

J. Y. Interpretation No.149 (June 17, 1977) *

ISSUE: Who shall be ordered to make good the payment of the court costs derived from the decision made before the remanded trial?

RELEVANT LAWS:

Interpretation Yuan-je Tze No. 2936 of the Judicial Yuan (司法院院解字第二九三六號解釋) ; Article 91 of the Code of Civil Procedure (民事訴訟法第九十一條) ; Article 18 of Act Governing Fees of Civil Actions (民事訴訟費用法第十八條) .

KEYWORDS:

court costs (裁判費) , non-gratuitous principle (有償主義) .**

HOLDING: When there is a party appealing against the judgment of a remanded trial, and if there is any omission or unpaid portion of the court costs which shall be paid for the first appeal, the court shall precisely levy it on the first appellant. And if there is still an omission or unpaid portion of such payment even

解釋文：當事人對於更審判決，提起上訴時，其第一次上訴應繳之裁判費尚未繳納或未繳足額，法院應向第一次上訴人徵足。如於該事件之裁判有執行力後，仍未繳足，應依職權以裁定確定裁判費之數額，命負擔訴訟費用之一造補繳之。本院院解字第二九三六號解釋（二）有關裁判費部分，應予補

* Translated by Jer -Shenq Shieh.

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

though the decision of the tried case has already been rendered, the court shall fix ex officio the amount of the court costs by a ruling and order the party who shall bear the costs of an action to make good the payment. Interpretation Yuan-je Tze No. 2936 (2) about the court costs shall thus be supplemented.

REASONING: Court costs are among the fees which the country shall levy. The court shall count and levy the court costs after assessing the value and amount of the subject matter of an action; the court shall not causally allow the parties to omit or leave partially unpaid the payment of the court costs, then could be in conformance with the non-gratuitous principle embraced by the Code of Civil Procedure. Interpretation Yuan-je Tze No. 2936 (2) partially reveals that in regard to the appeal against the judgment of a remanded trial, even though the court has discovered that there is actually an unpaid portion of payment of the court costs which shall be paid for the first appeal, the court may not order the first appellant to make good the payment. What

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解釋文：裁判費，為國家應徵收之一種規費。法院應切實核定訴訟標的之價額計徵之，不得任令當事人有漏繳或少繳情事，始符合民事訴訟法所採有償主義之原則。本院院解字第二九三六號解釋（二）部分揭示：關於更審判決之上訴，雖發見第一次上訴應繳之裁判費，確未足額，亦不得命第一次上訴人補繳。此項解釋，係指法院對於第一次上訴要件有無欠缺，不得再為調查，並非裁判費勿庸徵足。故當事人對於更審判決，提起上訴時，其第一次上訴應繳之裁判費尚未繳納或未繳足額，法院應向第一次上訴人徵足，如於該事件之裁判有執行力後，仍未繳足，應依職權以裁定確定裁判費之數額，命負擔訴訟費用之一造補繳之。本院院解字第二九三六號解釋（二）有關裁判費部分，應予補充。

this Interpretation does mean is that the court shall not, again, investigate whether there is any defect in the prerequisites of the first appeal; it does not mean that the court does not need to levy the court costs precisely. Therefore, when there is a party appealing against the judgment of a remanded trial, and if there is any omission or unpaid portion of payment of the court costs which shall be paid for the first appeal, the court shall precisely levy it on the first appellant. And if there is still an omission or unpaid portion of such payment even though the decision of the tried case has already been rendered, the court shall fix ex officio the amount of the court costs by a ruling and order the party who shall bear the costs of an action to make good the payment. The Interpretation Yuan-je Tze No. 2936 (2) about the court costs shall thus be supplemented.

Justice Wei-Kuang Yiau filed dissenting opinion.

Justice Shih-Ron Chen filed dissenting opinion.

本號解釋姚大法官瑞光、陳大法官世榮分別提出不同意見書。