

A Review of Cases Involving the Sea Decided by the Higher People's Court of Hainan Province in 2020

REN Yanbing, WANG Yanrui, YAO Dandan
yanbing.ren@dentons.cn

Abstract: In order to understand the judicial situation of the Higher People's Court of Hainan Province with regard to maritime related cases, one of the efficient ways is by legal research of the relevant legal cases. From the 1,451 judicial case documents issued by the People's Court of Hainan Province as published by the Wolters Kluwer Legal Information Database during January 1 to December 31, 2020, eight cases involving the sea were found which includes four commercial cases, two administrative cases and one criminal case.

Keywords: maritime justice

I. The Number of Cases Involving the Sea Decided by the Higher People's Court of Hainan Province in 2020

By searching the 1,451 judgments issued by the Higher People's Court of Hainan Province as published by the Wolters Kluwer Legal Information Database from January 1 to December 31, 2020, it was found that eight judgments contained basic facts and adjudication rules, including four maritime-related commercial cases, two maritime-related administrative cases and one maritime-related criminal case.

Cases involving maritime commerce

1. The Higher People's Court of Hainan Province: Civil Judgment No. 22 [2020] of the Final Instance by the Civil Division of Hainan Province; jurisdiction dispute over a contract of vessel operation loan;
2. The Higher People's Court of Hainan Province: Civil Judgment No. 17 [2020] of the Final Instance of Hainan Province; disputes over voyage charter party;
3. The Higher People's Court of Hainan Province: Civil Judgment No. 101 [2020] of the Final Instance of Hainan Province; disputes over voyage charter party;
4. The Higher People's Court of Hainan Province: Civil Judgment No. 478 [2020] of the Final Instance of Hainan Province; disputes over a contract or agreement.

Cases involving Maritime Administration

1. The Higher People's Court of Hainan Province: (No. 299 [2020], Administrative Ruling of the Administrative Tribunal of Hainan Province) fishery administrative disputes;
2. The Higher People's Court of Hainan Province: Administrative Judgment No. 420 [2020] of the Administrative Tribunal of Hainan Province, disputes over the administrative ruling of water area and beach aquaculture.

Case involving maritime crimes

1. The Higher People's Court of Hainan Province: Criminal Judgment No. 155 (2020) of the Final Instance of Hainan Province; illegal mining.

A. Cases involving maritime commerce

1. The Higher People's Court of Hainan Province: Civil Ruling No. 22 [2020] of the Final Instance by

the Civil Division of Hainan Province; Jurisdictional Dispute over Contract of Vessel Operating Loan

(1) Basic Facts

The plaintiff and the defendant entered into an Agreement on April 24, 2018, which stipulated that the plaintiff would pay the defendant 150,000 yuan as an investment for the fishing vessel, and the defendant would pay a monthly dividends to the plaintiff within the investment period, and the defendant would return 150,000 yuan of principal to the plaintiff after the investment term. In the course of performance, both parties had disputes, and consequently the plaintiff brought a lawsuit in Haikou Maritime Court.

The defendant raised an objection to the jurisdiction, and held that this case had nothing to do with the operation of the vessel. The agreement involved is a private loan. In accordance with Article 23 of the Civil Procedure Law of the People's Republic of China, this case shall be under the jurisdiction of the Suburban People's Court of Sanya City.

(2) Key Points of Judgment

In accordance with Item 49 of the Provisions of the Supreme People's Court on the Scope of Cases Accepted by Maritime Courts, cases involving disputes over loan contracts arising from the purchase, construction or operation of specific vessels shall be under the exclusive jurisdiction of maritime courts. This case involves breach of contract. Whether the funds involved in the case were actually used for the operation of the fishing vessel is to be decided at the trial.

In conclusion, the Haikou Maritime Court had the jurisdiction over the case.

2. The Higher People's Court of Hainan Province: Civil Judgment No. 17 [2020] of the Final Instance of Hainan Province; Disputes over voyage charter

(1) Basic Facts

On July 18, 2019, Hainan Zhongli and Zhangzhou Haiheng Company entered into an Annual Voyage Charter Party, in which Hainan Zhongli Co., Ltd. agreed to rent the "Changning No. 6" ship of Zhangzhou Haiheng Company.

