

## Contract of Sea Area Use with Non-Extension Clause

Jiangsu Ruida Food Compay, Ltd., Plaintiff

v.

People's Government of Yancheng City Dafeng District and Dafeng District Natural Resource and Planning Board, Defendants

Guo Zhongyuan\*

**Abstract:** At the expiration of the sea area use contract, the owner of the right to sea area use is entitled to apply for a contract extension to the government that originally approved the right (the "Granting Authority"). However, the government has the right to deny the application if it is necessary to revoke the right for the benefit of public interests or State security. It is at the government's discretion to include a non-extension clause in the contract.

**Key Words:** Right to the use of sea area; Consignment contract; Contract validity; Public interests

**Background:** In August 2015, the Plaintiff, Ruida Food Company, Ltd. (hereinafter "Ruida"), through a bidding competition, signed a consignment contract with Dafeng District Natural Resource and Planning Board (hereinafter "Natural Resource Board") for the right to use the Dongsa sea area for the purpose of breeding purple seaweed. The contract was valid for three years. In early 2018, Ruida filed an application with the Government of Yancheng City Dafeng District (hereinafter "District Government") as the Granting Authority, for an extension of the contract. In May 2018 the Natural Resource Board advised Ruida that it was denying the application.

Ruida brought this lawsuit against both the Natural Resource Board and the District Government at Shanghai Maritime Court.

Ruida claims that Article 26 of the Law on the Administration of Sea Area Use allows the owner of the right to use to apply to the Granting Authority for an extension, where the owner of the right continues to require that right on expiration of the use period set out in the contract. In accordance with Article 26 Ruida submitted the application as it continued

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to need to utilize the right to use per the 2015 contract. Ruida argued that because the Natural Resource Board was not the original granting authority, the denial of the application was invalid, and the district Government and the Natural Resource Board were obligated to extend the contract.

Defendants contend: (1) Both the contract and the certificate of the right to use explicitly state that there would be no extension at the expiration of the use period. They argued that an application for extension does not apply to contracts acquired through a bidding competition. (2) The Dongsha sea area either overlaps or is in the vicinity of the Yanchan National Wetland Natural Reserve where breeding of purple seaweed is not allowed. (3) Dongsha sea area is within the red lines for ecological protection which is restricted from development. (4) Dongsha sea area either overlaps or is in close vicinity of the Yancheng Yellow Sea Wetland. In 2018, Yancheng Yellow Sea Wetland was in the process of applying for recognition as a World Natural Heritage, continued breeding of purple seaweed in the sea area would jeopardize the prospect of being granted the World Natural Heritage status. Restoring the ecology of the sea and all water-life is of great public interest. For the foregoing reasons, Ruida's claims should be dismissed.

**Court Decision:** According to Article 20 of the Law on Administration of Sea Area Use, the right to sea area use may be obtained through bidding. It is within the Defendants' authority to hold the bidding competition and formulate the contract. Article 26 of the Law on Administration of Sea Area Use provides that "where at the expiration of period for the right to the use of the sea area, the owner of the right needs to continue to use the sea area, he shall, no later than two months prior to the expiration date, apply for extension to the people's government that originally gives approval. Except where it is necessary to revoke the right for the benefit of public interests or State security, the people's government shall approve the application for extension." Article 26 is a general provision to regulate the procedure for application of extension. It is not compulsory on the people's government to approve application for extension of the use period. It is at the governing department's discretion approve or deny the application of extension, base on the current situation.,

Ruida's claims dismissed. None of the parties has made an appeal. Verdict of the first trial of the Maritime Court is final and effective.

### **Comment and Analysis:**

#### **1. Character and validity of the consignment contract**

Based on Article 20, Article 26, Article 34 of the Law on Administration of the Sea Area Use, Defendants have the right to solicit biddings for the use of the sea area, to sign an agreement with the winning bidder, and to formulate the contract. The agreement of sea area use between Ruida and the Defendants is a contract of executive character and is in compliance with all the relevant laws.<sup>1</sup>The provisions of the contract explicitly stipulate that at the expiration of the contract there shall be no extension. The language in the non-extension clause is clear and precise. There is no evidence of fraud or coercion. The contract

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<sup>1</sup> MA Jin Liang: 纠缠在行政性与协议性之间的行政协议, "China Law Review" 2017, Vol. 1, p.60

shall be deemed effective and valid

**2. Notification of the denial in time.**

According to Article 50.2, “The administrative department shall, based on the application, make the decisions of whether the permit will be extended before the expiration of the permit. In case the decision is not made by the expiration date, it shall be deemed extended.” In this case, the Natural Resource Board, as a marine executive department as well as a sub-department of Dafeng District Government, has the executive power to issue a denial to the application for an extension of the use period. Ruida was notified of the decision not to extend by the Natural Resource Board before the contract was expired.

**3. Factors being considered.**

The Defendants have sufficient grounds to deny Plaintiff’s application by the reason of the non-extension clause in the contract. The Marine Court’s applying of the doctrine of public interests was to strengthen the Defendants position to deny the Plaintiff’s claims. Due to the fact that the majority of sea areas are not in use, it is the policy of people’s government to open the sea areas to individuals for development in aquaculture. Also, considering the time required for the return of the investors’ capital, it is usually a standard practice to extend the contract except where there are concerns in the public interests or State Security.<sup>1</sup>To date, no legislation or case law has specifically dealt with the definition of public interests or State security. As such, it is likely that cases involving these concepts will be dealt with in a case by case basis.

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<sup>1</sup> ZHANG Hong Bo “The Research of the System of Right to Sea Area Use ”by Harbin Engineering University Press, 2015, p. 100. (in Chinese)

