

The High People's Court of Jiangxi Province
Civil Judgment

(2020) Gan Min Zhong No. 317

Appellant (Defendant of First Instance): ZHANG Yongming, male, born on September 27, 1973, Han nationality, individual business, residing in Jiaojiang District, Taizhou City, Zhejiang Province.

Agent ad litem: ZHANG Xinchuan, lawyer at the Jiangxi Xianhe Law Firm.

Appellant (Defendant of first instance): ZHANG Lu, female, born on March 14, 1982, Han nationality, bank clerk, residing in Jiaojiang District, Taizhou City, Zhejiang Province.

Agent ad litem: JIN Yingbo, lawyer at Zhejiang Duolian Law Firm.

Agent ad litem: SHI Yaqian, lawyer at Zhejiang Duolian Law Firm.

Appellee (Plaintiff of Public Interest Litigation of First Instance): the Shangrao People's Procuratorate of Jiangxi Province

Person Appearing in Court: YANG Jincai, prosecutor of the Procuratorate

Person Appearing in Court: HAN Xueqiang, prosecutor of the Procuratorate

Person Appearing in Court: WU Xuesong, prosecutor of the Procuratorate

Defendant of First Instance: MAO Weiming, male, born on August 24, 1975, Han nationality, unemployed, residing in Huangyan District, Taizhou City, Zhejiang Province.

The appellant ZHANG Yongming and the appellant ZHANG Lu filed an appeal against the civil judgment made by the Intermediate People's Court of Shangrao City of Jiangxi Province numbered (2018) Gan 11 Min Chu No. 303 on the civil public interest lawsuit initiated by the Shangrao People's Procuratorate of Jiangxi Province (hereinafter referred to as the "Shangrao Procuratorate") against the two appellants and the Defendant MAO Weiming in the first instance. The present court accepted the appeal on April 2, 2020 and assembled a collegial bench to hear the case publicly. The appellant ZHANG Yongming's Agent ad litem ZHANG Xinchuan, the appellant ZHANG Lu and her Agents ad litem JIN Yingbo and SHI Yaqian, Prosecutors YANG Jincai, HAN Xueqiang and WU Xuesong from the appellee the Shangrao Procuratorate, the Defendant in the first instance MAO Weiming appeared in court for the trial. Prosecutors ZHOU Youzhi and WANG Deqing, and Assistant Prosecutor TANG Lijuan, designated by the People's Procuratorate of Jiangxi Province, appeared in court and provided their opinions. The case has been concluded.

ZHANG Yongming's claims in the appeal: 1. Withdrawing the judgment in the first instance

by law. 2. Overruling all litigation claims of the Shangrao Procuratorate. Facts and grounds: 1. The original judgment mistakenly equates the natural environment with the ecological environment. The Python Peak is a component of the natural environment, not the ecological environment. The case may not be subject to an eco-environmental public interest lawsuit. 2. The original judgment mistakenly adopts the way of "justifying criminal punishment by reference to a less serious but criminalized act" to oppose the principle that "everything is permissible unless prohibited under the law". Climbing with tools is not prohibited under the law, therefore is permissible for the general public. 3. The original judgment mistakenly admits the Expert Opinions provided by ZHANG Baiping et al. in the criminal action, and equates "existing risks" with "damage results". The Expert Opinions, inconsistent with Article 87 of *the Interpretation of the Supreme People's Court on the Application of the Criminal Procedure Law of the People's Republic of China*, is inadmissible. The original judgment holds that "substantial risks exist", while only when the "risks" become a reality will the damage results be produced. 4. The original judgment mistakenly admits the "Value Appraisal Report on Damage to the Python Peak of the Sanqing Mountain" issued by the expert panel of the Jiangxi University of Finance and Economics. Damage results in a civil public interest lawsuit shall be assessed by an appraising body and an appraiser with the qualification for appraisal. The report made by the aforementioned experts lacks legal basis, and is inadmissible. The Contingent Valuation Method adopted by the expert panel is a method commonly used in western countries for assessing compensation for damage, therefore the appraisal conclusion is not credible. In the civil law, damage refers to damage that has already occurred, not that may occur in the future. 5. It is evidently unfair that the original judgment requests the appellants to bear all compensation liability for the damage caused by multiple factors.

The appellee, the Shangrao Procuratorate, responded that ZHANG Yongming's appeal is not established, and shall be rejected. 1. It is a case of civil public interest lawsuit against damage to ecological environment and resource preservation. According to Article 2 of *the Environmental Protection Law of the People's Republic of China*, and Article 5 of *the Regulations on Geological Heritage Protection*, the acts of ZHANG Yongming et al. of intentionally damaging the natural heritage and the scenic area constitute the act of destroying the ecological environment. 2. The acts of ZHANG Yongming et al. of climbing the Python Peak in a destructive manner are in violation of the mandatory provisions of the law, and are defined as an illegal tort. *The Environmental Protection Law, the Regulations on Scenic Areas, the Management Regulations of the Sanqing*

Mountain Scenic Area and other laws and rules all contain prohibitive provisions on destroying and arbitrarily altering the landscape and the natural environment. The acts of ZHANG Yongming et al. of climbing the Python Peak by hammering pitons are evidently against the abovementioned mandatory legal provisions. 3. The Expert Opinions provided by ZHANG Baiping and the other three geological experts, can be used as the basis for fact-finding. Opinions provided by a person with expertise, once being cross-examined, can be used as the basis for fact-finding. In contrast, the article titled "Climbing the Giant Python, Dangerous!" does not have the legitimacy and probative force as evidence. 4. The acts of ZHANG Yongming et al. have caused irreparable serious damage to the Python Peak. Damage as a crucial element to the ecological and environmental tort liability includes not only damage that has been occurred, but also the substantial risks of damage. 5. The "Value Appraisal Report on Damage to the Python Peak of the Sanqing Mountain" issued by the expert panel of the Jiangxi University of Finance and Economics can be used as the basis for identifying the amount of damages by law. Expert opinions being cross-examined can be used as the basis for fact-finding. The Appraisal Report adopts effective and scientific assessing method, carries out investigation and appraisal by procedure, and makes an objective and impartial conclusion. 6. Acts of others of hammering pitons and the Management Committee of the Sanqing Mountain Scenic Area of installing the monitoring system are irrelevant to whether the acts of ZHANG Yongming et al. constitute a tort.

Appellant ZHANG Lu and defendant of first instance MAO Weiming had no opinion on ZHANG Yongming's appeal.

The appellant ZHANG Lu's claims in the appeal: 1. Requesting the court of second instance to remand the case for retrial, or reject the plaintiff's claim in the first instance for the joint and several liability for the losses and the 150,000 Yuan expert appraisal fee. 2. Requesting the appellee to bear the litigation costs of the case. Facts and grounds: 1. The claim that the act of the appellant has constituted a tort is not established by law. (1) Regarding illegal act. Rock climbing itself, including climbing with tools, is not illegal. (2) Regarding the fact of damage. The court of first instance mistakenly equates "substantial risks" with damage, as the fact of damage must be deterministic. Opinions provided by the four experts in the case are not the appraising opinions as stipulated by law, but only expert opinions, and not be cross-examined. It is unfair to the Defendants of First Instance as the court of first instance did not determine whether the damage to the Sanqing Mountain is caused by multiple harmful acts, or examine the causal relationship

between the damage and the acts. The Appraisal Report accepted by the court of first instance to determine the amount of damages has expired and cannot be applied as a professional appraisal report. (3) Regarding causal relationship. As acts of others have also caused the damage, it is not reasonable to request the Defendants of First Instance to assume liability for the entire damage. (4) Regarding fault. The subjective intention of the Defendants of First Instance is to climb the rock. Even though they violated administrative regulations on management of the scenic area, they do not have the intention to deliberately harm or destroy the Python Peak. (5) Regarding whether the liability for compensation should be jointly assumed. From the perspective of division of duties, the duty of the appellant was to take videos, rather than hammering pitons. Hence, the appellant shall be exempt from the joint liability for compensation. 2. The claim that the appellant shall jointly bear the expert fee of 150,000 Yuan may not be established. In this case, the Jiangxi University of Finance and Economics and the three experts cannot be entrusted to conduct the value appraisal, nor are they qualified to issue the appraisal report, nor have they provided any standard for charging fees.

The appellee, the Shangrao Procuratorate, responded that ZHANG Lu's claims in the appeal are not established, and should be rejected. 1. The acts of ZHANG Lu et al. conform to the constitutive preconditions of a joint tort, and ZHANG Lu shall assume the joint and several tort liability by law. (1) The acts of ZHANG Lu et al. of intentionally violating mandatory provisions against damage to natural heritage and scenic areas, and climbing the Python Peak in a destructive manner have constituted an illegal tort. (2) The acts of ZHANG Lu et al. of climbing the Python Peak in a destructive manner have directly caused irreparable serious damage to the Python Peak. (3) The acts of others' hammering pitons and the Sanqing Mountain Management Committee's installing the monitoring system are irrelevant to whether the acts of ZHANG Lu et al. constitute a tort. (4) In the first instance, evidence provided by the public security organ has fully proved that ZHANG Lu, ZHANG Yongming and the other Defendant were in close verbal contact with the same intention of tort. (5) ZHANG Yongming, ZHANG Lu and MAO Weiming colluded with each other beforehand, and collaborated when committing the crime. Their acts are consistent with constitutive preconditions of a joint tort. 2. The decision on ZHANG Yongming, ZHANG Lu and MAO Weiming's joint and several liability for the expert fee is made on both factual and legal basis, which is a reasonable expenditure in the litigation that should be supported by law.

