SPC Guiding Case No. 116: Dandong Yiyang Investment Co., Ltd. (Application for State Compensation for Wrongful Enforcement by Dandong Intermediate People's Court)

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Keywords

State compensation; wrongful enforcement; termination of enforcement; inability to pay.

Holding

Where the people's court's enforcement conduct was indeed erroneous and caused damage to the applicant for enforcement, and the enforcement for this time was terminated because the person subject to enforcement has no ability to pay and will no longer have any ability to pay, this does not affect the applicant for enforcement's application for state compensation in accordance with law.

Basic Facts

On November 7, 1997, the Dandong Branch of Bank of Communications signed a loan contract with Dandong Tire Factory, agreeing that the latter would borrow RMB 4.22 million from the former at a monthly interest rate of 7.92‰. On June 7, 2004, the claim was assigned to the Shenyang Office of China Cinda Asset Management Co., Ltd., and was later purchased by Dandong Yiyang Investment Co., Ltd. (hereinafter "Yiyang Company") through further transfers. On May 10, 2007, Yiyang Company filed a lawsuit demanding that Dandong Tire Factory repay the loan. On May 23, the Dandong Intermediate People's Court (hereinafter the "Dandong Intermediate Court"), based on Yiyang Company's property preservation application, made Civil Ruling (2007) Dan Min San Chu No. 32-1: freezing Dandong Tire Factory's bank deposits of RMB 10.5 million or sealing its property of equivalent value. The next day, the Dandong Intermediate Court issued a notice of assistance in enforcement to the Dandong Municipal Land and Resources Bureau, requesting assistance in: sealing six parcels of land of Dandong Tire Factory located at No. 134 Zhenqi Street, Zhenxing District, Dandong City, and specifying the land certificate number and area of each parcel. On June 29, 2007, the Dandong Intermediate Court made Civil Judgment (2007) Dan Min San Chu No. 32, ordering Dandong Tire Factory to repay Yiyang Company the loan of RMB 4.22 million and interest of RMB 6,209,022.76 (interest provisionally calculated until December 20, 2006) within 10 days after the judgment took legal effect. After the judgment took effect, Dandong Tire Factory did not voluntarily perform, and Yiyang Company applied to the Dandong Intermediate Court for compulsory enforcement.

On November 19, 2007, the 51st Mayor's Office Meeting of the Dandong Municipal People's Government resolved, "Regarding matters concerning the liquidation of Dandong Tire Factory's assets to settle employees and repay debts," to "instruct the Municipal State-owned Assets Supervision and Administration Commission, together with the Municipal Land and Resources Bureau, the Municipal Finance Bureau and other relevant departments, to formulate a practical implementation plan for the listing of the land plot of Dandong Tire Factory in accordance with the principles determined by the meeting, so as to ensure the smooth transfer of the plot." On November 21, the Dandong Municipal Land and Resources Bureau published in the Dandong Daily an announcement on listing Dandong Tire Factory's land for transfer. On December 28, the Dandong Property Rights Exchange Center published an announcement on listing Dandong Tire Factory's boiler room and nursery land for transfer. On January 30, 2008, the Dandong Intermediate Court made Civil Rulings (2007) Dan Li Zhi No. 53-1 and 53-2: releasing the sealing of three parcels of land of Dandong Tire Factory located at No. 134 Zhenqi Street, Zhenxing District, Dandong City. Subsequently, the aforesaid six parcels of land were transferred together to Taipingwan Power Plant, and

the transfer proceeds of RMB 46.8 million were used by Dandong Tire Factory to repay employees' internal debts, employees' fund-raising, ordinary debts, and the like, but no payment was made to Yiyang Company.

Beginning in 2009, Yiyang Company submitted state compensation applications to the Dandong Intermediate Court on multiple occasions. On August 13, 2013, the Dandong Intermediate Court accepted the case, but did not make a decision. Yiyang Company then applied on July 16, 2015 to the Compensation Committee of the Liaoning Provincial High People's Court (hereinafter the "Liaoning High Court") for a compensation decision. During the trial by the Compensation Committee of the Liaoning High Court, on March 1, 2016, the Dandong Intermediate Court made Enforcement Ruling (2016) Liao 06 Zhi No. 15 regarding Yiyang Company's application for enforcement, holding that Dandong Tire Factory currently had no other property available for enforcement, and ruling that the enforcement procedure for Civil Judgment (2007) Dan Min San Chu No. 32 be terminated for this time.

