**Typical Cases Concerning Cross-border Disputes of Guangdong Courts**

**in Guangdong-Hong Kong-Macao Greater Bay Area**

 **(Volume IV)**

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Case 1

Shenzhen Nanshan Air Raid Equipment vs. Yue Wohing and Shenzhen Sub-branch of China Pacific Insurance for Tort Liability Dispute

-Ruled that a contestant without intentional or gross negligence in an international regatta should not be liable for a collision accident and improved infringement rules of competitions

Case Introduction

The organizing committee of the China Cup International Regatta issued a notice on the 10th China Cup International Regatta, declaring that the competition would be held in Shenzhen and Hong Kong waters and adopt the *Racing Rules of Sailing (**RRS) 2013-2016 of International Sailing Federation*. “White Shark” of Shenzhen Nanshan Air Raid Equipment Co., Ltd. and “China Cup 24” of Yue Wohing Laser Mould (Shenzhen) Co., Ltd. signed up for the competition voluntarily. “China Cup No. 24” was insured against third-party liability at the Shenzhen Sub-branch of China Pacific Insurance Co., Ltd. During the competition, the above yachts collided and were damaged to varying degrees. Yue Wohing admitted that “China Cup No. 24” had violated Article 11 of RRS. It claimed that “White Shark” had violated Article 14 of RRS and thus should assume the primary responsibility for the accident involved in the case. As both parties failed to reach an agreement on accident liability and compensation amount, Shenzhen Nanshan Air Raid Equipment filed a lawsuit, requesting Yue Wohing to compensate for repair costs and other losses amounting to CNY514,459 and the Shenzhen Sub-branch of China Pacific Insurance to compensate Shenzhen Nanshan Air Raid Equipment within the scope of insurance liability. Yue Wohing counter-sued Shenzhen Nanshan Air Raid Equipment, requesting Shenzhen Nanshan Air Raid Equipment to compensate for repair costs and other losses amounting to CNY429,352.

Judgement

In the first-instance trial, Guangzhou Maritime Court held that the case was a dispute over the liability for damage in ship collision. Considering the degree of violations of both yachts and other circumstances, it ruled that “China Cup No. 4” and “White Shark” should respectively bear 90% and 10% of the liability for the accident and ordered both parties to compensate the other party’s repair costs and other losses according to corresponding proportions and the Shenzhen Sub-branch of China Pacific Insurance to bear the liability for compensation within the scope of insurance liability. In the second-instance trial, the High People’s Court of Guangdong Province held that the case was a dispute over tort and compensation liability caused by a collision accident in a regatta. Both parties voluntarily joined a sports event with certain risks. Therefore, Article 1176 of the *Civil Code of the People’s Republic of China* concerning the assumed risk rules should be applied to determine the liability of both parties. Violations should not be directly regarded as a tort. The yachts of both parties in this case had no intentional or gross negligence in the accident involved in this case, and neither party should request the other party to assume tort liability. Therefore, the original judgement was revoked, and the claim and counterclaim raised by Shenzhen Nanshan Air Raid Equipment and Yue Wohing were dismissed.

Significance

The people’s court determined the liability for damage caused by a collision accident in a regatta according to the assumed risk rules specified by the *Civil Code* and clarified that the violation of competition rules did not constitute a civil tort if the person causing the collision had no intention or gross negligence. This provides a legal guarantee for international regattas.

Case 2

Lan \* vs. Marco for Company-related Dispute

-Protected the right to know of directors of Hong Kong companies under the Hong Kong law and standardized corporate governance

Case Introduction

Marco HK Holdings Limited was a company incorporated in Hong Kong. According to the copy of Marco’s annual returns dated December 31, 1992 and January 7, 2016, Marco totally issued eight common shares, and its shareholders Chen \*hui (陈某辉), Lan \* (蓝某), Lan \*qiang (蓝某强) and Lan \*wen (蓝某文) each held two shares. According to Marco’s shareholders’ resolution dated December 12, 2017, the shareholding certificate it issued on March 8, 2007 was invalid and the shareholding of the company was subject to the register of shareholders. Lan \*wen, Lan \*qiang and Lan \*fen (蓝某芬) signed the resolution. Lan \* filed a lawsuit, requesting the court to rule Marco’s shareholders’ resolution dated December 12, 2017 invalid and to order Marco to provide accounting records, return the real estate ownership certificate of the company’s real estate and pay the rental income from leasing the real estate.

Judgement

In the first-instance trial, Yunfu (云浮) Intermediate People’s Court dismissed the claims raised by Lan \*. In the second-instance trial, the High People’s Court of Guangdong Province held that Marco’s shareholders’ resolution dated December 12, 2017 was signed by three shareholders who held 75% of its shares and 75% of its directors, which met the stipulation of the Hong Kong law that a company’s special resolution should be approved by at least 75% approval votes. And there was no violation of the company’s articles of association or relevant legal provisions to render the resolution invalid. According to the Hong Kong law, a company should provide accounting records free of charge to a director upon request. As Marco’s director, Lan \* had the right to consult Marco’s accounting records. Therefore, the High People’s Court of Guangdong Province amended the first-instance judgement and ruled that Marco should provide a copy of its accounting records to Lan \* and dismissed other claims raised by Lan \*.

Significance

The people’s court determined the validity of a shareholder’s resolution according to the laws of the place where the company was incorporated, i.e., the Hong Kong law. It supported the director’s request to consult the company’s accounting records and protected the director’s right to know according to the Hong Kong law.