The appellant ZHANG Yongming argued that: 1. Completely agreeing with the claim and

grounds presented by the appellant ZHANG Lu that their acts do not constitute a tort. 2. Completely agreeing with the claim presented by the appellant ZHANG Lu that there is no legal basis for the three experts Jiangxi University of Finance and Economics to charge an appraisal fee of 150,000 Yuan. 3. If tort is established in the case, the three people should assume the joint and several liability for compensation, instead of requesting ZHANG Yongming to bear the liability for compensation alone.

Defendant of first instance MAO Weiming had no opinion on ZHANG Yongming's appeal.

Claims made by the Shangrao Procuratorate in the court of first instance: 1. ZHANG Yongming, ZHANG Lu and MAO Weiming shall assume the joint and several liability for compensation for the threshold amount of the NUV losses to the Python Peak of 11.9 million Yuan; 2. ZHANG Yongming, ZHANG Lu and MAO Weiming shall jointly and severally pay 510,826.4 Yuan for the installation of the Python Peak intelligent monitoring system as a measure to eliminate danger; 3. ZHANG Yongming, ZHANG Lu and MAO Weiming shall make a public apology on a well-known national news and media platform; 4. ZHANG Yongming, ZHANG Lu and MAO Weiming shall jointly and severally pay 150,000 Yuan for engaging experts for the appraisal.

Fact-finding in the first instance: Around April 2017, ZHANG Yongming, MAO Weiming, and ZHANG Lu contacted on WeChat and agreed to go to the Sanqing Mountain Scenic Area to climb the "Gigantic Python Rising in the Mountain" (also known as the Python Peak). At around 17:00 p.m. on April 14, 2017, ZHANG Yongming, MAO Weiming and ZHANG Lu checked in at the "Goddess Hotel" at the Sanqing Mountain Scenic Area. At around 4:00 a.m. on April 15, 2017, ZHANG Yongming, MAO Weiming, and ZHANG Lu brought an electric drill, pitons (expansion bolts made from stainless steel), a hammer, ropes and other tools to the foot of the Python Peak. ZHANG Yongming climbed first, and MAO Weiming and ZHANG Lu pulled the ropes to protect ZHANG Yongming's safety. When climbing, ZHANG Yongming drilled pitons in dangerous places, drilled holes into the rock mass with an electric drill, drove the pitons into the holes with a hammer, tightened them with a wrench, and then attached the rope to the pitons. In this way, ZHANG Yongming climbed to the top of the Python Peak at about 6:49 a.m. in the morning. MAO Weiming followed ZHANG Yongming all the way to protect him by pulling the rope, and climbed to the top of the Python Peak at around 7:00 a.m. along the rope laid by ZHANG Yongming. At the top of the Python Peak, ZHANG Yongming gave extra tools to MAO Weiming, who got down from the Peak along the rope, took extra tools back to the "Goddess Hotel", and then returned to

the Python Peak. When climbing for more than 10 meters on the Python Peak, MAO was detected by the staff of the Sanqing Mountain Management Committee, and was controlled by the police after getting off from the Python Peak. When ZHANG Yongming and MAO Weiming began to climb, ZHANG Lu was pulling the rope to protect them. Then, ZHANG Lu returned to the hotel to collect a drone and went back to the Python Peak. She reached the top of Python Peak at around 7:30 a.m. with the rope laid by ZHANG Yongming, and filmed with the drone on the top. Under the persuasion of the staff, ZHANG Lu and ZHANG Yongming reached the foot of the Peak at around 9:00 a.m. and 9:40 a.m., respectively, and were put under control by the police. Afterwards, ZHANG Yongming, ZHANG Lu, and MAO Weiming were taken to the police station. Through on-site investigation, ZHANG Yongming hammered 26 pitons into the rock mass of the Python Peak. Due to the occurrence of the case, the Sanqing Mountain Management Committee have installed an intelligent monitoring system on the Python Peak at the cost of 510,826.4 Yuan.

On April 28, 2017, entrusted by the Sanqing Mountain Branch of the Shangrao Bureau of Public Security, four geoscience experts, LUO Zhaohua, ZHANG Baiping, YIN Guosheng and ZHAO Zhizhong, formed the expert panel, to engage in study, discussion and analysis of severity of the damage to the Python Peak, a world-class geological heritage site, of the Sanqing Mountain, caused by climbing of three tourists on April 15, and later, produced the "Opinions on Damage to the Python Peak, A World-Class Geological Heritage Site, in the Sanqing Mountain National Park, Caused by Climbing of Three Tourists on April 15" (hereinafter referred to as the "Expert Opinions"). According to the Expert Opinions; I . The geological heritage site of the Python Peak is a precious and landmark scenic spot in the Sanqing Mountain National Park, which is not only a non-renewable rare natural resource, but also a natural asset for sustainable utilization, with significant scientific, aesthetic and economic value. II . The geological heritage site of the Python Peak is a giant granite column formed by dissection of multiple joint structures of granite, which was later under long-term natural weathering and gravity disintegration, with a vertical height of 128 meters and a diameter of only 7 meters at its smallest point. There are multiple (multi-directional) structural surfaces on the granite column formed by dissection of joint structures. The Granite is a vulnerable rock. It is a completely isolated granite column due to the existence of multiple surfaces of dissection of joint structures and as a result of the long-term natural weathering and gravity disintegration. In normal natural conditions, it remains the relative stability and balance under the long-term natural weathering and gravity disintegration. However, under abnormal

external forces (such as earthquakes and other natural and man-made external forces), this isolated slender granite column with multiple surfaces of dissection of joint structures may lose its natural balance and collapse. III. With regard to severity of the damage to the geological heritage site of the Python Peak arising from the climbing of tourists: (i) The 25 expansion bolts nailed into the geological heritage site of the Python Peak (the granite column) have caused serious damage to basic properties (naturalness, primitiveness, integrity) of the World Natural Heritage (a world-class geological heritage site). (ii) The 25 expansion bolts are iron and steel materials, which, once being nailed, will directly induce and aggravate its physical, chemical and biological weathering, give rise to new cracks, and accelerate erosion of the granite pillar, and even cause collapse. (iii) The most slender section of the geological heritage site of the Python Peak (the granite column) has multiple sets of multi-directional joint structural surfaces, and is the vulnerable part of the granite column. However, at least four expansion bolts were nailed into this part, which exacerbated the vulnerability of the granite column structure. In conclusion, the three tourists who climbed the Peak on April 15 have caused serious damage to the Python Peak.

On March 28, 2018, entrusted by the Shangrao Procuratorate, the expert panel from the Jiangxi University of Finance and Economics carried out the value appraisal of the damage to the Python Peak and even to the Sanqing Mountain National Park caused by the 26 pitons drilled by ZHANG Yongming et al. when climbing the Python Peak. On May 3, 2018, the expert panel from the Jiangxi University of Finance and Economics issued the "Value Appraisal Report on Damage to the Python Peak of the Sanqing Mountain". The Appraisal Report states: the expert panel has carried out the value appraisal of the abovementioned intentional damaging acts and their results based on identified types of value by the Contingent Valuation Method commonly used across the world. Regarding the value of the damage to the Python Peak, it is concluded that even though the acts of the three people involved in the case did not lead to collapse of the Python Peak, they have caused irreparable serious damage to the Python Peak, exerted substantial negative impact on the existence of the Python Peak as a World Natural Heritage site, and accelerated the possibility of collapse. Hence, the expert panel suggests that the appraised value of the damage to the Python Peak in this case should be no less than the minimum threshold value of 11.9 million Yuan of the non-use value (NUV) losses to the Python Peak. The Shangrao Procuratorate paid 150,000 Yuan to the expert panel for the appraisal.

Additionally, it is found that on April 22, 2017, the Sanqing Mountain Branch of the Shangrao

Bureau of Public Security accepted and filed the case of intentional damage to the place of historical and cultural interest by ZHANG Yongming, ZHANG Lu and MAO Weiming for investigation. On July 5, 2018, the People's Procuratorate of Xinzhou District in Shangrao initiated a public prosecution at the Primary People's Court of Xinzhou District of Shangrao City by law, which was accepted by the Xinzhou Primary People's Court, Shangrao of Xinzhou District by law on the same day. On July 17, 2018, the Shangrao Intermediate People's Court issued a written decision on jurisdictional change to the Xinzhou Primary People's Court, Shangrao, transferred the case into the jurisdiction of the Intermediate People's Court of Shangrao City of Jiangxi Province, and sent a written notice to the Shangrao Procuratorate. The Shangrao Procuratorate then lodged a public prosecution with the indictment numbered Rao Jian Gong Su Xing Su (2018) No. 40 to the Shangrao Intermediate People's Court on August 21, 2018.

