

## High People's Court of Fujian Province

### Civil Judgement

(2015) Min Min Zhong Zi No.2060

Appellant (defendant of the first instance): Xie Zhijin, Male, DOB: 10/27/1963, Han Chinese, Self-employed, residing in Cangshan District, Fuzhou, Fujian

Appellant (defendant of the first instance): Ni Mingxiang, Male, DOB: 03/28/1965, Han Chinese, Farmer, residing in Fuqing, Fujian

Appellant (defendant of the first instance): Zheng Shijiang, Male, DOB: 04/04/1966, Han Chinese, Farmer, residing in Fuqing, Fujian

Attorney of the three appellants above: Xie Changling, Zhong Yin (Fuzhou) Law Firm.

Appellee (plaintiff of the first instance): Friends of Nature  
Domicile: Room A201, Building 2, No. 12 Yumin Road, Chaoyang District, Beijing  
Legal Representative: Zhang Hehe, Deputy Director-General  
Entrusted Agent: Ge Feng, Female, Director of Legal and Policy Affairs, residing in Wuchang District, Wuhan  
Attorney: Liu Xiang, Golden Diamond Law Firm

Appellee (plaintiff of the first instance): Fujian Green Home Environment-friendly Center  
Domicile: 3H, Buidling B, Hot Spring Park, Yingji Road No. 38, Gulou District, Fuzhou, Fujian  
Legal Representative: Lin Meiyong, Director  
Attorney: Wu Anxin, Hubei Longzhong Law Firm

Defendant of the First Instance: Li Mingshuo, Male, DOB: 12/16/1968, Han Chinese, Farmer, residing in Taishun County, Zhejiang  
Attorney: Qiu Shuhua, Fujian Quanxin Law Firm

Third Party of the First Instance: Yanping District Land Resources Bureau of Nanping Municipal Land Resources Bureau  
Domicile: Shengli Street No. 182, Yanping District, Nanping, Fujian  
Legal Representative: Huang Ge, Director-General  
Attorney: He Jianhua, Fujian Shunning Law Firm

Third Party of the First Instance: Yanping District Forestry Bureau of Nanping Municipal Forestry Bureau  
Domicile: Chaoyang Street No. 34, Yanping District, Nanping, Fujian  
Legal Representative: Wang Chengxu, Director-General  
Attorney: Guo Dehui, Fujian Minyue Law Firm

Entity supporting the litigation of the first instance: Research and Service Center for Environmental and Resources Law at the China University of Political Science (also known as “Center for Legal Assistance to Pollution Victims at the China University of Political Science ad Law”)

Domicile: Room 316, Runbo Conference Hotel, 35 Xitucheng Lu, Haidian District, Beijing

Head of the Center: Wang Canfa, Director

Attorney: Zhu Wenhe, Junyong Law Firm

Unsatisfied with the civil ruling (2015)*Nan Min Chu Zi No.38* by the Intermediate People’s Court of Nanping for civil environmental tort lawsuit brought against them by Friends of Nature (hereinafter referred as “**FON**”) and Fujian Green Home Environmental-friendly Center (hereinafter referred as the “**Fujian Green Home**”), with Yanping District Land Resources Bureau of Nanping Municipal Land Resources Bureau (hereinafter referred as “**Yanping District Land Resources Bureau**”), and Yanping District Forestry Bureau of Nanping Municipal Forestry Bureau (hereinafter referred as “**Yanping District Forestry Bureau**”) as the third party, appellants Xie Zhijin, Ni Mingxiang and Zheng Shijiang appealed to this court. This court formed a panel in accordance with law, and tried the present case openly on December 7<sup>th</sup> 2015. Appellants Xie Zhijin, Ni Mingxiang and Zheng Shijiang and their attorney Chen Yanmin, Ge Feng, the entrusted agent of the appellee Friends of Nature and the attorney Liu Xiang, Lin Meiying, the legal representative of Fujian Green Home Environment-friendly Center and the attorney Wu Anxin, Qiu Shuhua, the attorney of the defendant of the first instance Li Mingshuo, Guo Dehui, the attorney of the third party Yanping District Forestry Bureau and Zhu Wenhe, the attorney of the entity supporting the litigation of the first instance, Environmental Resources Law Research and Service Center of China University of Political Science of Law appeared in court to participate in the legal proceedings. The trial now has been completed.