Case 3

GF Xinde Investment vs. Rich Leader, et al. for Company-related Dispute

-Properly fulfilled cross-border gambling valuation adjustment mechanisms and protected the legitimate rights and interests of both investors and financiers

Case Introduction

In 2010, GF Xinde Investment Management Co., Ltd. signed an agreement with Rich Leader Technology Development Limited (a Hong Kong company), Profitmore Development Limited (a foreign company), et al., agreeing that GF Xinde should invest CNY12.5 million to increase the capital of the target company; when the target company’s actual net profit in 2012 was lower than the predicted net profit CNY35 million, Rich Leader and Profitmore should pay performance compensation according to the difference between the predicted net profit and the actual net profit and GF Xinde’s shareholding ratio; if the actual net profit was lower than 80% of the predicted net profit CNY35 million, GF Xinde should have the right to require Rich Leader and Profitmore to buy its equity; and without GF Xinde’s consent, Rich Leader and Profitmore should not pledge the target company’s equity held by them to others, otherwise, they should pay the penalty equal to 10% of GF Xinde’s investment. After signing the agreement, GF Xinde became the target company’s shareholder. The target company suffered a net loss of CNY24.14 million in 2012. In 2014, GF Xinde required Rich Leader and Profitmore to buy its equity. In 2017, Profitmore pledged its equity in the target company to outsiders. GF Xinde filed a lawsuit, requesting Rich Leader and Profitmore to buy GF Xinde’s equity, pay CNY2.96 million of annual performance compensation according to the actual net profit CNY-24.14 million in 2012, and pay CNY1.25 million of liquidated damages for pledging the target company’s equity without authorization.

Judgement

In the first-instance trial, the Intermediate People’s Court of Guangzhou ruled that Rich Leader and Profitmore should buy GF Xinde’s equity, pay CNY1.46 million of annual performance compensation according to zero actual net profit in 2012, and pay CNY1.25 million of liquidated damages. In the second-instance trial, the High People’s Court of Guangdong Province held that GF Xinde’s claims for equity buyback and performance compensation should be supported; GF Xinde’s claim to take the target company’s actual net profit in 2012 as a negative value to calculate performance compensation was to request other shareholders to compensate the target company for the losses made up by its profits after that year; GF Xinde should no longer hold the shareholder status in the target company after it sold its equity in the target company; Since then, that the target company’s other shareholders pledged the target company’s equity and that the target company made up for the losses of the previous year with its profits had no actual influence on GF Xinde who had withdrawn from the investment in the target company; and under the condition that GF Xinde’s claim for equity buyback had been supported, GF Xinde’s claim for liquidated damages from Rich Leader and Profitmore for unlawfully pledging the target company’s equity was not tenable. Therefore, the High People’s Court of Guangdong Province amended the first-instance judgement and dismissed GF Xinde’s claim for liquidated damages.

Significance

The people’s court affirmed that a party in a valuation adjustment mechanism should claim rights according to the liquidated damages clause and performance compensation clause to guarantee the target company’s normal operation on the premise that it was the target company’s investor. The people’s court supported the plaintiff to claim its rights based on the valuation adjustment mechanism according to law and equally protected the legitimate rights and interests of both investors and financiers.

Case 4

Zhou \*yi, et al. vs. Luo \*sheng, et al. for Company-related Dispute

-Accurately identified and correctly invoked conflict rules and properly resolved cross-border commercial disputes

Case Introduction

According to the annual return of Sunsky-Fulei (Hong Kong) Limited dated August 15, 2008, Sunsky-Fulei’s shareholders included Feng \*liang (冯某亮), Luo \*sheng (罗某胜) and Feng \*hong (冯某红) and its directors included Luo \*sheng and Feng \*hong. On December 19, 2008, Sunsky-Fulei held a shareholders’ meeting. Luo \*sheng and Feng \*hong attended the meeting. The meeting resolved that Sunsky-Fulei should transfer 12.87% equity of Guangdong Huasheng Electrical Appliances Co., Ltd. (广东华声电器股份有限公司) it held to Foshan Shunde Zhifu Investment and Development Co., Ltd. (佛山市顺德区智富投资发展有限公司) at USD2.214 million. Later, Sunsky-Fulei and Zhifu signed an equity transfer agreement. Zhou \*yi (周某仪) was Feng \*liang’s wife. They had three children. Feng \*liang died on November 17, 2001, without a will. Before his death, Feng \*liang usually lived in the Chinese mainland. As Luo \*sheng and Feng \*hong failed to notify Zhou \*yi and other heirs to attend Sunsky-Fulei’s shareholders’ meeting and approved a company resolution without authorization, Zhou \*yi filed a lawsuit and required the court to rule Sunsky-Fulei’s resolution for transferring Huasheng’s equity that Sunsky-Fulei held invalid and the equity transfer agreement signed by Sunsky-Fulei and Zhifu invalid. Zhou \*yi also required Luo \*sheng and Feng \*hong to compensate for her losses and pay corresponding interests.

Judgement

In the first-instance trial, the Intermediate People’s Court of Foshan (佛山) held that according to the *Law of the People’s Republic of China on the Application of Laws Concerning Foreign-related Civil Relations*, whether Zhou \*yi, as Feng \*liang’s spouse, could inherit Feng \*liang’s shareholder’s rights and interests should be subject to the mainland law; what rights Feng \*liang held in Sunsky-Fulei and whether Luo \*sheng and Feng \*hong encroached on Sunsky-Fulei’s rights and thus encroached on Feng \*liang’s shareholder rights should be subject to the Hong Kong law. According to the *Inheritance Law of the People’s Republic of China* and the *Marriage Law of the People’s Republic of China*, as for Feng \*liang’s equity in Sunsky-Fulei, Zhou \*yi should have the right to claim legal inheritance. According to the *Companies* *Ordinance* of Hong Kong, as for the resolution made by Luo \*sheng and Feng \*hong to transfer Sunsky-Fulei’s equity, the convening of the meeting and the resolution content did not violate relevant provisions of the Hong Kong law or damage Zhou \*yi’s inheritance rights and interests. In addition, according to Article 7 of the *Law of the People’s Republic of China on the Application of Laws Concerning Foreign-related Civil Relations*, the limitation of action for Zhou \*yi’s claim for compensation for losses should be subject to the Hong Kong law. The transfer of the equity involved in the case was completed in 2008. Zhou \*yi filed the lawsuit in 2016, exceeding the six-year limitation of action stipulated in the *Limitation Ordinance* of Hong Kong. Therefore, the Intermediate People’s Court of Foshan dismissed the claims raised by Zhou \*yi, et al. No appeal was filed later.