The court of first instance holds that key arguments in the case are: (i) Whether the action lodged by the Procuratorate falls under the category of civil public interest lawsuit? (ii) Whether the Shangrao Procuratorate has the jurisdiction to file civil public interest lawsuit regarding this case? (iii) Whether ZHANG Yongming's act of hammering pitons on the Python Peak is a tort? (i v) Whether acts of ZHANG Yongming, ZHANG Lu and MAO Weiming have caused damage to the Python Peak? (v) Whether ZHANG Yongming, ZHANG Lu and MAO Weiming are at fault for damaging environmental resources? (vi) Whether the amount of damages claimed by the Shangrao Procuratorate can be determined? (vii) Whether outsiders' acts of hammering pitons into the Python Peak have caused the same damage with that of ZHANG Yongming, ZHANG Lu and MAO Weiming, and whether the outsiders shall be held responsible? The arguments are judged respectively as follows:

(i) Whether the action lodged by the Procuratorate falls under the category of civil public interest lawsuit?

The court of first instance holds that the basic criterion for judging whether a civil lawsuit is for private interest or for public interest is whether the purpose of the party who brings the suit is to protect the public interest or not. The social public interest is the interest enjoyed by the unspecified majority of the people, to which, people's demand for clean water, fresh air, sound environment and beautiful scenery is an important component. Meanwhile, natural heritage and scenic areas, as natural resources, are owned by the state according to Article 48 of *the Property*

Law of China, that is, by the whole people. In addition, as an environmental element, natural heritage and scenic areas feature primitiveness and rarity, which are difficult to be restored once being destroyed. Hence, the precious environmental resources are even more urgent and essential to be protected. In view of this, Article 2 of *the Environmental Protection Law of China* explicitly deems natural heritage and scenic areas as an environmental element to be protected. Any act of destroying natural heritage or scenic areas not only jeopardizes the common property right of the people of the nation, but also undermines their recreational and sightseeing right to natural heritage and scenic areas, as well as the right to view the unique landscape. In this case, even though the Sanqing Mountain National Park has an explicit administrative subject, it does not affect the common interest of the general public to the Sanqing Mountain. The lawsuit filed by the Shangrao Procuratorate aims to protect the recreational and sightseeing right of the unspecified majority to the site of World Natural Heritage and its landscape. Information note on honors of the Sanqing Mountain National Park and the Python Peak and relevant documents and certificates submitted by the Procuratorate are authentic and legitimate, and hence admissible and effective to justify the facts it claims. Environmental tort is mainly manifested by environmental pollution and ecological damage. The act of destroying a natural resource leads to damage not only to the resource itself, but also to the ecological and environmental system that is interdependent with the resource being destroyed. In other words, civil environmental public interest litigation involves both public interest lawsuits for environmental pollution, and that for ecological damage including damage to natural resources. In this case, the acts of ZHANG Yongming et al., who climbed the Python Peak by hammering pitons, are evidently damaging to environmental resources; the acts are ecological damage in a broad sense, for which, relevant subjects are entitled to lodging civil public interest litigation for ecological damage. Hence, ZHANG Yongming's claim that his act of hammering pitons on the Python Peak does not destroy the ecology, and may not be subject to civil public interest litigation for ecological and environmental damage is not established, and thus not admitted. In addition, even though the Sanqing Mountain National Park has the explicit administrative subject, and is under business operation as a tourist attraction, it does not mean that the general public does not have the public environmental right to it. Hence, ZHANG Lu and MAO Weiming's claim that the case is not subject to public interest litigation as the Sanqing Mountain Management Committee is the beneficiary is not established, and is thus dismissed by the court.

(ii) Whether the Shangrao Procuratorate has the jurisdiction to file civil public interest

lawsuit regarding this case?

The court of first instance holds that as per Para. 2 of Article 55 of *the Civil Procedure Law*, "In the event that a people's procuratorate finds any act that harms the protection of the ecological environment and resources, any practice in the food and drug safety field that infringes upon the legitimate rights and interests of consumers, or any other behavior that damages the social benefits of the masses, while performing its duties and functions, it may file an action at the people's court, provided that there is no such organ or institution specified in the preceding paragraph or the organ or institution specified in the preceding paragraph decides not to bring a lawsuit. Where the organ or institution specified in the preceding paragraph files a lawsuit, the people's procuratorate may give endorsement to such lawsuit." In this case, the Letter of Clue Transfer submitted by the Shangrao Procuratorate testifies that the case is within its legitimate duty performance. As mentioned above, ZHANG Yongming, ZHANG Lu and MAO Weiming's acts constitute damage to environmental resources that infringes on public interest. In the meantime, the Procuratorate Daily could prove that it has fulfilled the procedure of public notice, and no statutory organ or institution brought a lawsuit upon the expiry of the public notice period. Therefore, the public interest lawsuit brought by the Shangrao Procuratorate meets the conditions stipulated by the Section 2 of Article 55 of *the Civil Procedure Law*, and conforms with the procedure required by *the Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues concerning Application of Laws for Cases regarding Procuratorial Public Interest Litigation*. The procuratorial organ may decide whether to file civil public interest lawsuit incidentally or separately based on the specific circumstances of the case, not only in the incidental way. In addition, whether the case should be heard after the conclusion of the criminal litigation depends on whether the judgment in the civil procedure should hinge on the criminal ruling, and not all cases subject to both criminal and civil proceedings are applicable to "criminal procedure going before the civil procedure". In this case, both in civil and criminal procedure, ZHANG Yongming, ZHANG Lu and MAO Weiming have no objection to basic facts of the case, and the argument is the determination on the nature of their acts. In detail, in the criminal procedure, the argument is whether their acts constitute "serious circumstance" or "serious damage" and whether they should be under criminal punishment. While in the civil procedure, the argument is whether their act of climbing is within the scope of reasonable utilization of natural heritage, whether they are in violation of relevant laws, and whether they shall bear liability for tort. Accordingly, as the

judgment in the civil procedure is not necessarily based on the facts found in the criminal procedure, the case can go through the criminal procedure in parallel with the civil procedure. It is not necessary to halt the procedure.

(iii) Whether ZHANG Yongming's act of hammering pitons on the Python Peak is a tort?

The court of first instance holds that *the Environmental Protection Law* explicitly identifies natural heritage and scenic areas as an environmental element to be protected, and stipulates that all organizations and individuals have the obligation to protect the environment, and those who cause damage by polluting the environment or destroying the ecology shall assume the tort liability. Moreover, Article 24 of *the Regulations on Scenic Areas* issued by the State Council in 2006 also stipulates that residents and tourists in scenic areas shall assume the obligation to protect relevant landscape, water body, etc., and its Article 26 sets forth that it is prohibited to carve or deface the landscape or facilities. In the same year, the Standing Committee of the 10th People's Congress of Jiangxi Province passed *the Management Regulations of the Sanqing Mountain Scenic Area* with similar provisions. It can be seen that the Python Peak, as a site of natural heritage, is under explicit protection of law, administrative regulations and local regulations. In this case, even less serious acts of carving and defacing the landscape in scenic areas are forbidden by law, more serious acts of climbing the Python Peak by hammering pitons into the rock mass committed by ZHANG Yongming, ZHANG Lu and MAO Weiming shall be prohibited naturally. Hence, ZHANG Yongming, ZHANG Lu and MAO Weiming's acts not only directly violated national laws and regulations, but also infringed on the environmental right of the general public protected by *the Environmental Protection Law* and other laws and regulations, and shall be deemed as an illegal tort.

(i v) Whether acts of ZHANG Yongming, ZHANG Lu and MAO Weiming have caused damage to the Python Peak?

