SPC Guiding Case No. 117: China Construction Third Engineering Bureau First Construction Engineering Co., Ltd. v. Ao Zhong Fortune (Hefei) Investment Real Estate Co., Ltd. and Anhui Wenfeng Real Estate Co., Ltd. (Enforcement Reconsideration)

Dan Young Business Consultancy — www.danyoungcpa.com

Unofficial English translation prepared for reference only. The official Chinese text prevails.

Keywords

Enforcement; enforcement reconsideration; commercial acceptance bill; actual performance.

Holding

Where, based on a civil mediation document and mediation record, a third party joins the creditor-debtor relationship by way of debt assumption, the enforcement court may enforce against that third party within the scope of its debt assumption. Where a debtor uses a commercial acceptance bill to perform the debt determined in the enforcement basis, and although it issued and delivered the commercial acceptance bill to the creditor, the bill cannot be honored due to insufficient funds in the bill payment account or freezing of the account, it cannot be determined that the debt has been actually performed, and the creditor may request continued compulsory enforcement against the debtor.

Basic Facts

In a construction contract dispute between China Construction Third Engineering Bureau First Construction Engineering Co., Ltd. (hereinafter "China Construction Third Bureau First Company") and Ao Zhong Fortune (Hefei) Investment Real Estate Co., Ltd. (hereinafter "Ao Zhong Company"), the case was concluded through mediation by the Anhui Provincial High People's Court (hereinafter the "Anhui High Court"), and the civil mediation document made by the Anhui High Court confirmed the rights and obligations of the parties. Items 2 and 3 of Article 1, Paragraph 6 of the mediation agreement confirmed in the mediation agreement provided that, after the signing of this agreement, in order to repay the project payment owed by Ao Zhong Company to China Construction Third Bureau First Company, commercial acceptance bills with a total amount of RMB 60 million would be delivered to China Construction Third Bureau First Company, with the payer being Anhui Wenfeng Real Estate Co., Ltd. (hereinafter "Wenfeng Company") and the payee being China Construction Third Bureau First Company (or the payee being Ao Zhong Company and endorsed to China Construction Third Bureau First Company). On the same day, the Anhui High Court organized mediation among China Construction Third Bureau First Company, Ao Zhong Company, and Wenfeng Company, and the mediation record recorded that Wenfeng Company expressly stated that it joined the mediation agreement as a debt assumer and stated that it was aware of the relevant obligations and consequences. Thereafter, Wenfeng Company delivered to China Construction Third Bureau First Company in two batches commercial acceptance bills with a total amount of RMB 60 million, but the bills could not be honored because Wenfeng Company's relevant account had insufficient balance and was frozen; that is, China Construction Third Bureau First Company actually failed to receive the RMB 60 million project payment.

China Construction Third Bureau First Company applied to the Anhui High Court for compulsory enforcement on the ground that Ao Zhong Company and Wenfeng Company failed to perform the obligations determined in the mediation document. After the case entered the enforcement procedure, the enforcement court froze Wenfeng Company's bank account. Wenfeng Company refused to accept it and raised an objection to the Anhui High Court, stating that Wenfeng Company was not the person subject to enforcement in this case, that it had already issued the commercial acceptance bills; in addition, even if it should bear

payment responsibility for the commercial acceptance bills, the debtor Ao Zhong Company should be enforced first, and Wenfeng Company's account could not be directly frozen.

Judgment

On September 12, 2017, the Anhui Provincial High People's Court rendered Enforcement Ruling (2017) Wan Zhi Yi No. 1:

1. The person subject to enforcement in Enforcement Case (2015) Wan Zhi Zi No. 00036 of the Anhui Provincial High People's Court is changed to Ao Zhong Fortune (Hefei) Investment Real Estate Co., Ltd.

2. The person subject to enforcement in Enforcement Ruling (2016) Wan 0191 Zhi No. 10 of the Hefei High-tech Industrial Development Zone People's Court is changed to Ao Zhong Fortune (Hefei) Investment Real Estate Co., Ltd.

China Construction Third Engineering Bureau First Construction Engineering Co., Ltd. refused to accept it and applied to the Supreme People's Court for reconsideration. On December 28, 2017, the Supreme People's Court rendered Enforcement Ruling (2017) Zui Gao Fa Zhi Fu No. 68: revoking Enforcement Ruling (2017) Wan Zhi Yi No. 1 of the Anhui Provincial High People's Court.