Significance

The people’s court determined the principle of law application according to different legal relationships, applied the mainland law and the Hong Kong law respectively to the determination of legal inheritance, the validity of equity transfer and the limitation of action involved in the same case, and effectively resolved a cross-border commercial dispute.

Case 5

Peng \*ming vs. Lyuyuan for Company Dissolution Dispute

-Prudently identified the deadlock of Hong Kong-invested companies and protected shareholders’ legitimate rights and interests

Case Introduction

Peng \*ming (彭某明), a Hong Kong resident, was the shareholder and director of Foshan Lyuyuan Ecological Technology Co., Ltd. (佛山市绿缘生态科技有限公司), holding 33.5% shares of the company. In the course of the company’s operation, Peng \*ming believed that because of the confrontation between the directors, it was very difficult to operate and manage Lyuyuan. Therefore, Peng \*ming filed a lawsuit, requesting Lyuyuan’s dissolution.

Judgement

In the first-instance trial, Gaoming (高明) District People’s Court of Foshan supported Peng \*ming’s claim for Lyuyuan’s dissolution. In the second-instance trial, the Intermediate People’s Court of Foshan held that the judgment criterion of a corporate deadlock was that the failure of the internal decision-making mechanism led to serious difficulties in corporate management. Therefore, comprehensive analysis should be made from the company’s operation. Evidence submitted by Peng \*ming, et al. only proved that there was a contradiction among the shareholders in the company’s control rights, but the contradiction could be solved through the company’s internal governance. It could not prove the company’s operation had seriously deteriorated and shareholders’ interests had suffered significant losses. Objectively, Lyuyuan still had a chance to hold a shareholders’ meeting and solve the company’s internal problems. Moreover, the forest planting industry in which the company was engaged required long-term operation before economic benefits could generate. If the company was dissolved halfway, shareholders’ rights and interests would be damaged. Therefore, the court dismissed Peng \*ming’s claim for the company’s dissolution.

Significance

According to law, the people’s court determined that as there was no failure in the company’s internal decision-making mechanism, the company should not be easily dissolved due to internal conflicts among the shareholders. In this way, it effectively maintained the company’s normal operation order.

Case 6

Guan \* vs. Jie \*, et al. for a Dispute over the Transfer of a Partnership’s Shares

-Determined the ownership of equity incentive shares after employees resigned according to the agreement and protected the rights and interests of cross-border investors

Case Introduction

Guan \* (关某), a Hong Kong resident, was one of the partners of Guangzhou Eyecom Investment Management Center (Limited Partnership) (广州埃信投资管理中心(有限合伙)), and Jie \* (介某), et al., totally six, were Eyecom’s employees. To motivate the employees, Guan \* signed an equity incentive agreement with Jie \*, et al. respectively, agreeing to grant 1.18%-2.36% of Eyecom’s shares to Jie \*, et al. Jie \*, et al. then became Eyecom’s partners. Half a year after signing the agreement, Jie \*, et al. resigned. Guan \* asked six defendants to go through the procedures of share withdrawal and share transfer, and return Eyecom’s shares to Guan \*. Jie \*, et al. rejected. Therefore, Guan \* sued them to the court.

Judgement

In the first-instance trial, Nansha (南沙) District People’s Court of Guangzhou held that as the transfer of Eyecom’s shares was made in mainland China, according to the principle of the closest connection, the mainland law should be applied to resolve the dispute in this case. The equity incentive agreement signed by Guan \* and Jie \*, et al. was legal and effective, and related shares had been transferred. According to the equity incentive agreement, if Jie \*, et al. resigned voluntarily, they would automatically lose the qualification to enjoy the partnership’s equity incentive and all the partnership’s shares held by them should be recovered by Guan \* free of charge and unconditionally. Now that Jie \*, et al. had resigned voluntarily, they should return the partnership’s shares held by them to Guan \*. Therefore, the court ruled that Jie \*, et al. should return the partnership’s shares held by them and assist Guan \* in the registration of changes. No appeal was made later.

Significance

According to the equity incentive agreement, the people’s court determined that the employees’ voluntary resignation after receiving the shares went against the contractual purpose of the company’s equity incentive and constituted a breach of contract. In this way, it protected the rights and interests of Hong Kong partners according to law.

Case 7

Chen \*ci and Green On vs. Chen \*gui, et al. for Tort Liability Dispute

-Applied the Hong Kong law to determine the validity of resolutions of the shareholders’ meeting of Hong Kong companies and maintained corporate governance order

Case Introduction

Fully Gain Limited in Hong Kong was the only shareholder of Guangdong Foshan Green On Fertilizer Manufacturing Co., Ltd. Fully Gain resolved at the shareholders’ meeting that Chen \*ci (陈某慈) should be dismissed from the post as Fully Gain’s director and Green On’s chairman and that Chen \*gui (陈某贵) should be appointed as Green On’s director. Chen \*gui took Green On’s official seal according to the above resolution. Chen \*ci and Green On believed that Chen \*gui’s taking and abusing Green On’s official seal constituted infringement. Therefore, they filed a lawsuit, requiring Chen \*gui to stop the infringement by applying for Green On’s business registration of changes and to return Green On’s official seal.