The court of the first instance found that: affiliated to Chinese Academy of Culture, a non-government organization, the Green Culture Sub-Academy (known as Friends of Nature) was registered with Ministry of Civil Affairs on May 8, 2003 and has been engaged in environmental activities for public interest in the name of “FON”. On June 18, 2010, the plaintiff FON was officially registered with Chaoyang District Civil Affairs Bureau and founded as a non-enterprise private entity, named a NGO engaged in non-profit social service activities. According to its Charter, the purpose of the organization is to promote ecological civilization, conducts environmental research and work towards sustainable development; the business scope covers research on technology and policy related to solid waste treatment, research on solid waste’s impact on ecological environment, educational programs to promote the science and research findings about solid waste. The organization passed the annual inspection in 2010, 2011, 2012 and 2013. It submitted to the court of the first instance the annual work reports between 2009 and 2014 featuring its involvement in public-interest activities including surveys on environmental issues, environmental protection and environmental education and claimed no recorded violation of law since its founding.

The plaintiff Fujian Green Home was officially registered with Fujian Civil Affairs Department and founded as non-enterprise private entity, namely a NGO engaged in non-profit social service activities. According to its Charter, the purpose of the organization is to raise the public awareness of environmental protection, conserve the

ecological environment and maintain the ecological balance; its business scope covers environmental protection, eco-friendly culture promotion and relevant academic and technological exchanges. The organization passed the annual inspection between 2009 and 2013. It submitted to the court of the first instance the annual work reports between 2009 and 2013 featuring its involvement in public-interest activities including surveys on environmental issues, environmental protection and environmental education and claimed no recorded violation of law since founding.

On May 18, 2005, with the approval of the third party Yanping District Land Resources Bureau, the defendant Li Mingshuo obtained the mining license No. 3507020520004 which granted him the mining right over Hengxing Stone Factory at Yanping District, Nanping, valid from April 2005 to August 2008. The mining area was 0.0039 square kilometers, the rock type being granites and operating depth ranging from 282m to 252m below the surface. Li Mingshuo was also the holder of the business license of the factory.

On June 3, 2008, with the approval of the third party Yanping District Land Resources Bureau, the defendant Li Mingshuo obtained the mining license No. 3507020820014, valid from June 2008 to August 2008. The operating depth ranged from 520m to 483m below the surface. The prospector, the coverage of mining area, the name of the mine and the type of substance being mined were consistent with the descriptions on the license No. 3507020820014. On May 28, 2008, the defendant Li Mingshuo paid CNY 10,000 upfront to Yanping Land Resources for restoration of ecological environment. The defendant Li Mingshuo failed to obtain the permit to occupy the forestland for mining operations in accordance with the law.

In November 2008, Fujian Design Institute of Metallurgical Industry issued *Development and Utilization Programme for Decorative-facing Granite at Shajiyang (Hengxing) Mining Area in Yanping District* to plan the work regarding soil and water conservation, land reclamation and closure of mine site in the mining area.

On July 28, 2008, the defendant Li Mingshou and the defendant Xie Zhijin signed the *Mining Rights Transfer Contract*. On July 29, 2008, the defendant Li Mingshou signed another contract with the same content with the defendants Xie Zhijin, Ni Mingxiang, and Zheng Shijiang, agreeing that the mining area Li Mingzhao was to transfer to them was located in Hulushan Village, Taiping Town, Yanping District, Nanping City, Fujian. The mine was called Yanping Hengxing Stone Factory with a mining area of 0.0039 square kilometers and the rock material being decorative-facing granite. The mining right was extended to the whole area of the top of mountain where the present mining site was situated. The mining license registered under the name of Li Mingshuo and the No. was 3507020520004. Li Mingshuo was responsible for renewing license for another ten years and the area of the mine site was extended to the whole area of the mountaintop. Upon the receipt of the approval of renewing the mining license, Li Mingshuo should hand over the mining right to the new holder Xie Zhijin. Li Mingshuo was responsible for building a road connecting the foot of the mountain to the top. At the end of the contract, it was noted that the former contract signed on July 28, 2008 among the defendants Li Ming and the defendant Xie Zhijin was void. The contract signed on July 29, 2008 among the defendants Li Mingshuo and the defendants Xie Zhijin, Ni Mingxiang, and Zheng Shijiang. And it was a valid one which also specified the amount of payment, the liability for breach of

contract and so on. The contract was not submitted to the competent authorities for approval. After discussion, the defendants Xie Zhijin, Ni Mingxiang, and Zheng Shijiang decided that Xie Zhijin would be in charge of the mining operations at the site.

