

Facts: In 2001, the plaintiff, Company A, and the defendant, a listed Company B, had incorporated a joint limited liability Company C in Shanghai with a registered capital of RMB 50,000,000. The defendant made 60 percent (RMB 30,000,000), the plaintiff 40 percent of the total contribution (RMB 20,000,000). After Company C was incorporated, the defendant, as majority shareholder, manipulated Company C's finance and operation directly. A few days after Company C was incorporated, the defendant transferred the registered capital to its own bank account without authority. Due to the failure in performance of the defendant, Company C did not carry out any business operation under its business scope and was therefore confronted with serious difficulties in operation and management. The plaintiff claimed to dissolve the joint Company C and to return its contribution of RMB 20,000,000 including interests from 2001 to 2006.

Issues:

1. Does the joint company C meet the conditions to be dissolved?
2. Has the defendant taken illegal

possession of the property of Company C and violated the interests of the plaintiff?

Sinotimes' Line of Argumentation

In this case, Sinotimes represented the plaintiff and argued according to the following points:

1. Company C did not carry out any business operation under its business scope since it had been established, which led to serious difficulties in operation and management. Its continued existence would cause significant losses to the interests of its shareholders and would leave the registered capital unused. Furthermore, the difficulties could not be surmounted in any other way. Therefore, Company C meets the conditions to be dissolved according to *Corporate Law*.
2. The plaintiff could not reach its purpose of incorporating joint Company C. Due to the restrictions of related laws and regulations, Company C could not get the approval to trade refined oil. In addition, the plaintiff's advantages in dealing with refined oil could not be exploited.
3. Since Company C incorporated, it had never proposed to call for any meeting of the shareholders' assembly and any meeting of the board of directors. The

board of directors failed to perform this obligation, which it had under the articles of association of Company C. Considering that the defendant may argue the plaintiff was entitled to call for an interim meeting of the shareholders' assembly and an interim meeting of the board of directors, Sinotimes suggested to the plaintiff to inform the defendant to participate an interim meeting of the shareholders' assembly and an interim meeting of the board of directors. The issue of illegal possession of Company C's capital should be discussed since the chairman of the board and the board of directors failed to act according to their obligation.

4. The defendant illegally possessed the property of Company C for its own business operation. In order to fix proof, Sinotimes suggested applying to the court for issuance of a notice of assistance in investigating all Company C's bank account information.

5. Corporate Law states that where a shareholder of a company abuses his shareholder rights and thus causes losses to the company or other shareholders, he shall be liable for compensation.

6. During the trial, the defendant

suggested to merge the plaintiff's 40 percent equity in Company C at the price of RMB 20,000,000. Taking into consideration that this kind of case had rarely happened before and thus the result as well as time for and costs of the process were hard to predict, Sinotimes suggested the plaintiff to accept the proposal. The acceptance should be bound to the condition that the court issued a conciliation statement stating that the defendant pays RMB 5,000,000 to guarantee performance of the conciliation statement. If the defendant failed to perform, the plaintiff should be entitled to forfeit the guarantee and apply to the court for compulsory execution.

The result:

The court issued a conciliation statement according to both parties' agreement. It ordered the defendant to buy the plaintiff's 40 percent equity in Company C at the price of RMB 20,000,000 adding the suggested RMB 5,000,000 performance guarantee article.

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