Judgement

In the first-instance trial, Sanshui (三水) District People’s Court of Foshan held that as Fully Gain was a company incorporated in Hong Kong, according to Article 14 (1) of the *Law of the People’s Republic of China on the Application of Laws Concerning Foreign-related Civil Relations*, the validity of the resolution of Fully Gain’s shareholders’ meeting should be subject to the Hong Kong law. According to the *Companies Ordinance* of Hong Kong and the legal opinions issued by a Hong Kong lawyer, Fully Gain’s shareholders’ meeting was convened without a valid quorum and the resolution of the shareholders’ meeting was invalid. Therefore, the appointment of Chen \*gui as Green On’s director as specified in this resolution had no legal effect. Chen \*gui had no right to exercise rights on Fully Gain’s behalf against Green On, and his taking Green On’s official seal and refusing to return it violated Green On’s operation and management rights. However, as Green On had declared the loss of its seal, there was no need to return the seal. Although Chen \*gui had applied to change Green On’s legal representative at the industrial and commercial administration department, the application had been withdrawn by Green On. Therefore, Chen \*gui’s behavior did not cause corresponding legal consequences. Finally, the court dismissed the claims raised by Chen \*ci and Green On. In the second-instance trial, the Intermediate People’s Court of Foshan dismissed their appeal and upheld the original judgement.

Significance

According to the laws of the place where the company was incorporated, namely the Hong Kong law, the people’s court accurately determined the validity of a resolution of the shareholders’ meeting of a Hong Kong company, effectively resolved the internal contradiction caused by the failure of the company’s autonomy mechanism, and maintained the company’s stable operation.

Case 8

Macao Chinese Bank vs. Zhou \*hua and Yin \*yan for a Dispute over Financial Loan Contract

-Applied the Macao law to settle a cross-border financial dispute according to the agreement

Case Introduction

Zhou \*hua (周某华) issued a deed of loan to Macao Chinese Bank on January 21, 2016, agreeing that Zhou \*hua would apply for an investment loan to Macao Chinese Bank, and any unprescribed matters should be handled according to the current Macao laws. After the deed of loan and relevant documents were signed, Macao Chinese Bank issued a loan of HKD940,000 to Zhou \*hua. After September 24, 2018, Zhou \*hua’s account did not have enough money to deduct the loan. Macao Chinese Bank filed the lawsuit, requiring Zhou \*hua to pay the remaining loan principal and interest and the cost in realizing the creditor’s rights.

Judgement

In the first-instance trial, the People’s Court of Hengqin New Area (横琴新区), Zhuhai (珠海) held that according to the deed of loan, the Macao law should apply to any disputes concerning contract terms. Mai \*ye (麦某业), a practicing lawyer in Macao, issued a legal opinion, confirming that the case involved the *Civil Code* of Macao, the *Commercial Code* of Macao, the *Code of Civil Procedure* of Macao and the administrative order No. 29/2006 of the Macao Special Administrative Region. After trial, the court accepted legal findings specified in the legal opinion and ordered Zhou \*hua to repay the remaining loan principal HKD731,905.89, corresponding interest and attorney’s fee to Macao Chinese Bank as agreed. No appeal was made later.

Significance

According to the agreement of both parties, the people’s court applied the Macao law to trying the cross-border commercial contract dispute, determined the civil liability of the breaching party, and ensured the order of cross-border financial transactions.

Case 9

Jiade vs. Chengxi Trade Office, Mai \*zhuan, et al. for Sales Contract Dispute

-A lawsuit filed to Hong Kong courts constitutes the cause for an interruption in the limitation of action in the mainland

Case Introduction

Foshan Shunde District Shanghua Plastics Trade Office (佛山市顺德区尚桦塑料贸易部) bought plastics from Jiade Investment (Hong Kong) Limited (迦德投资有限公司) in the name of Foshan Shunde District Xingtan Town Chengxi Plastics Trade Office (佛山市顺德区杏坛镇诚禧塑料贸易部) and then resold the plastics to Chengxi. At the time of the transaction, the receipt form and the bill of lading were stamped with Chengxi’s seal, stating that overdue arrears would be charged with 2% interest per month. After Jiade delivered the goods, Mai \*zhuan (麦某转), funder of Chengxi (a sole proprietorship company), issued a check to Jiade, but the check was not cashed. Jiade filed a lawsuit against Mai \*zhuan to a Hong Kong court for not receiving the payment for goods. The Hong Kong court entrusted a mainland court to serve judicial documents but failed. Jiade then filed a lawsuit to a mainland court, requesting Chengxi to pay for the goods and the interest on overdue payments and Mai \*zhuan to assume joint and several liabilities.

Judgement

In the first-instance trial, Shunde District People’s Court of Foshan held that the legal documents entrusted by the Hong Kong court to the mainland court were not actually served on Chengxi and Mai \*zhuan, so the lawsuit did not constitute the cause for an interruption of the limitation of action stipulated by law. Therefore, Shunde District People’s Court of Foshan dismissed all of Jiade’s claims. Jiade appealed against the judgement. In the second-instance trial, the Intermediate People’s Court of Foshan held that Jiade had filed a lawsuit to a Hong Kong court on the creditor’s rights involved in this case. Although the system of the Hong Kong court showed that the judicial documents had not been served successfully, Jiade did not idle in exercising its rights. The lawsuit it filed to the Hong Kong court constituted an interruption of the limitation of action. The procedure was still ongoing until December 9, 2015. Therefore, the limitation of action in this case could be renewed after December 10, 2015. Until October 1, 2017, when the *General Principles of the Civil Law of the People’s Republic of China* came into effect, the limitation of action in this case had not exceeded the two-year limitation of action stipulated in the *General Principles of the Civil Law of the People’s Republic of China*. According to Article 2 of the *Interpretations of the Supreme People’s Court on Some Issues Concerning the Application of the Limitation of Action System Specified in the* *General Principles of the Civil Law of the People’s Republic of China*, the limitation of action in this case should be deemed to expire on December 10, 2018 at least. Jiade filed a lawsuit to the first-instance court on September 18, 2018, which did not exceed the limitation of action. Therefore, the Intermediate People’s Court of Foshan revoked the original judgement and ruled that Chengxi and Mai \*zhuan should make the payment for the goods.

