SPC Guiding Case No. 119: Anhui Chuzhou Construction and Installation Engineering Co., Ltd. v. Hubei Zhuiri Electric Co., Ltd. (Enforcement Reconsideration)

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

Keywords

Enforcement; enforcement reconsideration; settlement outside enforcement; enforcement objection; basis for review.

Holding

Where, before the enforcement procedure begins, the two parties reach a settlement agreement on their own and perform it, and one party applies for compulsory enforcement of the original effective legal instrument, the people's court shall accept it. Where the person subject to enforcement raises an enforcement objection on the ground that the settlement agreement has been performed, it may be reviewed and handled by reference to Article 19 of the Provisions of the Supreme People's Court on Several Issues Concerning Enforcement Settlement.

Basic Facts

In a construction contract dispute between Anhui Chuzhou Construction and Installation Engineering Co., Ltd. (hereinafter "Chuzhou Jian'an Company") and Hubei Zhuiri Electric Co., Ltd. (hereinafter "Zhuiri Electric Company"), the Qinghai Provincial High People's Court (hereinafter the "Qinghai High Court") rendered Civil Judgment (2015) Qing Min Yi Chu No. 36 on April 18, 2016, the main content of which was: 1. Zhuiri Electric Company shall pay Chuzhou Jian'an Company project payment of RMB 14,050,253.30 and corresponding interest within ten days after the judgment takes effect; 2. Zhuiri Electric Company shall pay Chuzhou Jian'an Company attorney's fees of RMB 240,000 within ten days after the judgment takes effect. In addition, the judgment determined the assumption of the case acceptance fee, appraisal fee, and preservation fee. Zhuiri Electric Company later refused to accept it and appealed to the Supreme People's Court.

During the second instance, Zhuiri Electric Company and Chuzhou Jian'an Company signed a "Settlement Agreement" on September 27, 2016, agreeing: "1. Zhuiri Electric Company shall bear a total amount of RMB 4.633 million within the scope of the first-instance judgment of the Qinghai High Court, of which (1) principal within the contract is RMB 4.13 million; (2) acceptance fee is RMB 114,000; (3) appraisal fee is RMB 149,000; (4) attorney's fee is RMB 240,000. ... 3. Chuzhou Jian'an Company agrees to apply to the Qinghai High Court within seven working days after the signing of this agreement to release the seizure of all bank accounts of Zhuiri Electric Company, and within three days after the release, Zhuiri Electric Company shall pay the above agreed RMB 4.633 million, whereupon all accounts between Zhuiri Electric Company and Chuzhou Jian'an Company shall be settled, and the two parties shall henceforth have no economic disputes." After the settlement agreement was signed, Zhuiri Electric Company applied to the Supreme People's Court to withdraw its appeal as agreed, and Chuzhou Jian'an Company also applied to the Qinghai High Court to release the preservation measures on Zhuiri Electric Company as agreed. On October 28, 2016, Zhuiri Electric Company paid RMB 4,128,806.67 to Chuzhou Jian'an Qinghai Branch, and Chuzhou Jian'an Qinghai Branch issued a receipt of RMB 4.13 million. On October 24, 2016, Chuzhou Jian'an Qinghai Branch issued a "Statement of Circumstances," requiring Zhuiri Electric Company to pay the litigation fee, appraisal fee, and attorney's fee totaling RMB 503,000 to the name of Cheng Yinan. Later, to issue invoices, Zhuiri Electric Company and Cheng Yinan, Wang Xinggang, and He Shou backdated a construction contract with a subject amount of RMB 500,000. Zhuiri Electric Company paid RMB 400,000 to Wang Xinggang on

November 23, 2016, and RMB 100,000 to Wang Xinggang on July 18, 2017; the Gonghe County State Taxation Bureau of Qinghai Province issued a RMB 500,000 invoice on its behalf.

Later, on December 25, 2017, Chuzhou Jian'an Company applied to the Qinghai High Court for compulsory enforcement. On January 4, 2018, the Qinghai High Court rendered Enforcement Ruling (2017) Qing Zhi 108: sealing, distraining, and freezing RMB 10 million of all property of the person subject to enforcement Zhuiri Electric Company or property of equivalent value. It actually froze a total of RMB 1,266,051.18 in deposits in three bank accounts of Zhuiri Electric Company, and served on Zhuiri Electric Company Enforcement Notice (2017) Qing Zhi 108 and Enforcement Ruling (2017) Qing Zhi 108.

