

J. Y. Interpretation No.136 (August 3, 1973) *

ISSUE: May a court order the party in a civil action to pay execution fees for provisional attachment and preliminary injunction proceedings?

RELEVANT LAWS:

Article 23 of the Act Governing Costs of Civil Actions (民事訴訟費用法第二十三條) ; Interpretation Yuan-je Tzu No. 3991 (司法院院解字第三九九一號解釋) .

KEYWORDS:

preliminary injunction (假處分) , execution fees (執行費) , preventive proceeding (保全程序) .**

HOLDING: Execution fees may be collected for the enforcement of provisional attachment and preliminary injunction under Article 23 of the Act Governing Costs of Civil Actions and set off thereafter against the execution fees to be charged for enforcement of a judgment that has become irrevocable. Our Interpretation Yuan-je Tze No. 3991 is hereby amended and modified.

解釋文：假扣押假處分之執行，得依民事訴訟費用法第二十三條之規定，征收執行費，於本案確定執行征收執行費時，予以扣除。本院院解字第三九九一號解釋應予變更。

* Translated by Raymond T. Chu.

** Contents within frame, not part of the original text, are added for reference purpose only.

REASONING: The enforcement of either provisional attachment or preliminary injunction is a compulsory execution under the civil law, to which the provision of Article 23 of the Act Governing Costs of Civil Actions with respect to the collection of execution fees is applicable. Our Interpretation Yuan-je Tze No. 3991 holding that there is no need to collect execution fees for the enforcement of provisional attachment or preliminary injunction is based on the reasoning that, because execution fees will ultimately be collected for enforcement of an irrevocable final judgment on the merits of a settlement agreement concluded in the future, it is not necessary to collect execution fees at the stage of preventive proceeding. If, however, the applicant for enforcement of provisional attachment or preliminary injunction chooses eventually not to file an application for enforcement of the judgment on the merits or his appeal is dismissed, there will be no further opportunity for the collection of execution fees in compliance with the foregoing provision. It is therefore appropriate that the party be ordered to pay the execution

解釋理由書：按假扣押、假處分之執行，均為民事強制執行之一種，民事訴訟費用法第二十三條關於征收執行費之規定，自亦有其適用。本院院解字第三九九一號解釋認為假扣押、假處分之執行，無須征收執行費者，當以本案將來判決確定或和解成立執行時，既須征收執行費，則在此等保全程序之執行，自無須先行征收為理由。然若聲請人以後不依據本案判決聲請執行，或其本訴被駁回時，則此項執行費即再無征收之機會，與上開法條不合。自以在保全程序執行中，得命繳納，於本案確定執行征收執行費時，予以扣除，較為平允。上開解釋與此見解有異部分，應予變更。

fees incurred during the preventive proceeding and that the sum paid shall be set off against the amount of execution fees payable for enforcement of the irrevocable final judgment rendered on the merits. The part of the aforesaid interpretation inconsistent with this view must be modified accordingly.

Justice Shih-Ron Chen filed dissenting opinion.

Justice Shi-Ding Chin filed dissenting opinion.

本號解釋陳大法官世榮、金大法官世鼎分別提出不同意見書。