

I. Incidental civil public interest litigation to the criminal action against Kunming Min* Paper Co., Ltd. et al. for environmental pollution

[Case Number] Guiding Case No. 215

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[Adjudicating Court and Collegial Bench Members]

First instance: The People's Court of Xinshan District of Kunming City, Yunnan Province

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[Keywords]

Criminal / Incidental civil public interest litigation to criminal action / Environmental pollution / Corporate crime / Environmental tort debt / Denial of corporate legal personality / Joint and several liability of shareholders

[Essence of Judgment]

Where shareholders of a company abuse the independent legal personality of the company and the limited liability of shareholders, resulting in the company's failure to fulfill its obligations for restoring and compensating for ecological and environmental damage, if an authority stipulated by the State or a legally-authorized organization requests the shareholders to bear joint and several liability in accordance with Article 20 of the Company Law of the People's Republic of China (2018 Amendment), the people's court shall support such request in accordance with the law.

[Basic Facts]

The defendant, the Kunming Min* Paper Co., Ltd. (hereinafter referred to as the "Min* Company"), was incorporated on 16 November 2005 with a registered capital of CNY 1 million. Huang * Hai held 80% of its shares, while Huang * Fen held 10% of its shares, and Huang * Long held the rest 10%. Li * Cheng was the logistics factory manager of the Min* Company. Since its incorporation, the Min* Company installed a hidden pipeline on one side of the Tanglangchuan River -- a tributary of the Jinsha River in the Yangtze River basin -- connecting it to a sewage pipeline of the company's production factory for discharging production wastewater. Appraisal results showed that during the period of illegal discharge, the water quality indicators in the Tanglangchuan River exceeded the baseline level by 13.0 to 239.1 times. The above acts caused pollution to the surface water environment of the Tanglangchuan

River, saved the company a total of CNY 3,009,662 in operating costs in wastewater treatment facilities, and caused environmental pollution damage amounting to CNY 10,815,021 (calculated using the virtual treatment cost method), and exerted certain adverse impact on the ecological functional area of the Jinsha River at the lower reaches of the Tanglangchuan River.

During this period when the production and business activities of the Min* Company caused ecological and environmental damage, its shareholders, i.e. Huang * Hai, Huang * Fen and Huang * Long, also engaged in the following misconduct: 1. The shareholders' personal bank accounts received a total of CNY 124,642,613.1 in company's receivables, which was not recorded in the company's financial records. 2. Nine properties belonging to the company's assets (with a market value of CNY 8,920,611) were registered under the names of the shareholders and their spouses, and were occupied by the shareholders free of charge. 3. The company's account books were not maintained separately from those of the shareholders, making it difficult to distinguish between the company's property and the shareholders' property, as well as between the shareholders' personal income and company profits. Since the filing of the case, Min* Company has fully suspended its production, and the available balance in its corporate account was held at only CNY 18,261.05.

On April 2021, The People's Procuratorate of Xishan District of Kunming City, Yunnan Province, announced relevant information of the case. During the announcement period, there was no authority or organization specified by the law filed civil public interest litigation. Therefore, the People's Procuratorate of Xishan District of Kunming City, Yunnan Province, instituted a public prosecution against the Min* Company, Huang * Hai, Li * Cheng et al. over the above acts. It also filed an incidental civil public interest litigation to the criminal action against the company and its shareholders, i.e. Huang * Hai, Huang * Fen, Huang * Long et al., requesting to deny the independent status of the Min* Company, and hold shareholders Huang * Hai, Huang * Fen, Huang * Long jointly and severally liable for the compensation for the ecological and environmental damage caused by the Min* Company.