The court of first instance holds that ZHANG Yongming, ZHANG Lu and MAO Weiming, who drilled holes with an electric drill, drove the pitons into the holes with a hammer, tightened them with a wrench, and firmly fixed the pitons into the rock mass when climbing the Python Peak, definitely bring damage to a certain degree to the Python Peak. It is a commonly known fact that the parties involved do not need to adduce evidence to prove that. According to Article 1 of *the Supreme People's Court's Interpretation on Several Issues Concerning the Application of Law in Environmental Civil Public Interest Litigation*, organs with the relevant authority may file

lawsuits against acts that have already damaged the public interest or have produced significant risks to the public interest. Hence, it can be seen that ecological destruction with significant risk of damaging social and public interest itself is a form of damage. The Expert Opinions made by four experts in the criminal procedure submitted by the Shangrao Procuratorate, and testimonies made by ZHANG Baiping and YIN Guosheng in court that have been cross-examined by both parties in the case are associated with the occurrence of the damage in the case, and should be admitted. The Expert Opinions made by the four experts including LUO Zhaohua and ZHANG Baiping in the criminal procedure states, "The geological heritage site of the Python Peak is a giant granite column formed by dissection of multiple joint structures of granite, which was later under long-term natural weathering and gravity disintegration, with a vertical height of 128 meters and a diameter of only 7 meters at its smallest point. There are multiple (multi-directional) structural surfaces on the granite column formed by dissection of joint structures. The Granite is a vulnerable rock. It is a completely isolated granite column due to the existence of multiple surfaces of dissection of joint structures and as a result of the long-term natural weathering and gravity disintegration. In normal natural conditions, it remains the relative stability and balance under the long-term natural weathering and gravity disintegration. However, under abnormal external forces, such as earthquakes and other natural and man-made external forces, this isolated slender granite column with multiple surfaces of dissection of joint structures may lose its natural balance and collapse." Accordingly, it is deemed that damage caused by ZHANG Yongming, ZHANG Lu and MAO Weiming, who hammered 26 pitons into the rock mass of the Python Peak, meets the standard of proof of high degree of probability in civil procedure. ZHANG Yongming, ZHANG Lu and MAO Weiming's acts not only destroyed the naturalness, primitiveness and integrity of the Python Peak, and what is worse, the 26 pitons will directly induce and aggravate its physical, chemical and biological weathering, give rise to new cracks, accelerate erosion of the granite column, and even cause collapse, as well as exacerbate the vulnerability of the most slender section granite column with multiple sets of multi-directional joint structural surfaces at the same time. Hence, even though ZHANG Yongming, ZHANG Lu and MAO Weiming's acts have not directly led to disintegration or collapse of the Python Peak, they have brought a significant risk of disintegration and even collapse of the Python Peak. As such a significant risk of damaging social and public interest itself is a form of damage, it is reasonable for them to assume the liability for tort.

(v) Whether ZHANG Yongming, ZHANG Lu and MAO Weiming have fault for damaging environmental resources?

The court of first instance holds that the Article 65 of the effective *Tort Liability Law of the People's Republic of China* has sets forth the principle of "no-fault liability", which requires that the polluter shall bear tort liability no matter whether it has the subjective fault or not. However, whether the principle of "no-fault liability" is applicable to ecological damage including the damage to natural resources has not been explicitly regulated by relevant laws. By the principle of "no-fault liability", the doer shall bear the tort liability by law, no matter whether the doer has the fault or not. Its purpose is to reduce the victim's burden of proof under special circumstances, and ensure that the rights and benefits of the victim can be remedied timely. Hence, this principle shall be applied based on explicit legal provisions. If there is no special provision in the law, the general principle for tort liability, that is, the principle of "fault-based liability", shall apply, which is also true in this case when determining the liability of ZHANG Yongming, ZHANG Lu and MAO Weiming. The criterion of fault, usually judged from subjective and objective perspectives, includes intention and negligence. The former is the result of the doer's active pursuit of the damage, while the latter is the result of the doer's recklessness and carelessness, or gullibility that the damage can be avoided. In this case, the WeChat records provided by the Shangrao Procuratorate reveal that, ZHANG Lu said "Take the mechanical plug and don't let them know we are drilling pitons." ZHANG Yongming said, "It is also one of dreams of life to be in jail on the Sanqing Mountain. Being arrested and imprisoned for two days is nothing but tasting the meals in the jail." MAO Weiming said, "I'm ready to be arrested. Just make a self-criticism. It's nothing if we keep a good attitude." In particular, ZHANG Lu quoted the French "Spiderman" Alain Robert that "I hate the destruction of nature's treasures so much that I would rather not climb to the top of Python Peak than climbing with the aid of tools." In addition, the written records made when the investigating organ interrogated ZHANG Yongming, ZHANG Lu and MAO Weiming who were suspected of intentionally damaging the place of historical and cultural interest show that, ZHANG Yongming confessed "I'm responsible for drilling holes and laying the ropes, and MAO Weiming and ZHANG Lu are responsible for protecting me." MAO Weiming confessed that "ZHANG Yongming went first, climbing by drilling pitons and fixing ropes. I was following him to protect him, and ZHANG Lu was at the foot to protect him." "ZHANG Yongming visited the site and said the Python Peak is granite, suitable for drilling and climbing with tools." ZHANG Lu confessed

that "ZHANG Yongming and MAO Weiming climbed bare-handed as well as tool-aided, ... he punched holes with an electric drill on the rock of the Python Peak, and then hammered pitons into the holes for protection ...". Obviously, ZHANG Yongming, ZHANG Lu and MAO Weiming were clearly aware that the Sanqing Mountain National Park is a site of World Natural Heritage, and that acts of punching holes with an electric drill and hammering pitons into the holes would cause damage to the Python Peak, but still did that with intention, successively hammering 26 pitons and climbing to the top of the Python Peak with the help of pitons and ropes. Hence, it should be determined that ZHANG Yongming, ZHANG Lu and MAO Weiming have the joint intention to cause the damage in the case.

(vi) Whether the amount of damages claimed by the Shangrao Procuratorate can be determined?

The court of first instance holds that cases of environmental tort are mainly divided into two categories: environmental pollution and ecological damage. If environmental damage is caused, the tortfeasor shall compensate for the costs of environmental restoration and losses of environmental service function during the restoring period. If it fails to be restored, the tortfeasor shall compensate for the permanent damage. Unlike other commodities, environmental resources do not have a real trading market, and their economic value cannot be assessed based on observable or presupposed market behaviors. The Contingent Valuation Method is a typical statement-of-preference valuation technique, by which, people are directly surveyed about their willingness to pay (WTP) for a measure of environmental benefit improvement or resource preservation, or about their willingness to accept (WTA) a compensation for environmental quality losses under the hypothetical market situation, in order to estimate the economic value of environmental benefit improvement or environmental quality losses based on WTP and WTA. In this case, first, all members of the expert panel of the Jiangxi University of Finance and Economics entrusted by the Shangrao Procuratorate have relevant expertise, among whom, HUANG Heping is a professor of the University and a doctoral supervisor in population, resource and environmental economics; LIN Wenkai is a lecturer of the University and a Doctor of Management; and HU Haisheng is an associate professor and a postgraduate supervisor. The three experts have the expertise in environmental economics and tourism management, and are engaged in scientific research and teaching in the field of environmental economics for a long time, consistent with Article 15 of *the Supreme People's Court's Interpretation on Several Issues Concerning the Application of Law in*

Environmental Civil Public Interest Litigation concerning "persons with expertise". Their opinions, being cross-examined in court, can be used as the basis for fact-finding. Second, the Contingent Valuation Method adopted by the expert panel of the Jiangxi University of Finance and Economics for appraising the damaged value of the Python Peak is one of the methods approved by *the Recommended Methods for Appraisal and Assessment of Environmental Damage (Edition II)* issued by the former Ministry of Environmental Protection, which also pointed out that this method is particularly suitable to assess ecological service value of unique landscape and cultural relics where the option value accounts for a large proportion. Therefore, it is appropriate that the Contingent Valuation Method was adopted by the expert panel for the appraisal. Third, as soon as being entrusted, the expert panel of the Jiangxi University of Finance and Economics made relevant appraising plans, designed relevant questionnaires, and defined relevant work requirements. After that, the expert panel surveyed the respondents about their basic information, their WTP, amount of payment and motive of payment for the restoration of the Python Peak damaged by the 26 pitons drilled by ZHANG Yongming, ZHANG Lu and MAO Weiming in a down-to-earth manner. Based on the samples they obtained, they analyzed the non-use value of the Python Peak being damaged ranges from 11.9 to 237 million Yuan. Even though this method is uncertain to some extent due to the influence of many factors such as survey techniques, methodology and preferences of respondents, its scientific nature is still recognized worldwide. In this case, the amount of the damaged non-use value of the Python Peak calculated by the experts by using the Contingent Valuation Method conforms with Article 15 of *the Supreme People's Court's Interpretation on Several Issues Concerning the Application of Law in the Trial of Environmental Civil Public Interest Litigations*, with sufficient grounds. At the same time, given the uncertainty of the appraisal outcome, the court of first instance takes this appraisal report as reference for the final judgment on the tort liability of ZHANG Yongming, ZHANG Lu and MAO Weiming.

(vii) Whether outsiders' acts of hammering pitons into the Python Peak have caused the same damage with that of ZHANG Yongming, ZHANG Lu and MAO Weiming, and whether the outsiders shall be held responsible?