Failing to legally obtain the permit to occupy forestland for mining operation and get the approval of mining license extension, the defendants Xie Zhijin, Ni Mingxiang, and Zheng Shijiang, changed the original operating site which had belonged to Li Mingshuo and started quarrying by removing the top of the mountain and dumped waste materials downhill. The operation didn't stop until early 2010, resulting in severe damage of the forest. The defendants Xie Zhijin, Ni Mingxiang, and Zheng Shijiang, also built a masonry-concrete structure under the new operating site to shelter workers. Despite halting operation orders from the Ministry of Land, the defendants Xie Zhijin, Ni Mingxiang, and Zheng Shijiang continued to send an excavator to build roads at the pit slope and expanded the operating area in June 2011, seriously damaging the local forest. Fujian Tianxiang Judicial Identification Center identified that the defendants Xie Zhijin, Ni Mingxiang and Zheng Shijiang set up the operating sites at the smaller sub-compartment No.040 and the larger sub-compartment No.08 under the compartment No.005, the smaller sub-compartment No.050 and the larger sub-compartment No.02 under the compartment No.013, covering the forestland of 10.54 mu. The waste rocks were dumped at the smaller sub-compartment No.020 and the larger sub-compartment No.02 under the compartment No.013, burying an area of 8.62 mu. The worker's shed was built at the smaller sub-compartment No.070 and the larger sub-compartment No.08 under the compartment No.005, taking up an area of 0.28 mu. In total, the defendants illegally appropriate 19.44 mu of forestland. The old operating site owned by the defendant Li Mingshuo was situated at the smaller sub-compartment No.020 and the larger sub-compartment No.02 under the compartment No.013, the smaller sub-compartment No. 050 and the smaller sub-compartment No. 070, covering an area of 8.89 mu. The occupied forestland was used for quarrying and housing waste rock and earth, which led to serious damage to the local forest. The defendants Xie Zhijin, Ni Mingxiang, and Zheng Shijiang were found guilty of illegal appropriation of agricultural land and sentenced to imprisonment for one year and six months, one year and four months, and one year and two months respectively by the Yanping District People's Court on July 28, 2014. Unsatisfied with the decision, the three defendants appealed to the Nanping Intermediate People's Court which rejected the appeal and upheld the original decision.

On March 26, 2010, the defendant Li Mingshou issued a power of attorney entrusting the defendants, Xie Zhijin, Ni Mingxiang, and Zheng Shijiang, to handle the procedures related to compensation for removal of the mining site under the mining license No. 3507020520004.

On November 13, 2014, the third party Yanping District Land Resources Bureau issued "Notice on the Payment for the Restoration of Ecological Environment at the Mining Site" to the Hengxing Stone Factory registered by the defendant Li Mingshou, requiring a payment of CNY 25,2000 for the restoration and treatment of the ecological environment of the mining area.

During the investigation into the wrongdoings of illegal appropriation of agricultural land of the defendants Xie Zhijin, Ni Mingxiang, and Zheng Shijiang, Yanping District Forestry Bureau and Nanping Public Security Bureau produced an additional record of on-site inspection on 20 January 2014, stating "Xie Zhijin, Ni Mingxiang, and Zheng Shi Jiang dumped the waste rock downhill, which overlapped part of the operating site of the former owner Li Mingshuo. That is to say the former operating site owned by Li Mingshuo was partially buried by the waste rock. On January 22, 2014, according to the on-site confirmation of the defendant Xie Zhijin's records, "the old operating site built by the former owner Li Mingshuo has been buried by the waste rocks and earth from the mining operations at the top of the mountain." On February 12, 2014, the second additional record of the on-site inspection stated "the former owner Li Mingshuo confirmed on-site that the part of his old quarry that he identified today has been partially covered by waste earth and rock from Xie Zhijin, Ni Mingxiang, and Zheng Shijiang's mining operations".

During the lawsuit, plaintiff FON commissioned China Forestry Appraisal Co., Ltd. to conduct an environmental damage assessment. The company later produced an assessment report, stating that the total cost of ecological restoration project on the base date of assessment was CNY 1.1019 million; the damages value, i.e. the interim losses of ecological service function during the restoration, was CNY 1.34 million. The total amount of losses could be broken down into CNY 50, 000 worth of loss from damaged trees, CNY 20, 000 worth of loss caused by prolonged maturity of the trees, and CNY 1.27 million loss of ecological value caused by carbon release as a result of vegetation destruction, the loss of ecological service during the destruction of the forest and loss of ecological service during the restoration.

