

[Title]

RGB Adventure Case

[Deciding Court]

Second Petty Bench of the Supreme Court

[Date of Decision]

11 April 2003

[Case No.]

Case No. 216 (Ju) of 2001

[Case Name]

*Jokoku* appeal in claim for injunction against use of copyright

[Source]

*Hanrei Jiho* No. 1822: 133

[Party Names]

X: Tony Wayman Koo

Y: ACC Productions Creative Studios Co., Ltd.

[Summary of Facts]

X was a designer and a Chinese national, who visited Japan on three occasions. On the first and second visits he stayed on tourist visas, and on the third he stayed on a work visa. Y was a company engaged in the development and filming of works of animation. X wanted to learn Japanese animation production skills, and at Y he prepared more than ten pages of drawings (“Drawings”) as designs for characters and the like for animation works. Y used the Drawings to produce the animation work “RGB Adventure,” which it released to the public. X’s name was not represented anywhere in the work as the author of the Drawings. X asserted that he owned the authorship of the Drawings, and he claimed damages and an injunction against the distribution of the animation film. In response, Y argued that since the Drawings had been made in the course of X’s duties pursuant to a relationship of employment with Y, “works made for hire” had arisen under Article 15(1) of the *Copyright Act*, thus attributing authorship to Y. The District Court found that a contract of employment had come into existence from the time of X’s first visit to Japan, and accordingly it dismissed X’s claims with prejudice on the merits: decision of the Tokyo District Court of 12 July

1999, *Rohan* No. 849: 32. On the basis of external elements including that X had not had a work visa; Y had not presented X with its work rules or explained its work conditions to him; and that no employment insurance premiums or other employee deductions had been made, however, the Tokyo High Court ruled out the formation of any contract of employment prior to X's third visit to Japan and, ruling that X owned the authorship of those Drawings that had been prepared during his first and second visits to Japan, upheld X's claims: decision of the Tokyo High Court of 9 November 2000, *Hanrei Jiho* No. 1746: 135. Y brought a *jokoku* appeal before this Court, which in the following ruling quashed and remanded the decision of the High Court. At re-trial the High Court found that an employment relationship had come into existence, and dismissed X's claims with prejudice on the merits.

[Summary of Decision]

“Article 15(1) of the *Copyright Act* provides that, in a situation where a person employed by a legal person, etc. makes a work on the initiative of the legal person, etc. in the performance of his duties under the direction and supervision of the company, et al., and this work is made public under the name of the company, et al., the authorship of the work described in that paragraph shall be attributed to the company, et al.,. For a company, et al., to be attributed authorship under that paragraph, the person who made the work must be an ‘employee’ of the company, et al.,. Whilst it is therefore clear that a person in an employment relationship with the company, et al., would fall under this provision, in the event where the very existence of an employment relationship is in dispute, with respect to whether or not a given person constitutes an ‘employee of a company, et al.,’ under that paragraph, after looking at the substance of the relationship between the company, et al., and the person who made the work, it is appropriate that, in a situation where labor is in effect being provided under the direction and supervision of a company, et al., the question of whether or not monies paid by that company, et al., for that labor can be considered compensation for services rendered, is to be decided by taking into consideration, as a whole, detailed factors pertaining to, for example, the state of the individual’s employment, whether or not the employee was under direction and supervision, the level of his remuneration, and the method for payment of that remuneration.”

“X resided in Y’s employee dormitory immediately after his first visit to Japan. He performed his work at Y’s office, received payment from Y each month of a set amount of money under the title of ‘base salary’, and even received salary payment statements. X moreover made the Drawings for use in an animation work that Y developed. These facts should have raised questions such as whether X provided his labor under Y’s direction and supervision, and whether he received money as compensation for that labor. The High Court however, based its decision principally on technical factors such as the type of X’s resident status in Japan, the existence or absence of a written contract

of employment, and whether or not deductions had been made for employment insurance premiums, income tax and the like, gave no consideration to the specific factors cited above, and failed to conclusively determine, with respect to the work that X performed at Y's offices, whether or not Y had provided direction or supervision regarding the content of that work and the manner in which it was performed. The court ruled out the existence of any employment relationship prior to X's third visit to Japan without further ado. It must be said therefore that the High Court failed illegally in law with respect to its interpretation and application of an 'employee of a company, et al.,' under Article 15(1) of the *Copyright Act*. We find the arguments for the appeal have merit."

[Keywords]