person who has entered into an employment contract with the corporation, etc. However, in regards to the argument of whether there is an employment relationship, it is reasonable to interpret that the applicability of an "employee of a corporation, etc.," as stipulated in the aforementioned paragraph, should be determined based on whether the person concerned is actually providing labor under the supervision of the corporation, etc., and whether the money paid by the corporation, etc. to such person can be evaluated as compensation for the labor provided, when the relationship between the corporation, etc. and the person who created the copyrighted work is considered substantively, and by comprehensively taking into consideration the specific circumstances involving the manner of work, existence or lack of supervision, amount of payment, payment method, and the like.

(2) When this case is considered in light of the above, the following is true as

described above. [Summary] Immediately after the First Visit and ever since, the appellee has lived in an employee housing unit of the appellant, worked at the appellant's office, received from the appellant the payment of a certain amount of money each month as a basic salary, and received salary payment slips. Furthermore, the appellee created the Pictures for use in the Animation Work which had been planned by the appellant. These facts should be regarded as suggesting that the appellee provided labor under the appellant's supervision and received payment in exchange for the labor performed. However, in the court of prior instance, the court failed to consider the aforementioned specific circumstances, but instead, used external factors, such as the type of the appellee's visa status, existence or lack of a written employment contract, and whether or not employment insurance premiums and income tax and the like were deducted, as the main grounds for the judgment. Furthermore, the court of prior instance immediately denied the existence of an employment relationship between the appellee and the appellant prior to the Third Visit, and did not even confirm whether the appellant was supervising the content and method and the like of the work which the appellee was performing at the appellant's office. In that case, it must be said that the prior instance judgment is unlawful, due to erroneous interpretation of "employee of the corporation, etc.," as stipulated in Article 15, paragraph (1) of the Copyright Act, and the appellant's claims are with merit.

5. From what is described above, judgment of the court of prior instance contain violation of law which clearly influences the judgment, and thus the decisions made against the appellant in the prior instance judgment shall be definitely reversed. In addition, this case shall be remanded to the court of prior instance in regards to the aforementioned decisions for further proceedings concerning the points made above.

Therefore, the Justices unanimously render a judgment as per the main text.

Supreme Court, Second Petty Bench

Chief Justice KAJITANI Gen

Justice FUKUDA Hiroshi

Justice KITAGAWA Hiroharu

Justice KAMEYAMA Tsugio

Justice TAKII Shigeo