Plaintiff FON paid CNY 6,000 in assessment fee, CNY 96,200 in attorneys fee, and CNY 31,308 in other reasonable expenses for the case (including CNY 22,840 in reasonable transportation fee, CNY 4,148 in reasonable accommodation expenses. Expenditure on urban transportation and meals was determined to be CNY 4,320 with reference to "Management Measures of Business Travel Expenses for Central and State Government Officials" and actual needs); the plaintiff Fujian Green Home paid attorneys fee CNY 2,5261 and other reasonable expenses CNY 7,393,5 for the case (including transportation fee CNY 4,513.5 and accommodation CNY 400. Expenditure on urban transportation and meals was determined to be CNY 2,480 with the reference to "Management Measures of Business Travel Expenses for Central and State Government Officials" and the reality)

The court of the first instance held that there were five key issues in deciding the case:

1. Whether plaintiffs FON and Fujian Green Home were qualified as social organizations "being specialized in environmental protection public interest activities for five or more consecutive years" to bring such an EPIL?
2. Whether the defendants Xie Zhijin, Ni Mingxiang, Zheng Shijiang, and Li Mingshou, should bear the tort liability for damaging the environment and what are the forms and degree of liability?
3. Whether the damage of interim losses of service functions during the recovery of ecological environment stipulated in *the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law to the Trial of Environmental Civil Public-Interest Litigation Cases* (hereinafter referred as the "**EPIL Interpretation**") could be applied to this case?
4. How to evaluate and determine the cost, attorneys fees, and other reasonable litigation fees?
5. Whether the Yanping

District Land Resources Bureau and the Forestry Bureau should bear the civil liability for organizing the restoration work.

### **1. Plaintiffs' Eligibility:**

Article 58 of the new Environmental Protection Law (hereinafter referred as the “EPL”) provides that Chinese social organizations can bring suits on behalf of the public interest in situations involving pollution or ecological damage if the organizations: (1) registered with the civil affairs departments at or above the municipal level within the district; and (2) specialized in environmental protection public interest activities for five or more consecutive years. Even though plaintiff Friends of Nature (FON), registered as a non-enterprise private entity with Chaoyang District Civil Affairs Department on June 18, 2010, had not technically been registered for five years when it first filed the case, the court held it had standing because FON had been engaged in environmental protection public interest activities prior to registering and reached the five-year threshold by the time of the lawsuit with no recorded violations of the law. Therefore, it met the qualification of being engaged in environmental public-interest activities for at least five years to lodge an EPIL.

Plaintiff Fujian Green Home, registered as a non-enterprise private entity with Fujian Provincial Civil Affairs Department on November 7<sup>th</sup> 2006, had been engaged in environmental protection public interest activities for five years with no recorded violations of the law by the time of the lawsuit. In conclusion, both plaintiffs can bring suits on behalf of the public interest in situations involving pollution or ecological damage under Article 58 of the EPL.

### **2. Defendants' Liability, the Form and the Degree:**

The defendants Xie Zhijin, Ni Mingxiang and Zheng Shijiang illegally took a total of 19.44 mu of forestland and should be liable for the restoration of the damaged forest in accordance with the law. Although the defendant Li Mingshuo signed a contract for the transfer of mining right with the defendants Xie Zhijin, Ni Mingxiang, and Zheng Shijiang, the contract was ineffective without the approval of the competent authorities. Moreover, without renewing the soon-to-be expired mining license, the defendant Li Mingshuo expanded the mining rights to the whole area of the top of the mountain where the original mining site was situated without authorization and transferred to defendants Xie Zhijin, Ni Mingxiang, and Zheng Shijiang. Together with Xie Zhijin, Ni Mingxiang and Zheng Shijiang defendant Li Mingshuo is at fault of illegally occupying forestland and causing damages to vegetation. Therefore, the defendant Li Mingshuo shall jointly and severally liable for illegally occupying 19.44 mu of forestland. As 8.89 mu of the original operating site formerly belonging to the defendant Li Mingshuo had been buried by the waste rocks and earth dumped by defendants Xie Zhijin, Ni Mingxiang, and Zheng Shijiang, the extent to which each person is liable cannot be determined. So defendants Xie Zhijin, Ni Mingxiang, Zheng Shijiang shall jointly bear the liability for the restoration of this area. Article 18 of the *Forestry Law of the People's Republic of China* provides: "in prospecting and mining of mineral deposits and carrying out various construction projects, forestland shall not be occupied or the occupation shall be kept to the minimum level; in cases where forestlands have to be occupied or requisitioned, approval by the competent forestry administrative authority at or above the county level shall be obtained and review and