The court of first instance holds that both parties have no objection to the fact that the Python Peak has not only the 26 pitons hammered by ZHANG Yongming, ZHANG Lu and MAO Weiming, but also pitons from others, and from the monitoring system installed by the Sanqing

Mountain Management Committee, which is also consistent with the written records of scene investigation of the Python Peak in the first instance, and can be affirmed. It is undeniable that whether the acts of outsiders of hammering pitons, or the act of the administrative authority of installing the monitoring system, or the acts of ZHANG Yongming, ZHANG Lu and MAO Weiming of hammering pitons in this case, have caused damage to the Python Peak to some extent. It is an indisputable fact, while questions of how much damage has been caused, and whether the acts of multiple parties have jointly caused the same damage or respectively caused different damage are lacking in sufficient evidence to prove. Moreover, given the limit of capacity and conditions of mankind to understand and explore the nature, it is difficult to examine and affirm whether the acts of ZHANG Yongming, ZHANG Lu and MAO Weiming in this case interact and interplay with that of others' hammering pitons. Whether outsiders hammering pitons shall bear tort liability for hammering pitons, and whether the tort liability of ZHANG Yongming, ZHANG Lu and MAO Weiming shall be reduced accordingly should be analyzed from components of tort liability. With regard to the act of the Sanqing Mountain Management Committee of construction and protection, notwithstanding the objective fact that damage has been caused by installing the monitoring system on the Python Peak, it is an inevitable cost of reasonable utilization of natural resources by mankind, differing in nature from the acts of ZHANG Yongming, ZHANG Lu and MAO Weiming of climbing the Python Peak in a destructive manner, as it is in good faith subjectively and free from accountability, and should not bear tort liability by law. In addition, organized by the Sanqing Mountain Management Committee, outsiders of the case climbed the Python Peak by hammering pitons. Even though their acts had caused damage to a certain degree, the acts happened 18 years ago. No matter what were the purposes of the Sanqing Mountain Management Committee of organizing the event, and of the outsiders of attending the climbing contest, their acts were subject to inadequate economic and social development and people's limited awareness of environmental protection at that time, which may not be equated with that of ZHANG Yongming, ZHANG Lu and MAO Weiming. Nowadays, in the era where construction of ecological civilization has been incorporated into the "five-sphere" integrated plan (integration of economic, political, cultural, social and ecological development) to push forward the socialist cause with Chinese characteristics, the construction of a "beautiful China" is accelerating its pace, and people's awareness of environmental protection is enhancing day by day, ZHANG Yongming, ZHANG Lu and MAO Weiming, who were clearly aware of the illegality but still actively

continued their acts, shall be subject to the negative evaluation by law and assume legal liability accordingly.

In conclusion, the court of first instance holds that the Python Peak, as one of the three core landmarks of the Sanqing Mountain scenic area, which is a World Natural Heritage site, has the characteristics of rarity, uniqueness and vulnerability, with significant scientific, aesthetic, economic and recreational value that jointly shared by all mankind. Any act of damaging the Python Peak is an infringement on social public interest. The Shangrao Procuratorate has the authority to file a civil public interest lawsuit regarding this case by legal procedure. The acts of ZHANG Yongming, ZHANG Lu and MAO Weiming of outdoor rock climbing to conquer the nature and challenge themselves are understandable, but it is a common knowledge that climbing the Python Peak as a site of World Natural Heritage and climbing in a destructive manner by hammering pitons will bring damage. Therefore, ZHANG Yongming, ZHANG Lu and MAO Weiming have the obvious subjective fault. Objectively, it is irrefutable that ZHANG Yongming's act of hammering 26 pitons into rock mass of the Python Peak has caused damage to a certain degree, and ZHANG Yongming, ZHANG Lu and MAO Weiming, who supported and collaborated with each other, jointly committed the tort when climbing, and therefore shall bear the joint and several liability for compensation by law. Considering that acts of ZHANG Yongming, ZHANG Lu and MAO Weiming are an infringement on the environmental right of the general public to the World Natural Heritage with extensive social influence nationwide, ZHANG Yongming, ZHANG Lu and MAO Weiming shall make a public apology on a national media platform. When determining the amount of compensation, the court of first instance considered the rarity of the Python Peak as a site of World Natural Heritage and the severity of consequences and pervasiveness of social influence of the acts of ZHANG Yongming, ZHANG Lu and MAO Weiming, while taking other specific matters such as the economic conditions and solvency margins of ZHANG Yongming, ZHANG Lu and MAO Weiming into account, and used its discretion to make the decision, according to Article 23 of *the Supreme People's Court's Interpretation on Several Issues Concerning the Application of Law in the Trial of Environmental Civil Public Interest Litigations*. The trial of the case is significant, because it is a remedy to the damaged environmental right of the general public, and more importantly, it is to arouse the awareness of environmental protection among all members of the society, to enhance the consciousness of the general public of protecting all environmental resources including the World

Natural Heritage, and to warn and educate others in cherishing and caring for the environment and resources. With reference to the Appraisal Report issued by the expert panel of the Jiangxi University of Finance and Economics, the court of first instance decided the amount of compensation was 6,000,000 Yuan at its discretion. The Shangrao Procuratorate claimed that ZHANG Yongming, ZHANG Lu and MAO Weiming shall jointly and severally compensate the threshold amount of NUV losses to the Python Peak, which is the amount of damaged environmental resources in nature. Hence, the court of first instance hereby ordered ZHANG Yongming, ZHANG Lu and MAO Weiming to compensate for losses of environmental resources, and the amount will be used for protection and restoration of public ecology and environment. As for the Shangrao Procuratorate's withdrawal request of the claim that ZHANG Yongming, ZHANG Lu and MAO Weiming shall jointly pay 510,826.4 Yuan for the installation of the Python Peak monitoring system as a measure to eliminate the danger, as the claim does not involve social public interest to be protected by the Shangrao Procuratorate, the court of first instance allowed the withdrawal. In addition, expenditure on experts appointed by the Shangrao Procuratorate is a reasonable fee for the litigation, and shall be borne by ZHANG Yongming, ZHANG Lu and MAO Weiming. Hence, in accordance with Article 64 of *the Environmental Protection Law of the People's Republic of China*, Article 6.1, Article 8 and Article 15 of *the Tort Liability Law of the People's Republic of China*, Article 18, Article 22 and Article 23 of *the Supreme People's Court's Interpretation on Several Issues Concerning the Application of Law in Environmental Civil Public Interest Litigation*, upon discussion of the judicial committee of the court of first instance, it is judged that: I. ZHANG Yongming, ZHANG Lu and MAO Weiming shall publish an announcement on a national media platform to make an apology to the general public within ten days since the validation of the judgment, contents of which shall be reviewed by the court of first instance. II. ZHANG Yongming, ZHANG Lu and MAO Weiming shall jointly compensate for the losses of environmental resources amounting to 6 million Yuan, which shall be transferred to the account designated by the court of first instance within 30 days since the validation of the judgment, for use of protection and restoration of public ecology and environment. III. ZHANG Yongming, ZHANG Lu and MAO Weiming shall compensate plaintiff of public interest litigation the Shangrao Procuratorate, for the expert fees of 150,000 Yuan within 10 days upon since the validation of the judgment.

In the second instance, the appellee the Shangrao Procuratorate, submitted new evidence to

the court. The evidence is "written records of scene investigation" and relevant photos, aiming to prove that the Python Peak monitoring system installed by the Sanqing Mountain Management Committee is not directly fixed on the rock of the Python Peak, but on an independent column around the Python Peak. The installation of the monitoring system does not bring any damage to the rock mass of the Python Peak. In the cross-examination, ZHANG Yongming queried the evidence from three aspects. First, authenticity of the evidence. The "List of Expenditure on Installation of the Python Peak Intelligent Monitoring System" provided by the Shangrao Procuratorate in the first instance shows that six cameras have been installed, while the new evidence only shows four cameras, concealing two cameras installed on the rock mass of the Python Peak. Second, legitimacy of the evidence. In the scene investigation, grass-root organs or the parties involved in the case were not invited to be present. Third, relevance of the evidence. The Procuratorate did not lodge an appeal against the original judgment, proving that the Procuratorate has recognized the facts in the original judgment. The original judgment deems the act of hammering pitons by the Management Committee is in good faith, indicating that the Management Committee did hammer pitons on the Python Peak. Therefore, the new evidence provided by the Procuratorate is not relevant to the case. In the cross-examination, ZHANG Lu agreed with ZHANG Yongming: 1. The scene investigation in the evidence was carried out by the public security organ on April 24, 2020, later than the time when the court of first instance made the judgment. Whether the scene investigation was entrusted by the procuratorial organ or the court is not clear, nor the motive of the scene investigation. 2. The written records of scene investigation should be used for refuting the evidence confirmed by the court of first instance, then it should be the court that carries out the scene investigation. 3. the court of first instance had already done the scene investigation before that. The new evidence means that the Procuratorate denied its own claim, as it is inconsistent with the claim the first instance. 4. It is unclear that whether the scene of the incident has changed from before. Therefore, the new evidence is doubtful in terms of legitimacy, objectivity, relevance and fairness, and thus is inadmissible. MAO Weiming has no objection to the new evidence.

After the court hearing, the court organized all relevant parties and the Sanqing Mountain Management Committee and the Sanqing Mountain Branch of the Public Security Bureau to the Python Peak to investigate the scene, and confirmed that six cameras were installed by the Sanqing Mountain Management Committee in total. The Shangrao Procuratorate maintained that all the six

cameras are obviously not installed on the column of the Python Peak. ZHANG Yongming and MAO Weiming claimed that the No.1 camera is fixed on a rock that is connected with the foot of the column of the Python Peak, and the No.2 camera is fixed on a rock connecting with the rock of the No.1 camera, while No. 3 camera is fixed on a rock connecting with the rock of No. 2 camera, and other cameras are far from the Python Peak. Through on-site investigation, the court confirms that all the six cameras are not installed on the isolated column of the Python Peak. Whether the rocks are connected at the foot should be evaluated by the experts, and the court does not determine that.