After the conclusion of the contract, the vessel "Changning No. 6" arrived at the Eight Harbor Anchored at 1255 hours on July 19, 2019. The vessel left the harbor with no cargo loaded since the cargo was not delivered for loading at the time agreed upon which is 0837 hours on July 22, 2019.

(2) Key Points of Judgment

(a) Whether Hainan Zhongli Co., Ltd. should be liable for breach of contract-

First, the voyage charter contract concluded by both parties was lawful and valid. Zhangzhou Haiheng Company's vessel "Changning No. 6" ship arrived at the loading port at the time agreed upon in the contract, Hainan Zhongli Co., Ltd. failed to perform the loading process therefore Hainan Zhongli Co., Ltd. was liable for breach of contract.

Hainan Zhongli Co., Ltd. claimed that the voyage charter contract in question was not effective because it failed to pay all the earnest money of 250,000 yuan as agreed on and only paid the deposit of 150,000 yuan. Since, both parties have started the performance of the contract in question, the claim was denied.

Zeng Qingchang also made clear that it was expected that the vessel might be loaded in the evening of July 19. The vessel arrived at Bahang and anchored at about 14:00 on July 19 which was in conform to the provisions of the contract. Therefore, Hainan Zhongli Co., Ltd. is liable for breach of contract.

(b) The issue of how liquidated damages should be calculated-

Hainan Zhongli Co., Ltd. failed to make delivery of goods as provided in the contract, which caused losses to Zhangzhou Haiheng Co. In violation of the terms of the contract, Hainan Zhongli Co., Ltd. is liable for breach of contract and pay the damages to Zhangzhou Haiheng Co.

In accordance with the stipulations of the voyage charter party in question, the minimum voyage charter number is five times a month, and either party shall, in breach of the contract, pay 30% of the total voyage freight of the other party. "Total Freight" shall be understood as the total freight of five voyages, and the liquidated damages for this case are calculated as follows: 22,652 tons (quantity ordered) × 23 yuan/ton (freight rate) × 5 × 30% = 781,494 yuan.

Hainan Zhongli Co., Ltd. claimed that the default penalty was too high, but did not provide

evidence to prove it, for which reason the court refused to support it.

According to the statements of both parties at the trial of second instance, the court found that Hainan Zhongli Co., Ltd. had paid 150,000 yuan to Zhangzhou Haiheng Co. In accordance with Article 116 of the Contract Law of the People's Republic of China, where both liquidated damages and deposit are agreed upon by the parties, one party may choose for compensation either the liquidated damages or the deposit when the other party breaches the contract. The fine of 150,000 yuan that has been collected by Hainan Zhongli should be deducted from the breach of contract damages.

3. The Higher People's Court of Hainan Province: Civil Judgment No. 101 [2020] of the Final Instance of Hainan Province; Disputes over voyage charter contract

(1) Basic Facts

On June 13, 2016, Hongcheng Company and Jinshengda Company and Jiangpeng Company entered into a Voyage Charter Party, which stipulated that Hongcheng Company should provide "Meishan Gang 7" and "Meishan Gang 17" to undertake the carriage of goods. This case was brought to the court due to delay in payment.

(2) Key Points of Judgment

(a) Whether the limitation of actions in this case brought by Hongcheng Company has expired-

Paragraph 2 of Article 257 of the Maritime Law provides that: The limitation period for claims in relation to voyage charter party is two years, counting from the date on which the claimant knew or should have known that his right was infringed upon.

The contract involved in this case was a voyage charter, and the statute of limitations in accordance with the above provisions was two years.

(b) Whether Jiangpeng Company and Jinshengda Company should pay the freight charge and the interests incurred to Hongcheng Company-

In a voyage charter dispute, the duty of the ship-owner is to transport the goods to the designated port, and the obligation of the charterer is to pay the ship-owner the freight charge. Hongcheng Company fulfilled its obligations, and Jiangpeng Company and Jinshengda Company had no right to refuse to perform to pay for the freight.

Pertaining to whether Jiangpeng Company and Jinshengda Company could refuse to pay Hongcheng Company on the ground that Hongcheng did not issue an invoice, the fact was that Jiangpeng Company and Jinshengda Company were aware that an invoice in full amount was available on request.

