Harry v. Suzuki

MAIN TEXT

The appeal is dismissed.

Appeal costs shall be borne by the appellant.

REASONING

Reasons for appeal by Takeshi Kikuchi and Junichiro Inoue:

According to the old copyright law (Act No. 39 of 1902), the author has the exclusive right to reproduce the work, and when a third party reproduces the work without the permission of the copyright holder, it is liable for copyright infringement. Reproduction of a work here should be understood to mean recreating something that relies on an existing work and is sufficient to make people aware of the existing work's content and format. Even if a work that is identical to an existing work is created, if it is not recreated based on the existing work, it does not mean that it has been reproduced, and there is no ground to raise the claim of copyright infringement. When a person does not have the opportunity to access the existing works and therefore does not know their existence or content, regardless of whether or not there is negligence in not knowing this, since it is not due to the reproduction of a work that relies on an existing work, even if the created work is identical to the existing work, that person is not liable for copyright infringement.

Here, according to the decision of the lower court, A song [complaining song] has been known to some music experts or enthusiasts in this country up to this suit in 1963, while B song [defending song] was composed by the respondent B in Japan, it's just not so prominent that any music expert or enthusiast knew about it.

On the other hand, Respondent B worked at a broadcasting station with a huge collection of domestic and foreign records and musical scores. He worked as a temporary record clerk around 1952, and as a director in 1963. He was responsible for the planning and production of TV programs including music programs, and was engaged in the songwriting of popular songs during that time. However, there is no circumstantial evidence showing that he must have known the existence of A song at the time of composing B song.

Furthermore, when comparing A song and B song, there are similar parts in the melody, but the melody of such similar part is often used in so-called popular songs such as A song and B song. It is highly possible that such similarity will appear by chance, and it is found that B song contains a melody that is not found in A song, according to the above facts.

It is difficult to infer that the respondent B had been accessing A song before the composition of the instep song, and it is also difficult to infer that he had an opportunity to access A song. Even if the respondent B and E Co., Ltd. permitted reproduction B song to others, as the appellant insisted, it does not lead to the conclusion that the copyright of A song was infringed.

The lower court judgment is reasonable and legit.

The argument that the lower court judgment was incorrect or that the lower court was asserting its own point of view cannot be adopted.

Supreme Court of Japan (the First Petty Bench)

Chief Judge Yasuo Kishigami
Judge Shigemitsu Dandou
Judge Fujisaki Masato
Judge Toru Motoyama