

**Core Parts of  
Shanghai Pudong New Area People's Court (court of first instance) Judgment**

September 30, 2019

*(unofficial translation dated November 27, 2019, by Associate Prof. Yang Yu)*

I. Main facts in the indictment

From 2009 to the case, the defendant LXW has applied for a large number of patents involving multiple technical fields in the name of his KD company, BX company, etc. Then he filed patent dispute lawsuits with courts in order to force the alleged infringers to sign patent licensing contracts, settlement agreement etc. to pay the money in exchange for his withdrawing the lawsuits or no longer claiming the patent rights, by means of threatening those alleged infringers with the potential negative influences on their production, operation, listing, financing, etc. caused by the lawsuits. Between 2015 and 2017, the defendant LXW alone or in conjunction with the defendant LXWU, in the name of KD Company, BX Company, BD Company, etc., used the above-mentioned measures to force four victim companies to sign patent licensing contracts or settlement agreements with KD etc. in the name of patent implementation license fee, compensation, etc., extorting RMB 2.163 million and subsequently receiving RMB 1.163 million.

- A. From march to July 2017, when the defendant LXW was operating and managing KD company, he learned that ZY company was in the stage of initial public offering. In the name of KD company, he filed civil lawsuits with Beijing Intellectual Property Court and Shanghai Intellectual Property Court on the grounds that ZY company infringed his patent right. Although ZY company did not admit the alleged infringed, it was forced to sign a patent licensing contract with KD company and paid KD RMB 800,000 yuan in the name of patent licensing fee. Finally, RMB 500,000 yuan was actually paid to KD company.

At the end of 2017, LXW fabricated the intellectual property licensing contract in which KD company had exclusively licensed No. XX patent exclusive license to BD company which had been actually controlled by LXW. Then he filed civil lawsuits, in the name of BD company, with the Beijing Intellectual Property Court alleging that ZY company had infringed the patent right and reported to the China Securities Regulatory Commission (CSRC) in real name, disclosing that he had filed a patent infringement lawsuit against ZY company. Based on such moves, LXW negotiated with ZY company along with the other defendant LXWU who was a shareholder of BD company. In order to avoid affecting the initial public offering process, ZY company was again forced to sign a dispute resolution agreement with BD company represented by LXW and LXWU, agreeing to pay RMB 800000 yuan in the name of settlement fee, and then actually paid RMB 100,000 yuan.

- B. In October 2017, the defendant LXW learned YQ company was in the process of being listed on the motherboard of Shenzhen stock markets and hence, in the name of BX company, successively filed civil lawsuits with Xiamen Intermediate People's Court on the grounds that YQ company had infringed its three utility model patents. Besides, LXW then reported to the CSRC, disclosing such patent infringement lawsuits, which led to YQ

company's being inspected by the supervision department of the CSRC. Under the condition that YQ company did not admit the alleged patent infringement, in order to avoid affecting the listing process, it was forced to sign a settlement agreement with BX company represented by the defendant LXW, paying RMB 288,000 yuan in the name of compensation.

- C. From 2015 to 2017, the defendant LXW knew that GB company was in the stage of financing. In the name of KD company, he successively filed several civil lawsuits with Shanghai Intellectual Property Court on the grounds that GB company infringed some of its patent rights, and complained to online shopping platforms such as Jingdong and Taobao, causing GB company's products to be removed from the e-shelves. Under the conditions that GB company did not admit the alleged patent infringement, the involved patents were invalidated by the patent reexamination board of the China National Intellectual Property Administration (CNIPA), and KD company lost the lawsuits, in order to avoid affecting financing, GB company was forced to sign a patent licensing contract with KD company, paying RMB 225,000 yuan in the name of patent licensing fee.
- D. From 2015 to 2016, the defendant LXW, in the name of KD company, sued HY company for infringement of several of its patent rights. Under the condition that HY company did not admit the alleged patent infringement, in order to avoid excessive litigation costs, it was forced to sign a patent licensing contract with three companies such as KD company represented by the defendant LXW, and paid RMB 50,000 yuan in the name of patent licensing fee.

## II. Accusation in the indictment

According to the public prosecutor, the defendant LXW and LXWU, for the purpose of illegal possession, forcibly extorted public and private property by using blackmail means and the involved amount is especially tremendous, and thus their behaviors constituted the crime of extortion.

## III. Main legal reasoning in the judgment

A. As for the question of whether or not the prosecuted fact of actually obtaining RMB 500000 yuan in the first section and the prosecuted facts in the second, third and fourth sections constituted the crime of extortion, the court held that the evidence was insufficient regarding the prosecution which accused the defendant LXW of extorting 1.363 million yuan from four companies for the purpose of illegal possession and actually obtaining 1.063 million yuan, and thus the defendant's behaviors in the four above-mentioned sections did not constitute the crime of extortion. The reasons are as follows:

To accurately determine whether the acts constitutes the crime of extortion, we should not only examine whether the actor has the purpose of illegally possessing property, but also accurately grasp whether the act of acquiring property adopts threats and intimidation, and make specific identification on this basis.