4. The Higher People's Court of Hainan Province: Civil Judgment No. 478 [2020] of the Final Instance of Hainan Province; Disputes over marine construction project contracts

(1) Basic facts

In January 2015, Gangwan Company and Ruyidao Company entered into a General Contractor Agreement, which stipulated that Gangwan Company, as the general contractor, shall undertake the construction of the eastern section of the Haikou Ruyi Island Project developed by Ruyidao Company. Disputes arose during the performance of the contract.

(2) Key Points of Judgment

(a) On the validity of the General Contractor Contract and the Supplementary Agreement-

In accordance with Article 14 of the Interpretation (II) of the Supreme People's Court on Several Issues concerning the Application of the Contract Law of the People's Republic of China, the "mandatory provisions" as prescribed in Item 5 of Article 52 of the Contract Law of the People's Republic of China refers to mandatory provisions and administrative regulations.

Ruyidao Company, the developer of the project involved in this case, filled out the sea areas without obtaining the corresponding certificate of right to use sea areas, which violated the provision of paragraph 2, Article 3 of the Law of the People's Republic of China on the Administration of Sea Areas that "any entity or individual that intends to use sea areas must obtain the right to use sea areas according to law", and the consequences would be administrative punishment under Article 4422.

Therefore, the court held that the aforementioned paragraph 2 of Article 3 was a mandatory administrative provision. The violation of this provision did not result in the invalidity of the contract

for the project. Accordingly, the General Contractor Contract and the Supplementary Agreement concluded between Gangwan Company and Ruyidao were lawful and effective, under which both parties should fully perform their respective obligations as agreed upon in the contracts, and assume the liability for breach of contract.

(b) Whether the General Contractor and the Supplementary Agreement was ever rescinded by Gangwan Company and Ruyidao Company-

According to the facts of the case, Ruyidao Company repeatedly failed to pay the progress payments of the project for a long period of time with a large amount past due.

From August 2017 when Gangwan suspended the construction work to January 24, 2019 when Gangwan Company sent a notice to rescind the contract with a demand for all the payment overdue, the two defendants failed to make any payment.

During this period of time Ruyidao Company and its wholly-owned parent company, Zhonghong Company faced several lawsuits. Eventually, Zhonghong Company delisted from the Shenzhen Stock Exchange, which adversely affected the defendants' obligation to pay. The aforesaid circumstances have met the conditions for rescission as set out in subparagraph (b) (e) (f) of Article 16.2 of the General Terms, and the rescission of the said contract was in conformity with the legal provisions.

At the same time, in accordance with the provisions of Article 96 of the Contract Law of the People's Republic of China, where a contract is terminated on the ground that paragraph 3 of Article 94 above or the conditions agreed upon are satisfied, the other party shall be notified, and the contract shall be terminated upon the receipt of the notification. In this case, on January 24, 2019, Gangwan Company sent a notice to terminate the Contract to Ruyidao Company through EMS. The delivery records showed that Ruyidao Company signed and received the document on January 28 of the same year, so the court held that the General Contractor Contract and its supplementary agreement were terminated on January 28, 2019.

(c) The issues of amount owed by Ruyidao Company and the breach of contract damages after the contract was rescinded-

First of all, with regard to the value of the work completed by Gangwan Company, the Civil Judgment No. 215 [2018] of the Court of Hainan Province held that, Ruyidao Company recognized that all delayed progress payments to be 918413993 Yuan. However, the court held that the actual value of the construction work completed before the contract was rescinded by Gangwan Company should be 979103454 Yuan.

Second, the question of whether the retention money should be deducted. Article 14.7 of the contract provides that 5% of the total settlement price shall be reserved as quality warranty. However, as agreed in Articles 19.6 and 19.7, after the contractor notifies the rescission of the contract, the owner shall pay the contractor for the completed work. The Court held that since the suspension of construction in August 2017, the two-year warranty period has expired. In that respect, if Ruyidao Company did not provide evidence to prove that the completed project had any quality defects, the quality assurance fund should not be deducted from the overdue project payment.