In the second instance, the appellant ZHANG Yongming did not submit any new evidence, but applied for taking the study report made by QIU Liangming in 2001 on overall stability of the Python Peak as evidence from the Institute of the Northeastern Jiangxi Geological Brigade under the Jiangxi Bureau of Geology and Mineral Exploration. According to Section 2 of Article 64 of *the Civil Procedure Law of the People's Republic of China*, "Where a party and his or her agent ad litem are unable to collect evidence on their own for objective reasons, or where the people's court deems that the evidence is necessary for the trial of the case, the people's court shall investigate and collect the evidence." Accordingly, the court telephoned QIU Liangming about the study report, who replied that he could not find the report in 2001 because it was done long ago and the Institute has moved in the past years. Then, the appellant ZHANG Yongming applied for adducing the article titled "Climbing the Giant Python, Dangerous!" published on the "Jiangxi Daily" on October 19, 2001, which is the source of the clue to the evidence. This article quotes QIU Liangming from the Institute of the Northeastern Jiangxi Geological Brigade under the Jiangxi Bureau of Geology and Mineral Exploration that the stability of the "Giant Python" is not a big problem, and the geological survey organ had carried out a feasibility study on the overall stability of the rock mass of the Python Peak. However, this article also mentions that the geological survey organ specially underlines that when climbing, do not strike or drill holes as far as possible in points where cracks are expanding, so as not to jeopardize local image of the "Giant Python", and do not hang overweight objects unilaterally, so as to keep balance of stress on it. The study on stability cannot prove ZHANG Yongming's act of hammering pitons does not constitute serious damage to the Python Peak, and the "Python Peak Climbing Contest" mentioned in this article was not held in fact. The court suggests that whether the study report by QIU Shuliang in 2001 on the overall stability of the Python Peak can be found or not does not affect the fact-finding in this case,

and thus, does not support the application.

The appellant ZHANG Lu and defendant of first instance MAO Weiming did not submit new evidence.

Other facts ascertained in the second instance are consistent with that in the first instance. Other facts and evidence determined by the court of first instance are hereby confirmed by the present court.

The court holds that, with consideration of claims and defense opinions of all parties, the main arguments in the second instance are: I . Whether the case is subject to civil public interest lawsuit for ecological damage that can be filed by the Procuratorate? II . Whether the acts of the appellant constitute tort? Whether they shall assume joint liability? III. If tort is constituted, how to determine the amount of compensation? Regarding the key arguments, the present court judges as follows:

I . Whether the case is subject to civil public interest lawsuit for ecological damage that can be filed by the Procuratorate?

In the appeal, ZHANG Yongming claims that the natural environment is not equated with the ecological environment, and the case is not subject to a public interest lawsuit for ecological environment. According to the court, first, even though the expressions of "natural environment" and "ecological environment" have different meanings in different contexts, "natural environment" belongs to "ecological environment" in legal context. For example, Article 26 of *the Constitution of the People's Republic of China* stipulates that "The state protects and improves the environment in which people live and the ecological environment. It prevents and controls pollution and other public hazards." This provision divides the environment into living environment and ecological environment (The former refers to the environment relating to human activities, while the latter refers to environment relating to natural activities). Article 2 of *the Environmental Protection Law of the People's Republic of China* sets forth that "'Environment' as used in this Law refers to the total body of all natural elements and artificially transformed natural elements affecting human existence and development, which includes the atmosphere, water, seas, land, minerals, forests, grasslands, wildlife, natural and human remains, nature reserves, historic sites and scenic areas, and urban and rural areas." This provision categorizes the environment including atmosphere, water, seas and land, natural and human remains, nature reserves, scenic areas, etc. into "natural environment" and "artificial environment". (The former refers to natural conditions and natural

resources closely associated with subsistence and development of mankind, while the latter refers to the environment that has been transformed by human activities). Based on the above analysis, it can be determined that the acts of ZHANG Yongming et al. of climbing the Python Peak by hammering pitons constitute the damage to the natural environment, or the ecological environment. Second, the Python Peak, as a unique natural heritage site, is a rare and unrenewable natural resource asset with significant scientific, aesthetic and economic value, which is not only the common wealth of the present generation, but also the environmental resources that future generations should have the opportunity to enjoy. In this case, the acts of ZHANG Yongming et al. of climbing the Python Peak by hammering pitons have infringed on the environmental rights of the unspecified majority of the public, while rights of the unspecified majority are exactly the connotation of the social public interest. Environmental rights and interests of the people not only contain fresh air, clean water and other basic environmental elements essential for the subsistence and development of mankind, but also embody ecological and environment resources that satisfy the higher-level demands of the people, such as the beautiful scenery, endangered animals with critical value for scientific research, rare plants under ecological protection or scarce natural resources, etc. Damage to such resources will directly jeopardize the naturalness and diversity of the ecological environment that people can feel, and even produce ecological risks that people cannot feel within a short time.

Accordingly, ZHANG Yongming's claim in the appeal that their acts only constitute damage to the natural resources, rather than the ecological environment, is not established. In this case, the acts of ZHANG Yongming et al. of damaging the Python Peak, a natural heritage site, constitute the damage to social public interest in the field of protection of ecological environment and resources. As per Section 2 of Article 55 of *the Civil Procedure Law of the People's Republic of China*, "In the event that a people's procuratorate finds any act that does harm to the protection of the ecological environment and resources, any practice in the food and drug safety field that infringes upon the legitimate rights and interests of consumers, or any other behavior that damages the social benefits of the masses, while performing its duties and functions, it may file an action at the people's court." Hence, the Procuratorate has the authority to file civil public interest lawsuit for protection of ecological environment and resources regarding this case.

II. Whether the acts of the ZHANG Yongming, MAO Weiming and ZHANG Lu constitute tort, and whether they shall assume joint liability?

(i) As for whether the acts of the ZHANG Yongming, MAO Weiming and ZHANG Lu of climbing by hammering pitons and giving rise to damage to the Python Peak constitute tort, according to Article 64 of *the Environmental Protection Law of the People's Republic of China*, "Those who cause damage due to environmental pollution and ecological destruction shall bear tort liability in accordance with provisions of *the Tort Liability Law of the People's Republic of China*." Their acts should be judged from the constitutive conditions of general tort, including tortious action, damage, causality between the tortious action and the damage, and fault of the tortfeasor.

1. About tortious action. Climbing as a sport is mainly categorized into free climbing and climbing with tools. It is evident that climbing with tools will exert negative impact on the natural environment to a certain degree. The natural environment can be utilized appropriately, within the scope of reasonable development and exploration. Although rock climbing and the act of climbing with tools are not in violation of the law in general conditions, it does not mean that it is not a tortious action under any circumstances. The Python Peak, as a world geological heritage site and the core landscape of the Sanqing Mountain National Park, is under the protection of the national law and international conventions. In this case, ZHANG Yongming, MAO Weiming and ZHANG Lu, who are frequently engaged in rock climbing, hammered 26 pitons into the rock mass without being evaluated by the expert, nor avoiding the vulnerable part of the rock mass. Their acts have caused overall damage to the rock mass from the bottom up. The climbing activity in this case has caused damage to the rock mass of the Python Peak beyond the reasonable scope, and the tortious nature is evident.

The appellant ZHANG Yongming claims that as there is no explicit legal provisions prohibiting climbing with tools, and "everything is permissible unless prohibited under the law". The court holds that it is a single-faceted understanding of legal provisions. Both in the criminal law and the civil law, there are provisions prohibiting damage to places of historical and cultural interest. No matter what method is adopted to cause the damage, it is prohibited. Moreover, the principle of "everything is permissible unless prohibited under the law" is by no means a principle of absolute freedom. There is no absolute freedom in the world, but only relative freedom. When enjoying the freedom of "everything is permissible unless prohibited under the law", everyone shall observe the principle of "not harming others". In this case, ZHANG Yongming et al., who have caused damage to the Python Peak, infringe on the interest of unspecified majority of the

public, undermine the social public interest and seriously breach the principle of "not harming others".

In conclusion, the acts of ZHANG Yongming et al. constitute the tortious action.