approval procedures shall be handled in accordance with the laws and administrative regulations on land administration, and the entity that uses land shall pay for the restoration of forest in accordance with the relevant provisions of the State Council." The defendant Li Mingshuo and the defendants Xie Zhijin, Ni Mingxiang, and Zheng Shijiang illegally took a total of 28.33 mu of forestland for mining activities without the approval of the competent authority, constituting ecological destruction harming the public interest.

The defendant Li Mingshuo failed to provide evidence for his statement that the mining site he operated on had long existed since 1995. According to Article 24 of the Regulations on the Protection of the Mining Geo-environment issued by the Ministry of Land and Resources, "where the mining rights are transferred, the obligations of protection, treatment and restoration of the geological environment of mines shall be transferred at the same time. The transferee of mining rights shall, in accordance with this regulation, fulfill the obligations of protecting, treating and restoring the geological environment of the mine." That is to say, when the mining rights are transferred, the obligation of restoration is also transferred. In conclusion, defendants Xie Zhijin, Ni Mingxiang, Zheng Shijiang, and Li Mingshuo, shall jointly assume the liability for forest restoration according to the law. In case of failure to comply with the court order within the time limit specified in the judgement, the defendants shall pay CNY 1.1019 million for restoration.

### **3. About whether the EPIL Interpretation can be applied to this case:**

Where a lawsuit is brought to the people's court prior to the implementation of the relevant laws and regulations because of the disputes over any civil act or event, if there is no explicit provision in any law, regulation or judicial interpretation effective at that time, such case shall be governed by the new relevant law. Article 21 of the EPIL Interpretation officially effective on January 7, 2015 stipulates: "a people's court may support the plaintiff's claim for damages for interim losses of service functions during the recovery of ecological environment." The case was heard on January 1, 2015 and the EPIL Interpretation was enacted and enforced in the course of the first trial. So the judicial interpretation on the losses of service functions during the recovery of ecological environment can be applied to this case. Therefore, the plaintiffs' claim for the damages for the loss of service function during the restoration period should be supported by the court. The actual damages sought by the plaintiffs for trees totaling CNY 1.34 million, including CNY 50,000 for the destruction and CNY 20,000 for the prolonged maturity, should not be deemed as the loss of ecological services function. Rather, the actual damages could only be claimed by the local collective that had use rights to the forest. The court therefore dismissed the claim but supported the remaining claims for damages for losses of ecological public service function, including the carbon release caused by the destruction of vegetation and the interim losses of ecological services during the restoration, totaling CNY 1.27 million.

### **4. Attorneys Fees and Costs:**

In accordance with Article 22 of *the Civil Procedural Law of the People's Republic of China* (hereinafter referred as "CPL"), the plaintiff FON's claims for assessment fees of CNY 6,000, attorneys fees of CNY 96,200 and litigation costs of CNY 31,308 are reasonable and not contradicted by any applicable law and should be supported. The plaintiff Fujian Green Home's claims for attorneys fees of CNY 25,261, charged in accordance with relevant rules with a rate of 1% of the value of the subject matter of the litigation, are also within a reasonable range and should be supported.

#### **5. Third Parties' Responsibilities:**

The court held that the district land and resource bureau and the forestry bureau were not responsible for supervising the restoration work because they have no civil legal relationship to the case. Although they are charged with enforcing forestry and land protection laws and regulations in their jurisdiction, they only have administrative authority.

In view of the above, in accordance with Article 117 and 130 of CPL, Article 58 of EPL and Article 18, Article 20, Article 21 and Article 22 of the EPIL Interpretation, the defendants were ordered to:

1. remove the existing sheds, equipment and waste rocks and earth from the quarry site at Hengxing Stone Factory in Hulushan at Yanping, Nanpin, restore the function of the damaged forestland of 28.33 mu by planting new trees in accordance with the standards of the Technical Regulations for Afforestation (DB35/T84-2005) and the local requirements for plantation techniques and tend the newly-planted trees for three years (starting from the date of acceptance) within five months after the decision took effect;
2. pay CNY 1.1019 million to a special account designated by the Nanping Intermediate People's Court for site remediation if the defendants Xie Zhijin, Ni Mingxiang, Zheng Shijiang, and Li Mingshuo fail to comply with the court order;
3. be liable for CNY 1.27 million in ecological interim losses to be paid into a remediation account designated by the Nanping Intermediate People's Court for ecological restoration projects.
4. pay the plaintiff FON the assessment fee of CNY 6,000, the attorneys fees of CNY 96,200 and other reasonable litigation costs of CNY 7,393.5, a total of CNY 133,593.5 within 10 days after the decision takes effect.
5. pay the plaintiff Fujian Green Home the attorneys fees of CNY 25,261 and other reasonable litigation costs of CNY 7,931, a total of CNY 33,192 within 10 days after the decision takes effect
6. Other claims sought by the plaintiffs FON and Fujian Green Home were dismissed.

If the payments abovementioned fail to be made within the time limit specified in the judgement, double interest on the debt for the belated payment shall be paid under Article 253 of CPL. Of the case acceptance fees of CNY 26,335 and preservation fees of CNY 5,000, the defendants Xie Zhijin, Ni Mingxiang, Zheng Shijiang, and Li Mingshuo should assume CNY 31,335 and the plaintiffs FON and Fujian Green Home should assume CNY 560. The court then approved plaintiffs' application for a waiver of the payment.

After the sentence at the first instance, the defendants Xie Zhijin, Ni Mingxiang, and

Zheng Shijiang, appealed to this court against the decision of the court of the first instance on the grounds that:

1. the court of the first instance failed to find facts needful to sustain the conclusion that the appellants' act constitutes a tort and did not make any finding on the policies enacted by the local authorities as well as their violations of administrative laws and negligence. Instead, the court pinned the liability that shall be assumed by the authorities on the appellants. The ruling was unfair and unjust.
2. The assessment opinions on the restoration fees and interim losses of ecological service functions during restoration should not be used as evidence in determining ecological damages.
3. The interim losses of service functions during the recovery of ecological environment provided by Supreme People's Court's (SPC's) EPIL Interpretation could not be applied to this case. The original judgement was incorrect.
4. The plaintiff FON had not been registered for five years when it first filed the case, that is, specialized in environmental protection public interest activities for less than five consecutive years. So the plaintiff FON was not an eligible party to bring such a suit. The defendants lodged an appeal for setting aside the original judgement and dismissing the claims of plaintiffs in the first instance on the grounds that the court failed to find facts needful to sustain its conclusion of the law, the laws incorrectly were applied incorrectly and the procedure was illegal.

The appellees FON and Fujian Green Home contended that:

1. The appellants were clearly fault when carrying out mining activities without approval. There was no direct link between the policies enacted by the local authorities as well as the authorities' violations of administrative law or negligence and the appellants' tortious liability for damages caused to environment.
2. The assessment opinion was provided by capable experts who provided professional opinions on the cost of ecological environment restoration and the interim losses of service function and appeared in court for inquiry. The opinions should be accepted.
3. Both the *Tort Law of the People's Republic of China* and the *General Principles of the Civil Law* provide for forms of bearing civil liabilities such as restitution, compensation for losses, etc. and interim losses of service functions during the recovery of ecological environment should be included. The interim losses of service functions during the recovery of ecological environment provided by Supreme People's Court's (SPC's) EPIL Interpretation can be applied to this case.
4. FON has been engaged in environmental public interested activities for more than five consecutive years, making it an eligible party to bring an EPIL.

In conclusion, the facts were clearly ascertained, the evidence for the act was conclusive, the application of laws was correct and the procedure was legal. The appellees requested that the appeal be rejected and the original decision be upheld.

One defendant of the original trial, Li Mingshuo agreed with the claims of the appellants, and requested that the case should be retried and the claims the appellees sought against him should be rejected.

The third party Yanping District Forestry Bureau contended that the original court held that the bureau had no civil legal relationship to the case as it was only responsible for enforcing forestry and land protection laws and regulations and only had administrative authority. Therefore, the bureau should not bear the liability as the third party. In conclusion, the facts were clearly ascertained, the evidence for the act was conclusive, the application of laws was correct and the procedure was legal. The third party requested that the original decision be upheld by the court of the second instance.

As an entity supporting of the litigation, Environmental Resources Law Research and Service Center of China University of Political Science of Law submitted a statement that the appellants' act of destroying the ecological environment constituted a gross violation of the laws and regulations on environmental protection and caused serious damage to the public interest. The appellees had been specialized in environmental public interest activities for years and met the qualification for lodging an environmental civil public-interest litigation. The center therefore supported the appellees in bringing an EPIL.