Thirdly, on the issue of liquidated damage after the termination of the contract. In accordance with Article 10 of the Interpretation of the Supreme People's Court on Several Issues concerning the Application of Law in the Trial of Cases of Disputes over Contracts on Construction Projects and the provisions of Articles 19.6 and 19.7 of the General Articles of Association, Ruyidao Company shall pay all the project money after the contract is rescinded. After deducting the progress payments of 5,548,747,055 yuan and 1,838,564,900 yuan paid by Ruyidao Company (979103453-5548747055-1838564900=240372259 yuan).

Again, in accordance with the provisions of Article 17 of the Interpretation of the Supreme People's Court on Several Issues concerning the Application of Law in the Trial of Cases on Disputes over Contracts on Construction Projects, from January 28, 2019 to August 19 of the same year, the interest rate in the loan market announced by the People's Bank of Republic of China shall apply until the day of actual payment by Ruyidao Company.

(d) On the amount of losses suffered by Gangwan Company due to suspension of construction-

According to the facts of the case that has been ascertained, the suspension of work of Gangwan Company since August 2017 was a measure taken upon the request of Ruyidao Company due to the facts that Ruyindao failed to obtain the certificate of right to use sea areas, etc. As a result, Ruyidao Company shall compensate Gangwan Company for the losses incurred during the period of suspension of construction.

This suspension was an urgent measure taken by Gangwan Company as required by Yidao Company. During the aforesaid period of suspension of construction, Gangwan Company reported the number of staff members and vessel machinery and equipment, etc. to the supervising personnel of Ruyidao Company in writing, Ruyidao Company confirmed that the conditions of staff members and vessel machinery and equipment were in line with the scale and progress of the project construction. Therefore all expenses claimed were related to the project.

(e) Whether Ruyidao liable for breach of contract damages for the overdue payment of part of the construction before the rescission of the contract-

The 15% reserve for the part already measured except 5% of the quality assurance fund is conditioned upon the completion acceptance, filing of the completion acceptance, and issuance of the acceptance certificate. From the date of suspension of construction to the date of contract rescission, the reserve of 15% does not meet the contractual payment conditions.

(f) On whether Ruyidao should compensate Gangwan Company for the portion of damages that was not paid by the insurance company-

According to the stipulation of Article 18.1.1 of the General Clauses, the defendant as the owner shall buy "all construction project insurance and third party liability insurance". Although the defendant proved that it had purchased the insurance, it failed to provide evidence that it had paid the insurance premium on schedule.

Therefore, the court held that Ruyidao was liable for the damages which was unpaid by the insurance Company and relevant interest shall apply.

(g) Whether Ruyidao Company should pay Gangwan Company for the expected profits from the unfinished projects-

According to Article 97 of the Contract Law of the People's Republic of China, after the termination of a contract, performance shall cease.

In this case, the reason for the rescission of the contract was due to Ruyidao's default, so Ruyidao should compensate Gangwan Company for the expected loss of profits from unfinished portion of the project.

Upon appraisal, the expected profit of the unfinished project based on the list of contracts was 2,547,691.68 yuan.

The court held that, compared with the Provisions on the Budget Preparation of Budgetary Estimates of Coastal Port Construction Projects, the calculation of the expected profits of the unfulfilled portion based on the list of contract between Gangwan Company and Ruyidao Company was objective and scientific, so the expected profits of the unfulfilled portion in this case should be 2,547,691.68 yuan.

(h) Whether Gangwan Company has a priority right for compensation for the construction money owed by Ruyidao Company-

Article 286 of the Contract Law of the People's Republic of China provides that: "Where the developer fails to pay the price as agreed upon, the contractor may demand payment from the developer within a reasonable period of time. If the developer fails to pay within the time limit, the contractor may, in accordance with the nature of the construction project, enter into an agreement with the developer to liquidate the project, or petition the People's Court to auction the project in accordance with the law, unless the project is not suitable for liquidation or auction in light of its nature. Consequently, the

contractor shall have the priority right to the distribution of the liquidation or auction proceeds.

In this case, the project was for land reclamation (land fill), which the developer did not obtain the required certificate for the right to use sea areas, so the maritime safety administration ordered the project to return and restore the sea areas to their original state. The Rectification Plan submitted by Gangwan Company in the second instance was for the improvement of the Ruyi Island (Phase I and Phase II) which is not related to the project this case. The court held that the value of the project involved could not be assessed and Gangwan Company could not have the priority right for compensation from Ruyidao Company.