2. About damage. In this case, the acts of ZHANG Yongming, MAO Weiming and ZHANG Lu of climbing the Python Peak by hammering pitons have definitely caused serious damage to the Python Peak. However, currently, there is no statutory judicial authentication and appraisal institution across the nation can appraise the degree of the damage. Therefore, Expert Opinions are admitted in the case with the following legal basis. According to Article 79 of *the Civil Procedure Law of the People's Republic of China*, "A party may apply to a people's court to notify person(s) with specialized expertise to appear in court and provide opinions on an expert's opinions or specialized issues." Article 15 of *the Supreme People's Court's Interpretation on Several Issues Concerning the Application of Law in Environmental Civil Public Interest Litigation* stipulates that "Where a party applies to a people's court to notify person(s) with specialized expertise to appear in court and provide opinions on an expert's opinions or specialized issues including causality, methods of ecological and environmental restoration, costs of ecological and environmental restoration, and losses of service functions of the ecological environment during the period from being damaged to being restored, etc., the people's court may approve. The expert opinions in the preceding paragraph, once being cross-examined, can be used as the basis for fact-finding." On April 28, 2017, entrusted by the Sanqing Mountain Branch of the Shangrao Public Security Bureau, four geoscience experts, LUO Zhaohua, ZHANG Baiping, YIN Guosheng and ZHAO Zhizhong, formed the expert panel, to engage in study, discussion and analysis of severity of the damage to the Python Peak caused by the acts of ZHANG Yongming, MAO Weiming and ZHANG Lu of climbing the Python Peak by hammering pitons, and issued the "Opinions on Damage to the Python Peak, A World-Class Geological Heritage Site, in the Sanqing Mountain National Park, Caused by Climbing of Three Tourists on April 15" (hereinafter referred to as the "Expert Opinions"). The four experts who provided the Expert Opinions, LUO Zhaohua, a professor at the China University of Geosciences (Beijing), ZHANG Baiping, a researcher at the Institute of Geographic Sciences and Natural Resources Research of the Chinese Academy of Sciences, ZHAO Zhizhong, a researcher at the Institute of Geomechanics of the Chinese Academy of Geological Sciences, and YIN Guosheng, a senior engineer with professorship at Institute of Geological Survey of Jiangxi Province, are all "persons with the expertise". Entrusted by the

investigating organ with the authority, they provided the Expert Opinions based on detailed inspection and verification process, by legitimate procedure and with explicit conclusion. Two of the four experts, ZHANG Baiping and YIN Guosheng, upon the notification of the court, appeared in court as the appraisers in the trial of the Shangrao Procuratorate versus ZHANG Yongming, MAO Weiming and ZHANG Lu for intentional damage to the place of historical and cultural interest, made an explanation in detail on the formation of the Expert Opinions in the court, and accepted the cross-examination by both the prosecuting and the defending parties, as well as the judges. The appellant ZHANG Lu claimed that the two experts did not accept the cross-examination in the civil procedure as appraisers, but only provided court records in the criminal procedure, in violation of relevant provisions of the civil procedure and the Supreme People's Court. The present court holds that the two experts, ZHANG Baiping and YIN Guosheng, have appeared in court in the trial of Shangrao Procuratorate versus ZHANG Yongming, MAO Weiming and ZHANG Lu for intentional damage to the place of historical and cultural interest, which has the same litigant participants with the present lawsuit. All the three tortfeasors in this case have attended the trial of the criminal case as the accused, examined the Expert Opinions, and questioned the experts in court. Moreover, as the facts proved by the Expert Opinions are same with the facts in the present case, it can be deemed that the two experts, ZHANG Baiping and YIN Guosheng, have appeared in court and accepted the cross-examination on the situation of the damage to the Python Peak caused by ZHANG Yongming, MAO Weiming and ZHANG Lu who climbed the Python Peak by hammering pitons. In addition, in this case, ZHANG Yongming et al. have questioned the Expert Opinions in written form. Hence, the Expert Opinions conforms to the legal requirements from the substance to the procedure, and can be used as the basis for the fact-finding. The Expert Opinions ascertains that: The acts of the three tourists, ZHANG Yongming, MAO Weiming and ZHANG Lu, of climbing the Python Peak by hammering pitons on April 15 have caused serious damage to the naturalness, primitiveness and integrity of the Python Peak. The pitons being drilled into the rock mass will induce and aggravate the physical, chemical and biological weathering, give rise to new cracks, and accelerate erosion of the granite column, and even cause collapse. The four pitons nailed into the most slender section, which is also the most vulnerable part, of the granite column of the Python Peak will exacerbate the vulnerability of the granite column structure. To sum up, ZHANG Yongming, MAO Weiming and ZHANG Lu who climbed the Peak by hammering pitons have caused serious damage to the Python Peak.

In the appeal, ZHANG Yongming and ZHANG Lu claim that the damage to the Python Peak described in the Expert Opinions has not "already" occurred, but "will be" and "inevitably will be". Thus, the court of first instance mistakenly equated "significant risks" with "damage", and only after the "risks" become a reality can the damage result be produced. The present court holds that, first, the damage described in the Expert Opinions has "already" occurred, as the acts of climbing the Python Peak by hammering pitons have already caused serious damage to the naturalness, primitiveness and integrity of the Python Peak. Such damage has already objectively existed, and the damage to the naturalness, primitiveness and integrity of the column of the Python Peak caused by drilling pitons to the rock mass is the one that can be recognized and felt by the common people. Second, other two sorts of damage described in the Expert Opinions, namely, inducing and aggravating the physical, chemical and biological weathering and accelerating erosion of the granite column, and even causing collapse; and exacerbating the vulnerability of the granite column structure due to the four pitons drilled into the most slender section, which is also the most vulnerable part, of the column of the Python Peak, are the "risks" claimed by the appellants, which are also the state of danger in reality. The so-called risk refers to the combination of the possibility of the occurrence of a certain dangerous event (accident or incident) and its consequences. It is thus evident that the risk is a combination of two factors, the possibility of the occurrence of the danger, or the probability of danger, and the consequences of the occurrence of the danger. In the Expert Opinions, "weathering", "erosion" and "collapse" are consequences of the occurrence of the danger, while "inducing", "aggravating" and "accelerating" are deterministic descriptions that enlarge the possibility of the occurrence of the danger, that is, resulting in a higher probability of danger. The higher probability of danger is a consequence that has "already" occurred, which substantially increases the possibility that people will suffer from the dangerous consequences of the damage to the Python Peak. The Expert Opinions, based on scientific and professional knowledge, describe the risks of "aggravating" and "accelerating" and "even collapsing", posing significant risks to the social public interest. In order to avoid occurrence of dangerous consequences, to avoid people's suffering from immeasurable significant damage or losses, *the Criminal Law* has identified the consequence of potential danger, or the statutory state of danger, as the criterion for completion of a crime, instead of the actual damage. Likewise, in environmental civil public interest litigation, the law has stipulated that for any act of polluting the environment or destroying the ecology that has already damaged the public interest or has produced significant

risks to the public interest, the organ with the authority may lodge a civil public interest lawsuit and request the defendant to assume corresponding civil liability according to Article 1 and Article 18 of *the Supreme People's Court's Interpretation on Several Issues Concerning the Application of Law in Environmental Civil Public Interest Litigation*. The abovementioned provisions further actualize the preventive function of environmental civil public interest litigation, so as to better protect people's living environment and ecological environment. Hence, ZHANG Yongming and ZHANG Lu's claim that "risks" are not the consequences of the damage is lacking in factual and legal basis, and is not supported. The determination of damage in this case is not only a punishment imposed on those who cause or increase risks of damage to natural relics, but also a normative guidance for the general public and a reminder of cherishing and caring for the environment and resources.

3. About the causality between the tortious action and the damage. Based on the facts that have been ascertained, both parties have no objection to the fact that direct causality exists between the acts of ZHANG Yongming et al. of climbing the Python Peak by hammering 26 pitons and the damage to the Python Peak. ZHANG Yongming et al. only have an objection to the severity of the damage, which does not affect the causality between the tortious action and the damage in this case.

4. About fault. ZHANG Yongming and ZHANG Lu claim in the appeal that their subjective intention is to climb the Python Peak, which is reasonable utilization of natural resources, without any intention to damage the Python Peak. Even though *the Environmental Protection Law of the People's Republic of China* sets forth that "Those who cause damage due to environmental pollution and ecological destruction shall bear tort liability in accordance with provisions of *the Tort Liability Law of the People's Republic of China*", the provision does not explicitly define the imputation of liability for the two tortious actions, namely, environmental pollution and ecological destruction. *The Tort Liability Law of the People's Republic of China* only identifies the principle of "no-fault liability" for the tortious action of environmental pollution, while there is no clear stipulation for the tortious action of damage to natural resources in this case. As the principle "no-fault liability" shall be strictly applied based on explicit legal provisions, the principle of "fault-based liability" shall apply in this case, by which, subjective fault of the doers in this case shall be one of the constitutive conditions of the tort liability. Climbing as a sport activity is mainly categorized into free climbing and climbing with tools. It is evident that climbing with tools will

exert negative impact on the natural environment to a certain degree, while the key is whether the negative impact is within the reasonable scope. In this case, ZHANG Yongming et al., who are frequently engaged in rock climbing, are clearly aware of the unique value of the Python Peak as the core landscape in the Sanqing Mountain National Park, and still hammered 26 pitons into the rock mass without being evaluated by the expert, nor avoiding the vulnerable part of the rock mass. Their acts have caused overall damage to the rock mass from the bottom up, and they have the laissez-faire intention to the damage of the Python Peak as a matter of fact. Hence, ZHANG Yongming, MAO Weiming and ZHANG Lu have evident fault for the damage to the Python Peak.

To sum up, ZHANG Yongming, MAO Weiming and ZHANG Lu who climbed the Python Peak by hammering pitons have constituted tort, and shall assume tort liability.

(ii) Whether ZHANG Yongming, MAO Weiming and ZHANG Lu shall assume the joint and several liability?