Significance

The people’s court determined that the lawsuit filed by the plaintiff to the Hong Kong court constituted the cause for an interruption of the limitation of action according to law, which promoted the convergence of the litigation procedures between the mainland and Hong Kong and protected the legitimate rights and interests of creditors in Hong Kong.

Case 10

Xu \*dao vs. Liang \*wei for a Dispute over the Right of Habitation

-Applied new provisions of the Civil Code to protect the plaintiff’s right of habitation

Case Introduction

Xu \*dao (徐某道), a Taiwan resident, was the stepmother of Liang \*wei (梁某威), a Macao resident. In 2007, Liang \*wei’s father bought a commercial house in Zhongshan (中山). In 2011, Liang \*wei’s father and Xu \*dao registered their marriage in Hong Kong. In 2014, Liang \*wei’s father died. In the same year, Xu \*dao and Liang \*wei signed an agreement, agreeing that without Xu \*dao’s consent, Liang \*wei should not sell the house involved in the case and that Xu \*dao could live there until she died. Later, Xu \*dao had been living in the house. In 2019, the house was registered under Liang \*wei’s name, but Liang \*wei refused to cooperate with the registration of the right of habitation. In February 2021, Xu \*dao filed a lawsuit because she believed her right of habitation could not be guaranteed and required the court to rule that she should have the right to live in the house.

Judgement

The First People’s Court of Zhongshan held that Xu \*dao and Liang \*wei were stepmother and stepson. They seldom contacted each other. After Liang \*wei’s father died, they signed an agreement on the right to live in the house, but they had many disputes during the actual performance of the agreement. According to the provisions of the right of habitation specified in Chapter 14 of the *Civil Code of the People’s Republic of China*, to meet the plaintiff’s need for a stable life, the court mediated between them many times. The two parties finally reached a mediation agreement. Liang \*wei agreed to continue to perform the agreement about the right of habitation. The two sides further discussed and decided on specific issues such as the time and way Liang \*wei should go to check the house. Liang \*wei agreed to help Xu \*dao register her right to live in the house with the registration department.

Significance

The people’s court gave full play to the function of the right of habitation system specified in the *Civil Code of the People’s Republic of China*, facilitated the agreement between a Macao resident and his relative on the right of habitation in the mainland and the registration of the right of habitation, and ensured that the plaintiff enjoyed her due right of habitation.

Case 11

Liang \*pei vs. Xiecheng for a Dispute over Commercial House Pre-sale Contract

-Ruled the fulfillment of the promise of “canceling the house purchase order without reason” according to law and maintained good faith

Case Introduction

Liang \*pei (梁某培), a Hong Kong resident, signed a commercial house pre-sale contract with Taishan Xiecheng Real Estate Development Co., Ltd. (台山协城房地产开发有限公司), agreeing that Liang \*pei should buy a commercial house from Xiecheng by installments. On May 22, 2019, the two parties signed an agreement on canceling the house purchase order without reason, agreeing that if Liang \*pei performed Liang \*pei’s obligation according to the contract signed before without breach of contract and paid 30% or more of the total house price, Liang \*pei could enjoy the right to cancel the house purchase order without reason. After signing the contract, Liang \*pei paid the first three installments for the house on time. On February 3, 2020, Liang \*pei applied to Xiecheng’s salesman for canceling Liang \*pei’s house purchase order. The salesman said if Liang \*pei canceled the house purchase order, Liang \*pei did not need to pay the fourth installment. Later, Xiecheng required Liang \*pei to pay the fourth installment before Liang \*pei could cancel the house purchase order. Liang \*pei paid the fourth installment on March 5, 2020. Xiecheng believed that Liang \*pei was not eligible to cancel the house purchase order because the first three installments accounted for 29.99% (less than 30%) of the house price and the fourth installment was not paid on time. Liang \*pei filed a lawsuit, requiring that the house purchase contract should be terminated and Xiecheng should return Liang \*pei’s house payment.

Judgement

In the first-instance trial, the Primary People’s Court of Taishan City held that Liang \*pei did not pay the fourth installment before February 4, 2020 as specified in the contract because Xiecheng’s salesman told Liang \*pei that Liang \*pei did not need to continue Liang \*pei’s payment if Liang \*pei decided to cancel the house purchase order. Liang \*pei had reason to believe that the salesman had the right to represent the company. In addition, the first three installments paid by Liang \*pei amounted to 29.99% of the house price. Therefore, Liang \*pei’s behavior did not constitute a breach of contract. Liang \*pei’s claims that the house purchase contract should be terminated according to the agreement on canceling the house purchase order without reason and Liang \*pei’s house payment should be returned were tenable. Therefore, the court supported Liang \*pei’s claims. No appeal was made later.

Significance

Based on the actual performance of the contract by both parties and the principle of good faith, the people’s court ordered the developer to fulfill its promise of “canceling house purchase order without reason” and maintain the order of real estate transactions in the Bay Area.

Case 12

Zhao \*ting vs. Zhou \*di for a Dispute over Contract Invalidity

-Accurately identified the impact of changes in the marital relationship involving a Hong Kong resident on marital property and safeguarded the plaintiff’s legitimate rights and interests

Case Introduction

Zhao \*ting (赵某婷) and Lin \*liang (林某良) registered their marriage on October 24, 1992 in Sihui (四会), Guangdong Province. On February 29, 1995, Lin \*liang lent CNY270,000 to Sihui Municipal Grain Bureau. In June 1995, Sihui Municipal Grain Bureau signed a loan contract with Lin \*liang, agreeing to pay off Lin \*liang’s loan principal and interest within five years, otherwise, it would compensate Lin \*liang with the house involved in the case. In 1998, Sihui Municipal Grain Bureau gave the house involved in the case to Lin \*liang to pay off its debt to Lin \*liang. Lin \*liang became Hong Kong’s permanent resident in 2000. In August 2000, Lin \*liang issued an agreement to sell the house involved in the case to Zhou \*di (周某娣). On September 5, 2002, Zhao \*ting and Lin \*liang divorced by agreement in Sihui Municipal Civil Affairs Bureau. They did not divide the real estate involved in the case. On March 27, 2003, Zhao \*ting and Lin \*liang registered their remarriage in Hong Kong. Zhao \*ting became Hong Kong’s permanent resident in 2007. On January 11, 2010, the house involved in the case was registered under Lin \*liang’s name. On June 2, it was transferred to Zhou \*di and registered under Zhou \*di’s name. Lin \*liang died on January 22, 2016. Zhao \*ting filed a lawsuit, requiring the court to deem the sales contract for the house involved in the case between Zhou \*di and Lin \*liang invalid.