(i) Whether Zhonghong Company assumed the joint and several liability as a guarantor-

In light of the name and contents of the Guarantee Letter issued by Zhonghong Company to Gangwan Company on January 22, 2015, and the Meeting Minutes of January 28, 2018, the court held that Zhonghong Company had a clear intention to be joint and several liable for the debts towards Gangwan Company. The guarantee contract was valid. The bylaws of Zhonghong Company stated that when the guarantee reached a certain amount, it should be decided by its board of directors. The court held that the fact that a company's guarantee contract shall be subject to the deliberation of the board of directors is the company's internal business, it does not bind any third party. Therefore, the court held that the aforesaid guarantee provided by Zhonghong Company did not fall under any of the circumstances as prescribed in Article 52 of the Contract Law of the People's Republic of China, and should be determined valid.

In conclusion, in accordance with Article 18 of the Guarantee Law of the People's Republic of China, Zhonghong Company was jointly and severally liable for the debts of Ruyidao Company towards Gangwan Company.

B. Maritime-related administrative cases

1. The Higher People's Court of Hainan Province: (No. 299 [2020], Administrative Ruling of the Administrative Tribunal of Hainan Province); fishery related administrative disputes

(1) Basic Facts

On February 14, 2019, the Department of Agriculture of Hainan Province issued Notice No. 27 to repeal the plan of 2013 for the reconstruction of Nansha Fishing Vessels No. 065, 066, 067, 068 vessels owned by Nanying Company; the vessel reconstruction permits were acquired by forged documents. Nanying Company objected to the ruling and brought the lawsuit against the administrative departments.

(2) Key Points of Judgment

When a party files an administrative lawsuit with the People's court, it shall not only meet the conditions for instituting an action as prescribed in the Administrative Procedure Law of the People's Republic of China, but also has the interests in the subject matter of the legal action.

A People's Court can deny a hearing on cases that only complies with the statutory form and procedures but of no interests to the party that brings the lawsuit.

In this case, the substance of the Official Notice No. 27 and the Official Reply No. 34 were all administrative acts to repeal the plans for the reconstruction of four fishing boats with the serial numbers of 065, 066, 067 and 068 of Hainan Province, resulting in the same impact on the rights and obligations of Nanying Company.

In 2019, Nanying Company filed an administrative lawsuit with the Third Intermediate People's Court of Beijing against the Ministry of Agriculture and the Department of Agriculture of Guangdong Province, requesting the revocation of the Official Reply No. 34. The case was tried by the Third Intermediate Court of Beijing Municipality and the entities of the first and second instances of the Higher People's Court of Beijing Municipality. The trial was conducted on the grounds of whether Nanying Company was satisfied with the ruling of the Ministry of Agriculture and Rural Areas to abolish the Plan Serial Number of 065, 066, 067 and 068 plans of Hainan. The Supreme People's Court

of Beijing made an administrative judgment on December 18, 2019 (No. 8078 [2019] of the Administrative Tribunal of Beijing Municipality), affirming that Nanying Company used forged documents to obtain permits for the reconstruction of aforementioned vessels. In the Official Reply No. 34, the administrative acts of abolishing the reconstruction plan of the 4 fishing boats involved were supported by evidence, with correct application of laws and regulations, and complied with the statutory procedures. Ultimately, the administrative judgment was effective and in force.

Therefore, the ruling of the court to dismiss the lawsuit of Nanying Company did not deprive Nanying Company of its right to sue.

2. The Higher People's Court of Hainan Province: Administrative Judgment No. 420 [2020] of the Administrative Tribunal of Hainan Province, the case cause: Administrative dispute over aquaculture in waters and tidal flats

(1) Basic Facts

On March 14, 2014, the People's Government of Danzhou City issued Danzhou City Government (Sea) Aquaculture License (2014) No. 00001 to Danzhou Yonglexing Company.