According to Article 8 of *the Tort Liability Law of the People's Republic of China*, "Where two or more persons jointly commit a tort, causing harm to another person, they shall be liable jointly and severally". In this case, ZHANG Yongming, MAO Weiming and ZHANG Lu went to climb the Python Peak together and respectively brought relevant tools. ZHANG Yongming confessed in the interrogation by the public security organ that he brought an electric drill, about twenty pitons, eleven or twelve hooks, three carabiners, two or three flat belts, an ascender, a hammer, a wrench, a helmet and two static ropes. MAO Weiming brought a safety belt and hooks, and ZHANG Lu brought a safety belt, hooks and a drone. MAO Weiming confessed in the interrogation that they brought static ropes, expansion bolts (with hooks), an electric drill, a drill bit, an ascender, a descender, carabiners, a hammer, a chisel, a knife, a battery charger, safety belts, a drone and other tools and devices. ZHANG Lu confessed in the interrogation that she took a drone, a safety belt, a head gear, hooks, a climbing gear, a helmet, a flat belt and an intercom device with her. The three defendants admitted their confessions made in the interrogation by the public security organ. Based on facts ascertained in the trial, ZHANG Yongming climbed first, and MAO Weiming and ZHANG Lu pulled the ropes to protect ZHANG Yongming's safety. When climbing, ZHANG Yongming hammered pitons in dangerous places, drilled holes into the rock mass with an electric drill, drove the pitons into the holes with a hammer, tightened them with a wrench, and then attached the rope to the pitons. MAO Weiming followed ZHANG Yongming all the way to protect him by pulling the rope, and climbed to the top of the Python Peak along the rope laid by

ZHANG Yongming. When ZHANG Yongming and MAO Weiming began to climb, ZHANG Lu was pulling the rope to protect them. Later, she reached the top of Python Peak with the rope laid by ZHANG Yongming, and filmed by the drone on the top. In view of the above facts, it can be decided that even though it was ZHANG Yongming that hammered the pitons, MAO Weiming and ZHANG Lu have the common intention of climbing the Python Peak by hammering pitons before and during the climbing. The three people had different duties when climbing, but supported and collaborated with each other. Each of them, in fact, had to perform his/her own act based on that of others, for completing their common purpose. The three doers finally reached the top of the Python Peak by hammering pitons, and the act of shooting videos on the top testifies that the damage to the Python Peak caused by hammering pitons is within the scope of the purpose of the three doers with common intention, and does not go beyond the foreseeable scope of the purpose of the three doers. ZHANG Lu's claim that she shall be exempt from the joint liability for compensation, as her duty was to take videos, rather than hammering pitons, is not consistent with the fact and thus is rejected. ZHANG Yongming, MAO Weiming and ZHANG Lu have committed joint tort, and shall jointly and severally assume the tort liability by law.

III. How to determine the amount of compensation?

Currently, there is no statutory judicial authentication and appraisal organ across the nation can appraise the value of losses to the Python Peak caused by the three doers in the case. On March 28, 2018, the Shangrao Procuratorate entrusted the expert panel of the Jiangxi University of Finance and Economics to appraise the value of losses to the Python Peak in this case, who produced the "Value Appraisal Report on Damage to the Python Peak of the Sanqing Mountain" (hereinafter refer to as the "Appraisal Report") on May 3, 2018, and submitted the Appraisal Report to the court of first instance on January 11, 2019, within the valid period of the appraisal ranging from May 3, 2018 to May 3, 2019. Members of the expert panel, HUANG Heping, LIN Wenkai and HU Haisheng, are persons with expertise in environmental economics, tourism management and ecology. They appraised the value involved in the case by the Contingent Valuation Method commonly used across the world. All the three experts appeared in court, making an explanation of the Appraisal Report and accepting cross-examination by relevant parties. The present court holds that the Appraisal Report conforms to Article 15 of *the Supreme People's Court's Interpretation on Several Issues Concerning the Application of Law in Environmental Civil Public Interest Litigation* concerning "persons with expertise", and can be legally used as the basis for

fact-finding in the case. The Contingent Valuation Method adopted in this Appraisal Report, is one of the methods approved by *the Recommended Methods for Appraisal and Assessment of Environmental Damage (Edition II)* issued by the former Ministry of Environmental Protection. Despite of some uncertainties of this method, its scientific nature is recognized worldwide. Except the Contingent Valuation Method, there is no more proper method that can be adopted for this case. It is reasonable for the Shangrao Procuratorate to lodge a civil public interest lawsuit by law against the three people for ecological damage, and request the three doers to jointly and severally compensate the threshold amount of the NUV losses to the Python Peak of 11.9 million Yuan with reference to the Appraisal Report. According to Article 23 of *the Supreme People's Court's Interpretation on Several Issues Concerning the Application of Law in the Trial of Environmental Civil Public Interest Litigations*, the court may determine the amount of compensation at its discretion in consideration of the range and degree of ecological destruction, rarity of the ecological environment, difficulty in ecological and environmental restoration, and severity of the fault of the defendant, with reference to opinions of relevant departments and experts. Accordingly, the court of first instance, in view of objective facts and other factors in the case, determined the amount of compensation of 6 million Yuan at its discretion, with reference to the conclusion of the Appraisal Report that "The estimated value of damage to the Python Peak should be no less than the threshold amount of 11.9 million Yuan of the NUV losses to the Python Peak arising from the case." The decision of the court of first instance is reasonable, and should be maintained. ZHANG Yongming and ZHANG Lu's claim in the appeal that the Appraisal Report is not issued by a statutory judicial authentication and appraisal organ and has expired, and thus cannot be admitted as the basis for judgment, and ZHANG Yongming's claim in the appeal that the conclusion of the Appraisal Report using the Contingent Valuation Method is not reliable to be the basis for determining the amount of compensation by the court of first instance are lacking in factual and legal basis, and are not supported.

With regard to the ZHANG Yongming and ZHANG Lu's claim in the appeal that the damage to the Python Peak was also attributed to pitons hammered by others and monitoring system installed by the Sanqing Mountain Management Committee, thus it is unfair to judge that the compensation for the damage shall merely be borne by the appellant et al., and that the 150,000 Yuan expert fee shall be covered by the appellant et al. The present court holds that the Appraisal Report is an appraisal of the damage caused by the acts of the three doers in this case of hammering

26 pitons into the rock mass of the Python Peak, not involving damage caused by others. The Sanqing Mountain Management Committee installed the monitoring system around the Python Peak after the incident for the sake of the public interest with the permission and design by law. Moreover, after the scene investigation by the present court, it is confirmed that the Python Peak monitoring system has six cameras in total, none of which are fixed on the rock of the isolated column of the Python Peak, which averted any damage to the Python Peak. The act of the Management Committee is neither identical to that of ZHANG Yongming et al., nor relevant to the case. The 150,000 Yuan expert fee is reasonable expenditure of the Procuratorate for the litigation. In accordance with Article 22 of *the Supreme People's Court's Interpretation on Several Issues Concerning the Application of Law in Environmental Civil Public Interest Litigation*, "Where the plaintiff requests the defendant to bear the costs of examination and appraisal, reasonable lawyer fees and other reasonable expenses for the litigation, the people's court may support the request by law."

In conclusion, the present court holds that, the ecological environment is the foundation for the subsistence and development of mankind, and damage to natural resources is that to the ecological environment. The Chinese law explicitly protects natural heritage and scenic areas as an environmental element, stipulates that all organizations and individuals shall assume the obligation to protect the environment, and those who destroy the ecological environment and cause damage thereby shall bear the tort liability. In particular, in the process of promoting the construction of ecological civilization, only by executing the strictest system and the strictest rule of law can we better protect our ecological environment. In this case, ZHANG Yongming, MAO Weiming and ZHANG Lu, who climbed the Python Peak by hammering pitons, have caused irreparable and permanent damage to the Python Peak, jeopardized the social public interest, and constituted joint tort. Judging the three doers in this case liable for environmental tort compensation aims at guide the general public to adopt a correct view of ecological civilization, and cherish and care for the ecological environment on which all mankind depends for subsistence and development. The court of first instance, with reference to conclusion of the Appraisal Report and in consideration of legal, social and economic factors in the case, made the reasonable decision on the amount of compensation of 6 million Yuan at its discretion. The claims of ZHANG Yongming and ZHANG Lu in the appeal are not established, and should be rejected. The court of first instance made the judgement based on clear fact-finding and accurate application of laws,

which should be upheld by law. As per Para.1, Section 1, Article 170 of *the Civil Procedure Law of the People's Republic of China*, the judgment is hereby made as follows:

Dismissing the appeal and upholding the original judgment.

The processing fee of the second instance is 109,700 Yuan, of which, 54,850 Yuan shall be borne by the appellant ZHANG Yongming and the other 54,850 Yuan shall be borne by ZHANG Lu.

This judgment is final.

Presiding Judge HU Shuzhu

Judge HUANG Xunrong

Judge WANG Huijun

May 18, 2020

Judge Assistant WANG Qian

Clerk WAN Miaomiao