In the trial of the second instance, the appellants Xie Zhijin, Ni Mingxiang, and Zheng Shijiang supplemented the following five pieces of evidence to this court:

1. A copy of "Letter on Coordinating the Solution to Mineral Overlapping Caused by Newly-built Hefei to Fuzhou Railway Passing Through Nanping" (Document No. [2009] of Preparatory Group of Hefei to Fuzhou Railway (Fujian-Jiangxi) Company)
2. A copy of "Letter on Forwarding the 'Letter of Preparatory Group of Hefei to Fuzhou Railway (Fujian-Jiangxi) Company on Coordinating the Solution to Mineral Overlapping Caused by Newly-built Hefei to Fuzhou Railway Passing Through Nanping' " (Document No. [2009] of the Office of Nanping Municipal People's Government of Fujian Province );
3. A copy of " Meeting Notes on Studying the Mineral Overlapping Issue Caused by Beijing-Fuzhou High-Speed Railway Running through Yanping District" (Document No. 10 [2010] of Nanping Yanping District Railway Construction Headquarter)
4. A copy of "Meeting Notes of Beijing-Fuzhou Fujian-Jiangxi Company and Nanping Land Appropriation Headquarter for Hefei-Fuzhou Railway Construction on Coordinating the Solution to Mineral Overlapping Caused by Beijing-Fuzhou High-Speed Railway Running through Yanping District"

The above evidence was submitted to legitimize the appellants' unpermitted mining; the appellants failed to obtain the license because of the suspension of government service as a result of the railway construction efforts.

5. A copy of the electricity consumption record of Hengxing Stone Factory between October 2008 and October 2010 to prove that the mining activities took place between November 2008 and July 2009 and have stopped since August 2009.

The appellees FON and Fujian Green Home confronted that none of the five pieces of evidence submitted by the appellant was new given the time they were obtained. The first four pieces were irrelevant to the case. The last piece failed to prove that the appellants had suspended production since August 2009. In the opinion of this court, the five pieces of evidence submitted by the appellant had been obtained before the first instance. The appellants should have submitted such evidence within the evidence-adducing period in the trial of the first instance, and had exceeded the evidence-adducing period for it to adduce evidence after the trial of second instance began. Also the evidence does not belong to the category of new evidence, hence having no effect on ascertaining the appellants' infringement fact and determination of liability assumption in the original judgement. Therefore this court shall not admit it.

Through trial, the facts found at the trial of the first instance are clearly ascertained and confirmed by this court.

Regarding the FON's ineligibility of bringing an EPIL brought up by the appellants Xie Zhijin, Nimingxiang and Zheng Shijiang, it was found that even though plaintiff FON, registered as a non-enterprise private entity with Chaoyang District Civil Affairs Department on June 18, 2010, had not technically been registered for five years when it first filed the case, it still had standing because FON had been engaged in environmental protection public interest activities prior to registering. Therefore the judgement of the first instance was not inappropriate in determining that the plaintiff FON was eligible in bringing an EPIL under Article 58 of EPL. The grounds of appeal of the appellants were untenable and should not be supported.

Regarding the grounds of appeal that the appellants Xie Zhijin, Ni Mingxiang and Zheng Shijiang should not bear the tort liability, it was found that the appellants Xie Zhijin, Ni Mingxiang and Zheng Shijiang illegally took land for mining operations without the approval of the authorities, causing severe damages to the forest of a total of 19.44 mu and should bear liability for environmental tort in accordance with the law. In addition to the injury to the forest, the appellants Xie Zhijin, Ni Mingxiang, and Zheng Shijiang dumped the waste rocks and earth from mining activities onto the original operating site formerly belonging to the defendant of the first instance Li Mingshuo, burying an area 8.89 mu. As a result, the extent to which each person is liable cannot be determined. They should bear joint and several tort liabilities. The defendant of first instance Li Mingshuo, without the approval of the administrative authorities, expanded the mining right to the whole area of the top of the mountain where the original mining site was situated without authorization and transferred to appellants Xie Zhijin, Ni Mingxiang, and Zheng Shijiang. The two sides shall share the responsibility for causing the destruction of the above 19.44 mu woodland vegetation.