On September 13, 2018, the Danzhou Municipal Ecological Environment Bureau made Announcement No. 29 [2018] on Administrative Punishment Advance Notice, notifying Danzhou Yonglexing Company that it violated Article 20 of the Ecological Red Line Regulations of Hainan Province for its illegal construction of large scale breeding and other construction projects damaging ecological red line and causing environmental pollution. In accordance with Article 31 of Hainan Province Regulations on Ecological Red Line, the decision was to order the violator to demolish, within three days, the illegal breeding farm. On November 12, the written decision on administrative penalty was served by Danzhou Municipal Ecological Environment Bureau. Danzhou Yonglexing Company was dissatisfied and thus brought an action.

(2) Key Points of Judgment

The subject matter of review in this case was whether the alleged administrative action was lawful. The points of dispute are: (a) Whether the alleged administrative action is abuse of power; (b) Whether the evidence for determining the violation of law by Danzhou Yonglexing Company due to administrative action was conclusive.

(a) On whether the alleged administrative act constitutes abuse of power.

In analyzing whether the alleged administrative action is abuse of power, the nature of the alleged administrative action in the Administrative Law must be examined first.

Administrative penalty is an administrative act of an administrative organization to impose punishment on the subject of penalty on the basis of illegal acts.

In this case, the administrative organization, based on its findings that Danzhou Yongxing Company conducted illegal large scale breeding and other construction projects that crossed the ecological red line and polluted the environment, made the decision to order Danzhou Yongsing Company to dismantle illegal constructions within a prescribed time limit. Under Article 12 of the Measures for Environmental Administrative Punishment, ordering demolition within a prescribed time limit is one of the administrative forms of ordering for correction.

Paragraph 2 of Article 11 of the Measures for Environmental Administrative Punishment provides that "Where a party fails to make corrections within the time limit as required and the violation is still ongoing, the violation may be determined as a new environmental violation. In this case, although Danzhou Yongxing Company filed an application for administrative reconsideration within the time limit, it not only failed to make correction within the time limit prescribed in the Decision on Ordering for Correction but also continued with the illegal activities. The court held that Danzhou Municipal Ecological Environment Bureau's decision did not fall within the scope of abuse of power.

(b) Whether the evidence for the determination of Danzhou Yonglexing Company for illegal administrative act is conclusive.

The alleged administrative action determined that Danzhou Yonglexing Company made illegal large-scale breeding within the designated red line of Class II ecological protection, the evidence of which is the Partial Map of Danzhou Comprehensive Plan (Space Class 2015-2030).

However, the Danzhou Comprehensive Plan (Space Type 2015-2030) was approved by the People's Government of Hainan Province on December 1, 2018 after the administrative decision for correction was made. In sum, the abovementioned evidence shall be revoked. Considering that the illegal breeding farm and constructions of Danzhou Yonglexing Company has been dismantled, the administrative order for correction was invalid.

(C) Cases involving maritime crimes

1. The Higher People's Court of Hainan Province: Criminal Judgment No. 155 (2020) of the Final Instance of Hainan Province; illegal mining crime

(1) Basic Facts

On August 21, 2018, Zhang and Cai came to an agreement in which Cai would organize a crew to excavate sea sand (E110°34.632', N20°16.340') in the sea area of the southwest sandy beach of Wenchang City. During the operation, 4,385 cubic meters of sea sand was seized.

(2) Key Points of Judgment

(a) As to whether the original judgment was valid by applying Item 1, Paragraph 1 of Article 3 of the Interpretation on Several Issues Concerning the Application of Law in the Handling of Criminal Cases of Illegal or Destructive Mining (hereinafter referred to as the Interpretation)-

Upon investigation, defendants Cai and Zhang illegally engaged in sand mining on March 31 and August 11, 2018, and on May 9 and October 10 of the same year, the Bureau of Ocean and Fishery of Xuwen County of Guangdong Province and the Bureau of Ocean and Fishery of Wenchang City of Hainan Province respectively imposed administrative punishments on Cai. Afterwards, Cai and Zhang engaged in another illegal mining on August 22 of the same year, the value of the sand excavated was 87,700 yuan. In accordance with item (3), paragraph 1 of Article 3 of the Interpretation, a person who received two or more administrative penalties for illegal mining within two years but continues to engage in such illegal sand mining shall be deemed as "serious circumstance" as prescribed in paragraph 1 of Article 343 of the Criminal Law. The facts that Cai did not obtain the certificate of right to use sea areas and the permit for sand mining constitute the crime of illegal sand mining.