Judgment

On April 27, 2016, the Compensation Committee of the Liaoning Provincial High People's Court made Decision (2015) Liao Fa Wei Pei No. 29, dismissing Dandong Yiyang Investment Co., Ltd.'s state compensation application. Dandong Yiyang Investment Co., Ltd. refused to accept it and filed a petition with the Compensation Committee of the Supreme People's Court. On March 22, 2018, the Compensation Committee of the Supreme People's Court made Decision (2017) Zui Gao Fa Wei Pei Jian No. 236, deciding that this case would be directly tried by the Compensation Committee of the Supreme People's Court. On June 29, 2018, the Compensation Committee of the Supreme People's Court made State Compensation Decision (2018) Zui Gao Fa Wei Pei Ti No. 3:

1. Decision (2015) Liao Fa Wei Pei No. 29 of the Compensation Committee of the Liaoning Provincial High People's Court is revoked;

2. The Dandong Intermediate People's Court of Liaoning Province shall, within 5 days after this decision takes effect, pay Dandong Yiyang Investment Co., Ltd. state compensation of RMB 3 million;

3. Dandong Yiyang Investment Co., Ltd. is permitted to waive its other state compensation requests.

Reasoning

The Compensation Committee of the Supreme People's Court held that the basic facts of this case were clear and the evidence was definite and sufficient, and the two petitioning parties had no substantive dispute. The dispute between the two parties focused mainly on three questions of legal application: first, was the Dandong Intermediate Court's release conduct in nature a preservation act or an enforcement act? Second, did the Dandong Intermediate Court's release conduct constitute wrongful enforcement, and what was the specific legal basis? Third, should the Dandong Intermediate Court bear state compensation liability?

On the first focus. Yiyang Company argued that the Dandong Intermediate Court's release conduct was not an enforcement act of the court, but an unlawful preservation act independently carried out by the court outside the case. The Dandong Intermediate Court argued that it was an enforcement act. The Compensation Committee of the Supreme People's Court held that, in the trial of the creditor's right transfer contract dispute in which Yiyang Company sued Dandong Tire Factory, the Dandong Intermediate Court lawfully took property preservation measures and sealed the relevant land of Dandong Tire Factory. After the civil judgment took effect and entered the enforcement procedure, under Article 4 of the Provisions of the Supreme People's Court on Sealing, Distraining, and Freezing of Property in Civil Enforcement by the People's Court, the preservation sealing measures in the litigation had automatically converted into sealing measures in enforcement. Therefore, the Dandong Intermediate Court's release conduct was an enforcement act.

On the second focus. Yiyang Company claimed that the Dandong Intermediate Court's release conduct was carried out without Yiyang Company's consent and ultimately caused Yiyang Company's huge claim to be

frustrated, and was unlawful. The Dandong Intermediate Court argued that its release conduct was carried out at the request of the municipal government and conformed to the spirit of the relevant policies of the Supreme People's Court. On this, the Compensation Committee of the Supreme People's Court held that, in order to cooperate with the government department in transferring the land involved, the Dandong Intermediate Court could release the sealing of the land involved, but it had to effectively control the land transfer proceeds and distribute the funds in accordance with the statutory order of priority so as to ensure the enforcement of the effective judgment. However, after carrying out the release conduct, the Dandong Intermediate Court did not effectively control the land transfer proceeds and distribute them in accordance with law, causing Yiyang Company's claim to receive no satisfaction whatsoever. That conduct did not conform to the spirit of the Supreme People's Court's judicial policy on lawfully and properly handling financial non-performing asset cases, infringed Yiyang Company's lawful rights and interests, and constituted wrongful enforcement conduct.