Reasoning

The Supreme People's Court held that legal relationships involving negotiable instruments generally include the underlying relationship (the reason for the parties' delivery and acceptance of the instrument), the fund relationship (the relationship between the parties in terms of fund supply or fund compensation), the instrument arrangement relationship (the contract entered into by the parties, after the underlying relationship exists and before the issuance of the instrument, concerning the type, amount, maturity date, place of payment, and other instrument content, as well as the conduct of delivering and accepting the instrument), and the instrument relationship (the creditor-debtor relationship directly arising between the parties based on the instrument conduct). Among them, the underlying relationship, fund relationship, and instrument arrangement relationship are the basic relationships of the instrument and are legal relationships under general civil law. In analyzing a specific case, the underlying relationship and the instrument relationship should be specifically distinguished.

In this case, the mediation document was made on June 9, 2015. Item 2 of Article 1, Paragraph 6 of the mediation agreement it confirmed provided: within 7 working days after the signing of this agreement, commercial acceptance bills with the payer being Wenfeng Company, the payee being China Construction Third Bureau First Company (or the payee being Ao Zhong Company and endorsed to China Construction Third Bureau First Company), an amount of RMB 30 million, and a maturity date no later than September 25, 2015 would be delivered to China Construction Third Bureau First Company; item 3 provided: within 7 working days after the signing of this agreement, commercial acceptance bills with the payer being Wenfeng Company, the payee being China Construction Third Bureau First Company (or the payee being Ao Zhong Company and endorsed to China Construction Third Bureau First Company), an amount of RMB 30 million, and a maturity date no later than December 25, 2015 would be delivered to China Construction Third Bureau First Company. On the same day, the mediation record organized by the Anhui High Court among China Construction Third Bureau First Company, Ao Zhong Company, and Wenfeng Company recorded: the presiding judge asked Wenfeng Company, "As a debt assumer, are you aware of the obligations and consequences of joining the settlement agreement in this case?" Wenfeng Company's agent Shao Hongwei answered: "We are aware." The presiding judge asked China Construction Third Bureau First Company, "Do you agree to Anhui Wenfeng Real Estate Co., Ltd. joining the settlement agreement in this case to assume the debt?" China Construction Third Bureau First Company's agent Fu Qi answered: "We agree." Combining the above circumstances, it can be seen that when the three parties signed the mediation agreement, the expression of intent concerning Wenfeng Company's issuance of the bills not only made arrangements in the category of the instrument arrangement relationship regarding Wenfeng Company's issuance of bills and the

parties' delivery and acceptance of the bills, but also made arrangements in the category of the underlying relationship regarding Wenfeng Company's joining the debt relationship between China Construction Third Bureau First Company and Ao Zhong Company and assuming the debt jointly with Ao Zhong Company toward China Construction Third Bureau First Company. Therefore, under the mediation agreement, Wenfeng Company had the obligation to issue and deliver the bills at the level of the instrument arrangement relationship, and the obligation to pay off the debt assumption of RMB 60 million to China Construction Third Bureau First Company at the level of the underlying relationship. Wenfeng Company's timely issuance of genuine, sufficient, and lawful commercial acceptance bills merely performed its obligation at the level of the instrument arrangement relationship; as for its debt assumption obligation, because the bills involved could not be honored due to the insufficient balance and freezing of its bill payment account, it did not actually perform, and China Construction Third Bureau First Company's application to the court for compulsory enforcement against Wenfeng Company was not improper.

(The judges of the effective judgment: Mao Yiquan, Zhu Yan, and Qiu Peng.)

Relevant Legal Provisions

Article 225 of the Civil Procedure Law of the People's Republic of China.

Disclaimer: This document is an unofficial English translation of the original Chinese guiding case text, provided for general reference and informational purposes only. It is not an official translation and is not a substitute for professional legal advice. While every effort has been made to ensure accuracy, no warranty is given, and in the event of any discrepancy, the original Chinese version shall prevail. Dan Young Business Consultancy assumes no liability for any errors, omissions, or reliance placed on this translation.