

J. Y. Interpretation No.225 (April 29, 1988) *

ISSUE: Is the Code of Civil Procedure constitutional in providing that the plaintiff bears the court costs where the suit is withdrawn after it is instituted?

RELEVANT LAWS:

Article 15 of the Constitution (憲法第十五條) ; Article 83, Paragraph 1 and Article 249, Paragraph 1, Subparagraph 6 of the Code of Civil Procedure (民事訴訟法第八十三條第一項、第二百四十九條第一項第六款) .

KEYWORDS:

court costs (裁判費) , non-gratuitous principle (有償主義) , abuse of the process (濫行起訴) .**

HOLDING: Civil litigation is a proceeding whereby the party appeals to the judicial organ for determining his private rights for his personal interest. Payment of court costs is one of the prerequisites for the institution of an action. Even if the suit is withdrawn by the plaintiff after it has been brought, he is still obligated to pay the court costs incurred in

解釋文：民事訴訟係當事人請求司法機關確定其私權之程序，繳納裁判費乃為起訴之要件，原告於提起訴訟後撤回其訴，自應負擔因起訴而生之訴訟費用。民事訴訟法第八十三條第一項：「原告撤回其訴者，訴訟費用由原告負擔」之規定，與憲法第十五條尚無牴觸。

* Translated by Raymond T. Chu.

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connection with the institution of the suit. The provision of the Code of Civil Procedure, Article 83, Paragraph 1, that “if the plaintiff withdraws his action, he shall bear the costs thereof” is not in conflict with Article 15 of the Constitution.

REASONING: Civil litigation is a proceeding whereby the party appeals to the judicial organ for determining his private rights for his personal interest. To be fair, all court costs and expenses incurred should of course be borne by the litigant parties. This is the reason that the Code of Civil Procedure embraces the non-gratuitous principle, and the payment of the court costs in the sum specified by the Act Governing Costs of Civil Actions is one of the prerequisites for the institution of an action. If this essential requirement is not met when the action is brought and the defect is not amended within the period fixed by the presiding judge, the court must dismiss the case by an order in pursuance of the Code of Civil Procedure, Article 249, Paragraph 1, Subparagraph 6. While the court shall, when delivering the final decision, order *ex officio* that the

解釋理由書：民事訴訟係當事人為自己之利益，請求司法機關確定其私權之程序，自應由當事人負擔因此所生之費用，方稱公平，故我民事訴訟法採有償主義，以依民事訴訟費用法繳納定額之裁判費為起訴之要件，如起訴不備此項要件，經審判長定期命其補正，而未補正者，法院應依民事訴訟法第二百四十九條第一項第六款裁定駁回。雖此項裁判費及其他訴訟費用，法院為終局裁判時，應依職權裁判命敗訴之當事人或其他引起無益訴訟行為之人負擔，惟訴訟之終結非必經裁判，如原告於起訴後終局判決前，撤回其訴者，既仍得再行起訴，為防止原告濫行起訴，此項訴訟所生之費用，自應由引起訴訟之原告負擔。民事訴訟法第八十三條第一項：「原告撤回其訴者，訴訟費用由原告負擔」之規定，為增進公共利益所必要，與憲法第十五條尚無牴觸。

defeated party or another party who brought the meaningless lawsuit bears such court costs and other fees and expenses arising out of the proceeding, a lawsuit is not necessarily ended by court adjudication, and a plaintiff who withdraws his suit after instituting the proceeding and before a final and binding judgment is made is entitled to again bring a suit. Thus, to avoid abuse of the process, the plaintiff who initiates the lawsuit must be made to pay all costs for such proceeding. We conclude that the provision of the Code of Civil Procedure, Article 83, Paragraph 1, that “if the plaintiff withdraws his action, he shall bear the costs thereof,” being necessary for the furtherance of the public interest, is not in conflict with Article 15 of the Constitution.