Judgement

In the first-instance trial, Zhaoqing (肇庆) Intermediate People’s Court ruled that the sales contract for the house involved in the case between Zhou \*di and Lin \*liang should be invalid. In the second-instance trial, the High People’s Court of Guangdong Province held that as Lin \*liang acquired the ownership of the house involved in the case by debt in kind during the existence of Lin \*liang and Zhao \*ting’s first marriage, and both parties’ common residence at that time was in the mainland, whether the house involved in the case was their joint property should be subject to the mainland law. According to the mainland law, the house was their joint property. Lin \*liang and Zhao \*ting did not divide the house involved in the case when they divorced, so it was still their joint property. Lin \*liang transferred the house to Zhou \*di without Zhao \*ting’s consent. Zhou \*di knew about the conjugal relationship between Lin \*liang and Zhao \*ting and the real ownership of the house involved in the case, but Zhou \*di did not pay reasonable consideration. Therefore, Zhou \*di could be deemed to have colluded with Lin \*liang and helped Lin \*liang maliciously transfer their joint property. Therefore, the sales contract for the house involved in the case should be deemed invalid. The second-instance court dismissed the appeal and upheld the original judgement.

Significance

According to the laws of the common residence of the couple during the existence of their marriage, the people’s court determined applicable laws concerning their joint property, determined that property not divided at the time of divorce should still be their joint property according to law, and safeguarded the plaintiff’s lawful property rights and interests.

Case 13

Honeywell vs. Lin \*peng, Lin \*quan and Lin \*chang for Trademark Infringement

-Punished infringement on the trademark rights of multinational companies according to law and maintained competition order

Case Introduction

Honeywell International Inc., a company incorporated under the US law, was the holder of the registered trademark “Honeywell”. Lin \*peng (林某鹏) hired Lin \*quan (林某权) and Lin \*chang (林某畅) separately to produce a barcode scanner and counterfeit the above registered trademark without the consent of its owner. Lin \*peng, Lin \*quan and Lin \*chang were investigated for criminal responsibility according to law. Honeywell filed a lawsuit, requiring Lin \*peng, Lin \*quan and Lin \*chang to stop their infringement on Honeywell’s rights and compensate for Honeywell’s losses.

Judgement

Xinhui (新会) District People’s Court of Jiangmen (江门) held that Lin \*peng, et al. infringed on Honeywell’s exclusive right to use the registered trademark. The court comprehensively considered factors such as the profits Lin \*peng made from selling infringing products in his Taobao shop, the market value of infringing products they produced, the popularity of Honeywell’s registered trademark and reasonable costs for Honeywell to stop the infringement and ruled that Lin \*peng should compensate Honeywell for its economic losses and reasonable costs, totally CNY120,000, and that Lin \*quan and Lin \*chang should assume the joint liability for compensation, with each compensating Honeywell within CNY20,000. No appeal was made later.

Significance

The people’s court ordered the infringing parties to be liable for compensation for their counterfeiting of the registered trademark and protected the intellectual property rights of the transnational company.

Case 14

Star Overseas vs. Jinkat Media and Li \* for Unfair Competition

-Using similar names to well-known film names constitutes unfair competition

Case Introduction

 In 1999, *King of Comedy* was released in Hong Kong and gained high box office revenue and high popularity in Hong Kong. From 1999 to 2015, it was continuously reported and promoted by mainland media platforms. Video websites still provide online broadcasting services of the movie. In 2018, Li \* (李某), one of the directors of *King of Comedy 2018*, and Jinkat Media posted news about *King of Comedy 2018*, which was sued for infringement, and its casting on Sina Weibo. They prepared to shoot the movie and claimed that it was “a TV series version of #*King of Comedy*# and that the TV series *King of Comedy 2018* was based on the comedy movie *King of Comedy* in 1999. Star Overseas, copyright owner of *King of Comedy*, filed a lawsuit, claiming that Li \* and Jinkat Media misused the name of a film with certain influence and that their acts constituted unfair competition by false publicity, and requesting an apology and compensation for losses.

Judgement

In the first-instance trial, Tianhe (天河) District People’s Court of Guangzhou held that the TV series *King of Comedy 2018* and the movie *King of Comedy* were similar products. The accused behavior could easily lead the relevant public to believe that the TV series was a TV series version or a sequel of the movie *King of Comedy*. Relevant acts constituted unfair competition by using a confusing name similar to that of a film with certain influence and false publicity. Therefore, Tianhe District People’s Court of Guangzhou ruled that Li \* and Jinkat Media should publish a statement to counteract bad effects and compensate Star Overseas 1 yuan for economic losses and 120,000 yuan for reasonable expenses. In the second-instance trial, Guangzhou Intellectual Property Court upheld the judgement.

Significance

The people’s court determined that Hong Kong film names with relatively high visibility in the mainland were product names with certain influence and maintained the competition order in the film and television market in the Guangdong-Hong Kong-Macao Greater Bay Area according to law.