The act of illegal appropriation of forestland and forest destruction of the appellants Xie Zhijin, Ni Mingxiang, Zheng Shijiang and the defendant of the first instance Li Mingshuo has constituted an infringement upon the forest resources, not minerals. Under Article 18 of the *Forestry Law of the People's Republic of China*, having illegally taken the forestland for mining activities without the approval of the competent authority, the appellants Xie Zhijin, Ni Mingxiang, and Zheng Shijiang and

the defendant of the first instance Li Mingshuo, shall bear the liability for forest restoration. Whether there is violation of administrative law or negligence on the part of the local authorities does not affect the tort liability assumption on the part of the appellants Xie Zhijin, Ni Mingxiang, and Zheng Shijiang and the defendant of first instance Li Mingshuo. In conclusion, the fact about the appellants Xie Zhijin, Ni Mingxiang, and Zheng Shijiang and the defendant of the first instance Li Mingshuo shall bear joint and several tort liabilities for harming 28.33 mu of forest was well-founded in the judgement of first instance. The grounds of appeal of the appellants were untenable and should not be supported.

The appellees Xie zhijin, Ni mingxiang and Zheng shijiang proposed that the assessment of the cost of ecological environment restoration and the loss of service function during the period from the restoration of ecological environment couldn't be accepted as evidence in determining ecological damages facts, it was found that the report was produced by a certified assessment institute, China Forestry Appraisal Company. Although the company didn't provide the appraisers' qualifications specifically related to assessment, most of them were either professors of ecology or holders of PhD in ecology, including Li Zhenji, a professor of ecology and ecological PhD holders Wu Dongdong and Jing Jianping, all from Xiamen University. They also appeared in court to accept inquiry. Their opinion should be considered opinions from experts. Moreover, the appellants Xie Zhijin, Ni Mingxiang, and Zheng Shijiang and the defendant of first instance Li Mingshuo didn't submit a request for reassessing the cost of ecological environment restoration and the interim losses of service function, Under Article 23 of EPIL Interpretation, the judgement of first instance referring the opinion as expert opinion to determine the reasonable cost of ecological environment restoration and the interim losses of service function was not contradicted by any law. The grounds of appeal of the appellants therefore were untenable and should not be supported.

Regard to the grounds of appeal that the interim losses of service functions during the recovery of ecological environment supported by the EPIL Interpretation could not be applied to this case, it was found that where a lawsuit is brought to the people's court prior to the implementation of the relevant laws and regulations because of the disputes over any civil act or event, if there is no explicit provision in any law, regulation or judicial interpretation effective at that time, such case shall be governed by the relevant new law. The *Tort Law of the People's Republic of China* and *General Principles of the Civil Law* provide that the infringing parties shall be held liable for torts but specify no compensation matters. The case was first heard on January 1, 2015. The EPIL Interpretation has been enacted and enforced on January 7, 2015, which was during the trial of first instance. Under Article 22 of the EPIL Interpretation, the plaintiff's claim damages for interim losses of service functions during the recovery of ecological environment can be supported by a people's court. Therefore, under the EPIL Interpretation, losses of service functions during the recovery of ecological environment belong to the compensation matters, hence applicable to this case. The activities of occupying forestland of appellants Xie Zhijin, Ni Mingxiang, and Zheng Shijiang and the defendant of the first instance Li Mingshuo constituted ecological destruction harming the public interest for which they should not only bear joint and several tort liabilities but also the joint responsibilities for the interim losses of service functions during the recovery of

ecological environment. In conclusion, the grounds of appeal of the appellants therefore were untenable and should not be supported.

In view of the above, this court held that the grounds of appeals of the appellants Xie Zhijin, Ni Mingxiang and Zheng Shijiang and the answer of the defendant of first instance Li Mingshuo lacked factual and legal basis, which were untenable and should not be supported. The opinions of the appellees FON and Fujian Green Home and the third party Yanping Distric Forestry Bureau were tenable and should be supported. The facts were clearly found and the law was correctly applied in the original judgement which should be sustained

In accordance with Item 1 of Subclause 1 of Article 207 *the Civil Procedural Law of the People's Republic of China*, it is ordered as follows:

1. The appeal be rejected and the original judgement be sustained; and
2. The acceptance fees for the trial at second instance of CNY 26,335 be jointly assumed by appellants Xie Zhijin, Ni Mingxiang and Zheng Shijiang.

This order is final.

Presiding Judge	Zhu Changlin
Judge	Li Heping
Acting Judge	Lin Jinbin

14 December 2015

Clerk	Lin Hui
-------	---------