[Judgment]

The People's Court of Xishan District of Kunming City, Yunnan Province, rendered its judgment in the incidental civil public interest litigation to the criminal case coded [2021, Yunnan, 0112, Criminal First Trial, No. 752] on 30 June 2022. The defendant company, the Min* Company, was convicted of the crime of polluting the environment and imposed a fine of CNY 2,000,000. Defendant Huang * Hai was convicted of polluting the environment and sentenced to three years and six months of imprisonment, along with a fine of CNY 500,000. Defendant Li * Cheng was also convicted of the crime of polluting the environment and was sentenced to three years and six months in prison, along with a fine of CNY 500,000. The defendant company Min* Company shall assume the compensation for ecological and environmental

damage of CNY 10,815,021 within ten days upon effectiveness of the judgment, and the amount shall be deposited into a special fund account of Kunming city designated for environmental public interest litigation remedy to be used for ecological and environmental restoration. Additionally, the defendant Min* Company, was ordered to pay a total of CNY 129,500 for the appraisal and testing fees to the People's Procuratorate of Xishan District of Kunming City, Yunnan Province within ten days upon effectiveness of the judgment. Defendants of the incidental civil public interest litigation to the criminal action, Huang * Hai, Huang * Fen and Huang * Long, shall bear joint and several liability for the compensation for the ecological and environmental damage and appraisal and testing fees borne by the Min* Company. After the judgment was pronounced, there was no appeal or protest, and the first-instance judgment has taken legal effect. The case has entered the enforcement procedure. As of the present, the value of the available assets for enforcement is sufficient to cover that of the subject matter of enforcement.

[Grounds for Judgment]

The effective judgment held that in the process of production and operation, a company shall bear its social responsibility of reasonably utilizing resources, taking measures to prevent and control pollution, and protecting the environment. The defendant, the Min* Company, disregarded its social responsibility for environmental protection and violated national laws and regulations. Without holding a pollutant discharge permit beforehand, it directly discharged its production wastewater through a hidden pipeline without effective treatment, causing serious environmental pollution. The acts constitute the crime of polluting the environment according to Article 338 of the Criminal Law of the People's Republic of China. As directly responsible managers and persons of the company, defendants Huang * Hai and Li * Cheng, played equal roles in the company's crime and shall also be held criminally responsible. The Min* Company discharged its production wastewater directly into the river through a hidden pipeline without authorization, causing ecological and environmental damage of up to CNY 10,815,021, and exerting adverse impacts on the ecological functions of the downstream Jinsha River basin. The acts constituted serious damage to the environmental public interests, resulting in not only criminal liability according to the law, but also civil liability for ecological and environmental damage compensation.

The defendant in the incidental civil public interest litigation to the criminal action, Min* Company, disregarded its obligation to protect the environment while pursuing economic benefits, causing serious damage to the environmental public interests in its production and operation process. Therefore, the damage compensation and the fees for appraisal and testing borne by Min* Company shall be regarded as the company's environmental tort liabilities.

Since its establishment, the Min* Company had extensive and frequent financial

transactions with shareholders Huang * Hai, Huang * Fen and Huang *Long, and all of the three people occupied the company's property free of charge, which led to serious confusion of personalities with the Min* Company. It constitutes the act of shareholders abusing the independent legal status of a company and the limited liability of shareholders as stipulated in Paragraph 3 of Article 20 of the Company Law of the People's Republic of China (2018 Amendment). The company's environmental tort liabilities amounted to CNY 10,944,521, far exceeding its registered capital of CNY 1,000,000. Moreover, the Min* Company had fully suspended production after the case was filed, and the available balance in its corporate account was only CNY 18,261.05. The above facts indicate that the serious confusion of personalities of Huang * Hai, Huang * Fen and Huang * Long with the Min* Company has deprived the Min* Company of its ability to repay its environmental tort liabilities, and made the Min* Company unable to fulfill its obligation to compensate for the ecological and environmental damage. It meets the conditions for shareholders to bear joint and several liability as stipulated in Paragraph 3 of Article 20 of the Company Law of the People's Republic of China (2018 Amendment). Accordingly, Huang * Hai, Huang * Fen and Huang * Long shall bear joint and several liability for the environmental tort debts on Min* Company.