Case 15

He \*hao, et al. vs. Tianyi for Liability for Personal Injury at Sea

-Hong Kong and Macao residents who suffer personal injury in the mainland should be compensated according to the standard for urban residents of the place where the court is located

Case Introduction

On March 12, 2019, the fishing boat “Zhugui (珠桂) 6234” driven by Hong Kong residents He \*hao (何某豪) and He \*hui’s (何某慧) parents collided with “Tianyi (天一) 5” of Zhejiang Tianyi Shipping Co., Ltd. (浙江天一海运有限公司) in the second traffic lane of Dangan (担杆) Waterway of the Pearl River estuary, resulting in total damage to “Zhugui 6234” and the unfortunate death of He \*hao and He \*hui’s parents. After investigation, Shajiao (沙角) Marine Office of Guangzhou concluded that “Zhugui 6234” should be primarily responsible for the accident and “Tianyi 5” should be secondarily responsible. He \*hao and He \*hui filed a lawsuit, arguing that as their parents were Hong Kong residents, the per capita disposable income of Hong Kong residents should be used to calculate the compensation for death and other losses.

Judgement

Guangzhou Maritime Court held that according to the *Interpretation of the Supreme People’s Court on Several Issues Concerning the Application of Laws in Trying Cases Involving Personal Injury Compensation*, the compensation for death should be calculated according to the per capita disposable income of urban residents or the per capita net income of rural residents in the place where the court was located in the previous year. In this case, “Zhugui 6234” was a floating fishing boat among Guangdong, Hong Kong and Macao. The port of its entry was Guishan (桂山) Port, Zhuhai, Guangdong Province. The collision occurred in Zhuhai waters, so the court ruled that the compensation for death should be calculated according to the per capita disposable income of urban residents of Zhuhai. No appeal was made later.

Significance

Based on the place where the collision accident involving a floating fishing boat from Hong Kong or Macao occurred, the people’s court determined the compensation for personal injury suffered by Hong Kong residents in the mainland according to law, and equally protected the legitimate rights and interests of litigants both at home and abroad.

Case 16

Fan \*yi and Guo \*mei vs. Huang \*di, et al. for Liability for Personal Injury at Sea

-Used the resources of smart courts and worked with other parties to resolve disputes involving Hong Kong and Macao residents

Case Introduction

The fishing boat Zhuxiang (珠香) 1746 was a Hong Kong boat and its owner was Zhou \*gui (周某贵), a Macao resident. Zhuxiang 1746 lost contact while operating in the south of Big Wanshan (大万山) Island in Zhuhai, Guangdong Province on April 18, 2019. After search and rescue, it was confirmed that the fishing boat sank and none of all eight people on board, including Zhou \*gui, survived. Fan \*yi and Guo \*mei, as close relatives of the victims (mainland fishermen), filed a lawsuit, requesting Zhou \*gui’s heirs Huang \*di (黄某弟), Zhou \*sheng (周某昇) and Zhou \*ting (周某渟) (all Macao residents) to compensate for personal injury.

Judgement

Before the lawsuit was filed, Guangzhou Maritime Court worked with Zhuhai Association of Hong Kong and Macao Floating Fishermen and arranged for mediation among related parties. It helped serve legal documents on Macao parties and investigated related information of Zhou \*gui’s heirs. After entertaining the case, it invited Macao jurors familiar with local society and legal environment in Macao as members of the collegial panel, and worked with Zhuhai Association of Hong Kong and Macao Floating Fishermen to continue to mediate among related parties. During the trial, it linked Macao and Zhuhai via an authorized witness platform and completed the authorized cross-border witness of Macao parties. After mediation, all related parties finally reached a mediation agreement. Guangzhou Maritime Court issued a mediation letter to confirm the result. Huang \*di, et al. have actively fulfilled all obligations.

Significance

The people’s court properly worked with industry associations and Macao jurors and resolved disputes over the compensation for personal injury for Hong Kong and Macao fishermen through online platforms of smart courts.Case 17

WS vs. Tall and Stout, et al. for Contract Dispute

-The people’s court entrusted Hong Kong mediators to apply Hong Kong mediation rules to resolve a cross-border dispute and explored the convergence of mediation rules between the two places

Case Introduction

In November 2014, Water Solutions (HK) Limited (WS), a Hong Kong company, had a dispute with Tall and Stout Industrial Corp., Shenzhen Hongyu Dacheng Investment Co., Ltd. (深圳市宏宇大成投资有限公司), Long \*chuan (龙某川) and Wu \*wei (吴某伟). WS applied for arbitration to the International Arbitration Tribunal of the International Centre for Dispute Resolution. The arbitration tribunal made an arbitration award, ruling that Tall and Stout, et al. should pay various losses, totally more than USD3.7 million to WS. In May 2018, Shenzhen Intermediate People’s Court issued a civil ruling to recognize and enforce the arbitration award. From April to July 2018, Tall and Stout, Long \*chuan, et al. cooperated with each other and transferred all of Tall and Stout’s property. WS filed a lawsuit, requiring to deem the transfer of lands, real estates, equity and receivables among Tall and Stout and Long \*chuan, et al. invalid.

Judgement

Shenzhen Intermediate People’s Court introduced the case into the pre-mediation procedure and appointed a specially invited mediator from Hong Kong for mediation. In the process of communication, the mediator adopted Hong Kong’s “facilitative mediation rules”, guided the plaintiff to confirm “undisputed facts” and learned about its real demands. At the same time, the mediator paid attention to controlling the plaintiff’s negative emotions, relieved its dissatisfaction through online communication and other ways, and then found the appropriate time to bring the plaintiff back on the normal negotiation track. The two sides finally reached a settlement agreement and fulfilled it. WS applied to withdraw the lawsuit.

Significance

The people’s court hired a specially invited mediator from Hong Kong to resolve a cross-border dispute through online mediation and Hong Kong’s mediation rules, which reflected the convergence of judicial rules between Guangdong and Hong Kong.