As for the specific legal basis of the wrongful enforcement, because the Dandong Intermediate Court's release conduct occurred in 2008, the judicial interpretation effective at the time should be applied, namely the Interpretation of the Supreme People's Court on Several Issues Concerning Judicial Compensation in Civil and Administrative Litigation issued in 2000. Because the Dandong Intermediate Court's conduct occurred at the enforcement stage after the civil judgment took effect, and constituted the wrongful conduct of unauthorized release causing the civil judgment to be unenforceable, the "other wrongful enforcement circumstances in violation of legal provisions" prescribed in Article 4, Item 7 of that interpretation should be applied.

On the third focus. Yiyang Company argued that the person subject to enforcement Dandong Tire Factory was not merely temporarily without property available for enforcement, but had completely lost its ability to pay, and that the enforcement procedure should not remain in the "termination for this time" state for a long time but should be substantively terminated; therefore, this case should be accepted and a decision made for the Dandong Intermediate Court to compensate Yiyang Company for the principal, interest, and relevant litigation costs of the frustrated claim. The Dandong Intermediate Court argued that the enforcement procedure involved had not yet been terminated, that the person subject to enforcement Dandong Tire Factory still had property available for enforcement, and that Yiyang Company's application did not meet the conditions for accepting a state compensation case. On this, the Compensation Committee of the Supreme People's Court held that the termination of the enforcement procedure was not an absolute standard for the commencement of the state compensation procedure. Generally speaking, only after the enforcement procedure is terminated can the amount of loss caused to the parties by the wrongful enforcement conduct be determined, can the coexistence and overlap between the enforcement procedure and the compensation procedure be avoided, and can the compensation case be finally reviewed and handled after exhausting other remedial measures. However, this understanding should not be absolutized and formalized; it should be understood in a substantive sense. Where the people's court's enforcement conduct has made no progress for a long time and can no longer make progress, the person subject to enforcement has in fact completely lost its ability to pay, and the applicant for enforcement and others have suffered irreparable losses due to the wrongful enforcement conduct, they should be allowed to file a state compensation application. Otherwise, if the court with wrongful enforcement conduct simply does not make a conclusion terminating the enforcement procedure, the state compensation procedure cannot be commenced; such an understanding runs counter to the purpose of the State Compensation Law and the relevant judicial interpretations. In this case, the Dandong Intermediate Court's enforcement conduct had made no progress for eleven years, and its wrongful enforcement conduct had also been proven to have caused Yiyang Company actual losses that could not be recovered through other channels; therefore, it should bear state compensation liability in accordance with law. The decision of the Compensation Committee of the Liaoning High Court to dismiss Yiyang Company's compensation application on the ground that the enforcement procedure had not yet been terminated constituted an error in the application of law and should be corrected.

As for the specific damage and compensation amount, after the Compensation Committee of the Supreme People's Court organized the petitioner and the respondent to negotiate, the two parties voluntarily reached the following agreement on the enforcement conduct under Civil Judgment (2007) Dan Min San Chu No. 32 of the Dandong Intermediate Court: (1) the Dandong Intermediate Court shall, within 5 days after this decision takes effect, pay Yiyang Company state compensation of RMB 3 million; (2) Yiyang Company voluntarily waives its other state compensation requests; (3) Yiyang Company voluntarily waives the enforcement of that civil judgment, and the Dandong Intermediate Court shall rule to terminate the enforcement of that civil case.

In sum, the Compensation Committee of the Supreme People's Court held that the facts of the Dandong Intermediate Court's wrongful enforcement in this case were clear and the evidence was definite and sufficient; the decision of the Compensation Committee of the Liaoning High Court to dismiss Yiyang Company's application was erroneous and should be corrected; the compensation agreement reached between Yiyang Company and the Dandong Intermediate Court reflected the true intent of the two parties and did not violate legal provisions, and should be confirmed. In accordance with Article 30, Paragraphs 1 and 2 of the State Compensation Law of the People's Republic of China and Article 11, Item 4, Article 18, and Article 21, Item 3 of the Provisions of the Supreme People's Court on Several Issues Concerning the State Compensation Supervision Procedure, the above decision was made.

(The judges of the effective judgment: Tao Kaiyuan, Zhu Erjun, Huang Jinlong, Gao Ke, and Liang Qing.)

Relevant Legal Provisions

Article 30 of the State Compensation Law of the People's Republic of China.

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