In this case, firstly, from a subjective perspective, the existing evidence can only determine that the money obtained by defendant LXW from four companies is patent license fee or compensation, which cannot accurately determine that the defendant LXW has the objective of illegal possession subjectively. On the basis of rights, in property crimes, the judgment of criminal illegality is the judgment of illegality relativity under the principle of unity of legal order. The

criminal illegalities embodied in property-based crimes must be based on the judgment of civil law, administrative law and other branches of law. It is a necessary condition that the establishment of a property-based crime necessitate illegal property transfers in terms of the criteria in other branches of law, but such a necessary condition is not a sufficient condition. If property transfers are legal and effective in terms of the legal evaluation criteria in other branches of law, then property-based crime is impossible to be established. In this case, both the patents involved in earlier patent infringement lawsuits against relevant companies instituted by defendant LXW and the patents involved in the patent licensing contracts or settlement agreements signed with the four companies are either recognized by the CNIPA as legal and valid or in the uncertain state of patent validity, lacking corresponding evidence that such patent rights were obtained by the defendant by means of plagiarism, swindle, theft and other illegal means. Under the premise that the basis of patent rights cannot be completely ruled out and denied in the patent litigations, it is difficult to confirm the behaviors of the defendants are extortion under the guise of patent litigations. The evidence in this case can only prove that the defendant LXW, believing the existence of patent infringements, filed lawsuits or proposed to conduct compensation negotiation with the above-mentioned four companies. The defendant LXW shall not be deemed to have the purpose of illegal possession of the money involved based on the fact that the lawsuit or negotiation time were sensitive points when the relevant companies were preparing for listing or financing.

Secondly, from the objective perspective, the relevant evidence is insufficient to prove that the defendant LXW carried out threats or blackmail, which was enough to make the victims reluctantly dispose of property because of the psychological status of fear and being scared. The evidence in the case can only confirm that the defendant LXW filed claims for infringement compensation through litigation or settlement negotiations. It cannot be confirmed that the relevant companies agreed to pay the corresponding amount solely because of coercion and free will's status of being controlled. It is impossible to rule out the possibility of private law autonomy in consideration of factors such as the intent to pour oil on troubled waters, litigation costs, etc.

To sum up, it is difficult for the court to determine that the documented evidence has reached the proof standard of definiteness and sufficiency, which is sufficient to prove that the defendant LXW subjectively has the purpose of illegal possession and objectively carried out the threatening behavior to force the relevant companies to dispose of the property.

B. As for whether the fact that the defendant LXW and the defendant LXWU have obtained RMB 100,000 yuan in the indictment constitutes the crime of extortion, the court considers that the defendant LXW and LXWU's behaviors in this section conform to the constitutive elements of the crime of extortion, and they should be accountable for criminal responsibility for the crime of extortion.

The facts of this case are typical "racketeering" behavior in the guise of alleged patent infringement, which is divided into two stages. The first stage was "racketeering", that is, the defendant LXW intentionally signed the contract backwards in July and August 2017, and fabricated the exclusive license of the patent under his company to BD company, creating the illusion that BD company had the exclusive right to use the patent. The second stage was to obtain the property, that is, the two defendants maliciously colluded and chose to change the litigation entity deliberately at the critical time when the victim companies were going to be listed and traded, in order to file patent infringement lawsuits against them in the name of BD company. Then the defendants reported the content of those patent infringement lawsuits to the CSRC as an important reporting basis, setting

up obstacles for the listing of the victim companies. The defendants subsequently proposed to negotiate with the victim companies based on such reporting, in order to impose psychological coercion on the victim companies and then illegally obtain property.

1. In this case, the two defendants subjectively held the purpose of illegal possession:

First, the two defendants maliciously colluded, fabricating the exclusive license contract which was signed backwards in order to create the illusion that the exclusive license between KD and BD had been signed before the general license between KD and ZY. The extortion which was based on such an illusion and the fabricated exclusive license contract is illegal in the field of civil law. The defendant's purpose of backward signing the contract was to cause the court's or the CSRC's wrong understanding that "BD company has the exclusive right to use the patent, and is not bound by the previous general license contract", trying to make ZY company's defense unestablishable that it had the right to use the no. XX patent. The essence of the above behavior is that the two defendants colluded in bad faith to sign a contract that damaged the interests of a third party and then extorted money from the victim company. This contract is a case of malicious collusion that damages the interests of a third party and should be regarded as invalid. This act is an illegal act in the scope of civil law and has the basis of criminal illegality.

Second, the two defendants directly converted the right to report into property rights for extortion with obvious illegal possession purposes. The law protects legitimate reporting behavior, but the right to report is not directly equivalent to property rights. The acquisition of property rights requires a legitimate and reasonable basis. The perpetrators threatened the victim company with the purpose of illegally acquiring the property and the victim company had to pay the corresponding money to buy the withdrawal of reporting. In fact, such behaviors are de facto extorting the property in the name of the reporting. In the facts of the section, the two defendants used the coercive means to make the victim company reluctantly pay the price of the defendants' revoking the corresponding complaint to the CSRC, having the purpose of illegal possession.

2. In this case, the two defendants objectively used the threat of coercion to extort money from the victim company. During the critical period when the victim company was listed for trading, the two defendants filed a lawsuit in the court by fabricating a false license contract, and then filed a report to the CSRC based on the relevant lawsuit, causing ascending levels of severity and thus, to a certain degree, objectively engendering the victim company's psychological stress and fear, and then conducted the behavior of extorting money from the victim company. The surrender of property by the victim company was based on the fear of the uncertainty and unpredictability of losses and risks caused by delaying the listing, and accordingly the victim company, to some extent, had to be forced to yield to dispose of its own property even clearly knowing that the defendants' behaviors were blackmail in terms of reporting to the CSRC. Therefore, the defendant's multiple means of behaviors have obvious threats and coercive characteristics, which is consistent with the criminal composition of extortion. Therefore, the accusation based on the fact, that the actually acquired amount of money was RMB 100,000 yuan, in the first section of the indictment is established and the Court approves it.

#### IV. Court decision

A. The defendant LXW is convicted of extortion and sentenced to four years and six months in prison and a fine of RMB 50,000.

B. The defendant LXWU is convicted of extortion and sentenced to two years in prison and a fine of RMB 20,000.

C. The illegal income will be recovered and returned to the victim company.

D. The tools, which were used to commit crime and were detained in the case, are confiscated.