Case 18

Yuexiu Property vs. Manston, Zeng \*wen, et al. for Property Contract Dispute

-The people’s court entrusted a Hong Kong mediator to efficiently resolve a cross-border dispute in Hong Kong and explored ways to integrate mediation mechanisms between the two places

Case Introduction

Twenty Hong Kong residents, including Zeng \*wen (曾某文), purchased real estates in Chancheng (禅城) District, Foshan, Guangdong Province, and signed a property service agreement with the Chancheng Branch of Guangzhou Yuexiu (越秀) Property Development Co., Ltd. Yuexiu Property provided property management services to Zeng \*wen, et al. After this, Zeng \*wen, et al. signed a proxy agreement with Foshan Manston Hotel Management Co., Ltd., agreeing that the above real estates should be leased and managed by Manston for them and Manston should pay property management fees. Later, Manston and Zeng \*wen, et al. failed to pay their property management fees. Yuexiu Property filed a lawsuit, requesting Manston and Zeng \*wen, et al. to pay the overdue property management fees.

Judgement

After entertaining this case, Chancheng District People’s Court of Foshan found that some Hong Kong parties could not reach, some could not join the trial and some believed they should not assume any liabilities due to the COVID-19 epidemic. To protect the legitimate rights and interests of all related parties, the court entrusted a specially invited mediator in Hong Kong to mediate among all Hong Kong parties. After accepting the assignment, the mediator contacted 18 real estate owners one by one according to their Hong Kong telephone numbers and Hong Kong addresses, served legal documents on all of them, patiently explained the legal provisions on property management in mainland China and the rights and obligations between the real estate owner and the hotel management company regarding property trusteeship. Later, 18 real estate owners paid property management fees and Yuexiu Property applied to withdraw the lawsuit.

Significance

The people’s court entrusted a specially invited mediator in Hong Kong to assist in serving legal documents and successfully solved the dispute, thus reducing the cost of cross-border rights protection for all parties concerned.

Case 19

Clear Zone Applied for Recognition of a Judgement Made by the Hong Kong Court

-Recognized the exclusivity of the jurisdiction clauses of the Hong Kong court according to law and the judgement made by the Hong Kong court

Case Introduction

On April 24, 2018, Clear Zone Limited and Xu \*yang (许某阳) signed an equity transfer agreement, agreeing that Clear Zone should transfer the target company’s shares to Xu \*yang. The dispute settlement clause of the agreement stipulated that either party may bring a dispute to a Hong Kong court. On November 15, 2019, Clear Zone sued Xu \*yang to a Hong Kong court for not paying the equity transfer payment in full. On March 9, 2020, the Hong Kong court made the final judgement No. HCA2117/2019, ordering Xu \*yang to make relevant payment to Clear Zone. Clear Zone applied to the Intermediate People’s Court of Guangzhou for recognition of the above judgement on January 28, 2021.

Judgement

After trial, the Intermediate People’s Court of Guangzhou held that the related jurisdiction clause stipulated that either party may bring a suit to a Hong Kong court in the exercise of its right of action. The clause did not indicate that either party had the right to choose a court other than Hong Kong courts. Therefore, this jurisdiction clause was the agreement where Hong Kong courts held sole jurisdiction as stipulated in Article 3 of the *Arrangement of the Supreme People’s Court for Mutual Recognition and Enforcement of Judgements for Civil and Commercial Cases under Agreed Jurisdiction of the Parties Concerned between Courts in the Mainland and Hong Kong Special Administrative Region*. Xu \*yang had been legally summoned. There were no circumstances in this case under Article 9 of the Arrangement for adjudication of non-recognition and non-enforcement. Clear Zone’s application was in line with the provisions of the Arrangement. Therefore, the court ruled that the judgement made by the Hong Kong court should be recognized.

Significance

The people’s court recognized the exclusivity of the jurisdiction clause according to law, recognized the validity of the judgement made by the Hong Kong court, facilitated the circulation of judgments made by Hong Kong courts in the mainland, and achieved closer judicial cooperation in the Guangdong-Hong Kong-Macao Greater Bay Area.

Case 20

Essential Perfection vs. Kuang-Chi for Property Preservation in Arbitration Proceedings

-Fulfilled arbitration preservation arrangements made by mainland and Hong Kong arbitration centers and explored new mechanisms for judicial assistance

Case Introduction

Essential Perfection Enterprises Limited applied for arbitration to Hong Kong International Arbitration Centre on April 28, 2020, requiring Shenzhen Kuang-Chi Technology Co., Ltd., et al. to pay the equity transfer fee equivalent to CNY78,672,248.2. Due to the Covid-19 epidemic, the arbitration was postponed. To prevent Kuang-Chi from transferring its property, Essential Perfection requested to take property preservation measures and freeze Kuang-Chi’s equity in other companies. On May 11, 2020, Hong Kong International Arbitration Centre submitted Essential Perfection’s application for property preservation and other materials to Shenzhen Intermediate People’s Court.

Judgement

After trial, Shenzhen Intermediate People’s Court held that Kuang-Chi’s equity that Essential Perfection requested to freeze had been pledged. In addition, Kuang-Chi was involved in other lawsuits. These fell into the circumstance specified in Article 5(3) of the *Arrangement for Mutual Assistance and Preservation of the Courts in the Mainland and Hong Kong Special Administrative Region in Arbitration Proceedings*, “the situation is urgent and the failure to make immediate property preservation will cause irreparable damage to the applicant’s legitimate rights and interests or make it difficult to implement the arbitration award”. Therefore, the court ruled that the value of Kuang-Chi’s equity in other companies to be frozen should not exceed CNY78,672,248.20. With Essential Perfection’s consent, Shenzhen Intermediate People’s Court entrusted Hong Kong International Arbitration Centre to deliver the civil award to Essential Perfection.

Significance

The people’s court implemented the Arrangement and approved the plaintiff’s property preservation application in Hong Kong’s arbitration proceedings. In addition, it tried to deliver mainland legal documents to the plaintiff in Hong Kong via a Hong Kong arbitration institution with the plaintiff’s consent, thus broadening new paths for judicial assistance.