(b) Whether the original judgment was correct on the issue of Zhang's voluntary surrender-

Upon investigation, the "process of investigation" issued by the No. 3 Branch of the Maritime Police of the General Armed Police of Public Security and Frontier Defense of Hainan Province provided that on November 28, 2018 defendant Zhang voluntarily appeared at the police station after receiving a telephone call from the police handling the subject case. Zhang's voluntary confession of his activities of illegal mining to the police should be construed as voluntary surrender.

(c) Whether the sentencing of defendants Cai and Zhang was fair-

Upon investigation, Cai and Zhang agreed that Cai would provide vessels and crew to excavate sand, Zhang would provide the time and place for sand mining and to make contacts to sell sand. Zhang contacted Zhu, owner of Fuhe Sand Field. Zhu would purchase the sea sand at 31 yuan per cubic meter, while Cai would receive 30 yuan per cubic meter for sand mining. The above-mentioned facts were verified by the confessions of Cai and Zhang, and the testimonies of witness Zhu, as well as other evidence.

In this case, Cai received the majority of the sales of illegally excavated sea sand. Cai also played a more active role in the illegal activities. In addition, Cai continued the illegal mining after receiving the administrative penalties twice. Based on the above, the original judgment was fair in the sentencing of Cai and Zhang.

(d) On the issue of reducing the fines on the defendants-

Article 28 of the Administrative Penalty Law provides that if a person has been fined by an administrative organization, the monetary penalty can be deducted from the judgment of the court for the same illegal activity. In this case, Cai was imposed upon two administrative penalties for illegal mining within two years before committing the subject crime for trial. The monetary penalty paid by Cai for the two administrative was a penalty for the illegal act before the trial of the subject crime. Therefore, the court judgment on Cai should not be reduced by the two administrative penalties. Zhang was not given any administrative punishment. Therefore, it was improper to apply the two

administrative punishment received by Cai to offset the court penalty received by Zhang.

(e) On the issue of defendant Cai's withdrawal of appeal after filed for appealed.

Upon investigation, on June 8, 2020, the court of first instance pronounced a judgment on defendant Cai, who on the same day expressed his intention to appeal. Afterwards, on June 19, 2020, Cai filed the Application for Withdrawal of Appeal and submitted it to the court of first instance.

In accordance with Article 305 of the Interpretation of the Supreme People's Court on the Application of the Criminal Procedure Law of the People's Republic of China: "Where an appellant requests to withdraw his appeal after the expiration of the term of appeal, the People's court of second instance shall examine the request. If, upon examination, the People's court deems that the facts determined in the first trial and the applications of laws are correct and the sentencing is appropriate, it shall render a ruling to permit the withdrawal of the appeal. If it considers that the facts at the original trial are not clear, the evidence is insufficient, or an innocent person is convicted and a heavy punishment is given for a minor offense, it shall not grant permission, and the case shall continue to be heard as an appellate case." Cai requested to withdraw his appeal after the expiration of the appeal period, the court found that the original court did not verify the facts, and the application of laws was wrong. Therefore, the court should continue the trial of this case. Accordingly, the court did not approve Cai's withdrawal of the application for an appeal.

Defendant Zhang violated the provisions of the Mineral Resources Law by engaging in mining without obtaining the certificate of right to use sea areas for the exploitation of sea sand as well as the mining license which constituted the crime of illegal mining. The value of the sea sand involved in this case was 133,950 yuan.

Defendants Cai and Zhang voluntarily pleaded guilty and confessed to their crimes, thus a lighter or lenient punishment could be considered by law.

Defendant Cai paid a fine of 30,000 yuan in advance, and defendant Zhang paid a fine of 20,000 yuan in advance. In addition, the two defendants separately paid ecological compensation and other expenses of 186,500 yuan (total of 373,000 yuan) to the Haikou Maritime Court.

In addition, defendant Cai was sentenced to fixed-term imprisonment of 11 months and a fine of 30,000 yuan; Zhang was sentenced to a fixed-term imprisonment of seven months and a fine of 20,000 yuan.

Translator: Ali Faizan Zaheer
Editors (English): Regina Law
Evans Tetteh
Executive editor: YANG Wei