Zhuiri Electric Company refused to accept the above enforcement ruling of the Qinghai High Court and raised a written objection to that court. The objection stated: the two parties negotiated and signed the "Settlement Agreement" on September 27, 2016, and Zhuiri Electric Company had now fully performed all the obligations agreed in the above agreement. Chuzhou Jian'an Company's negation of the validity of the "Settlement Agreement" on the ground that the signatory Wang Xinggang had no agency authority, and its application for compulsory enforcement, clearly lacked basis and violated the principle of good faith, and the enforcement ruling made by the Qinghai High Court should be revoked. For this reason, the Qinghai High Court rendered Enforcement Ruling (2017) Qing Zhi Yi No. 18, revoking the court's Enforcement Ruling (2017) Qing Zhi 108. The applicant for enforcement Chuzhou Jian'an Company refused to accept it and filed a reconsideration application with the Supreme People's Court. The main reasons were: the signatory of the "Settlement Agreement" involved was "Wang Xinggang," who had no authority to represent Chuzhou Jian'an Company in signing the agreement, so the agreement should be void; Zhuiri Electric Company also failed to perform the payment obligation under the "Settlement Agreement"; the "Settlement Agreement" raised by Zhuiri Electric Company was not reached at the enforcement stage, and if it considered the "Settlement Agreement" valid, the first-instance judgment should no longer be performed, and it should apply for retrial or sue separately for handling.

Judgment

On May 24, 2018, the Qinghai Provincial High People's Court rendered Enforcement Ruling (2017) Qing Zhi Yi No. 18, revoking the court's Enforcement Ruling (2017) Qing Zhi 108. Anhui Chuzhou Construction and Installation Engineering Co., Ltd. refused to accept it and applied to the Supreme People's Court for reconsideration. On March 7, 2019, the Supreme People's Court rendered Enforcement Ruling (2018) Zui Gao Fa Zhi Fu No. 88, dismissing the reconsideration request of Anhui Chuzhou Construction and Installation Engineering Co., Ltd. and upholding Enforcement Ruling (2017) Qing Zhi Yi No. 18 of the Qinghai Provincial High People's Court.

Reasoning

The Supreme People's Court held:

I. On the nature of the "Settlement Agreement" involved.

The "Settlement Agreement" involved was a settlement agreement reached by the parties on their own before the enforcement procedure began, and constituted a settlement outside enforcement. Compared with an enforcement settlement agreement, a settlement outside enforcement cannot automatically affect the people's court's compulsory enforcement, and the parties still have the right to apply to the people's court for compulsory enforcement. Where Zhuiri Electric Company raised an enforcement objection on the ground that the "Settlement Agreement" reached by the parties on their own had been fully performed, the people's court may, by reference to Article 19 of the Provisions of the Supreme People's Court on Several Issues Concerning Enforcement Settlement, review the validity and performance of the settlement agreement, and then determine whether to terminate the enforcement.

II. On the validity of the "Settlement Agreement" involved.

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Although Chuzhou Jian'an Company claimed that Wang Xinggang, who signed the "Settlement Agreement" involved on its behalf, was not authorized by it, and that it did not affix its official seal to the "Settlement Agreement," so that the "Settlement Agreement" had no effect on it, after the "Settlement Agreement" was signed, Chuzhou Jian'an Company applied to the Qinghai High Court in accordance with the agreement to release the preservation seizure of Zhuiri Electric Company's property, and conducted multiple negotiations with Zhuiri Electric Company regarding the payment of the amounts under the "Settlement Agreement" and the issuance of receipts and invoices, and received the amounts under the "Settlement Agreement" and issued receipts and invoices. Therefore, Chuzhou Jian'an Company, through its actual performance conduct, demonstrated that it fully recognized Wang Xinggang's agency authority and the validity of the "Settlement Agreement"; the "Settlement Agreement" was valid.

III. On whether the "Settlement Agreement" involved had been fully performed.

Zhuiri Electric Company, in accordance with the provisions of the "Settlement Agreement" and the requirements of Chuzhou Jian'an Company, paid RMB 4,128,806.67 and RMB 500,000 to Chuzhou Jian'an Company and Wang Xinggang respectively. Although this was still about RMB 4,000 short of the RMB 4.633 million agreed in the "Settlement Agreement," Chuzhou Jian'an Company accepted it and issued a receipt of RMB 4.13 million and an invoice of RMB 500,000 to Zhuiri Electric Company respectively. Under Article 66 of the Opinions of the Supreme People's Court on Several Issues Concerning the Implementation of the General Principles of the Civil Law of the People's Republic of China (for Trial Implementation), and in combination with the fact that Chuzhou Jian'an Company did not raise any objection to the payment amount for a relatively long time after accepting the payment, it could be determined that the two parties had modified the payment amount agreed in the "Settlement Agreement" through their conduct, constituting an implied modification of the contract; therefore, the payment obligation agreed in the "Settlement Agreement" involved had been fully performed. Regarding the issue of the payment period, under Article 15 of the Provisions of the Supreme People's Court on Several Issues Concerning Enforcement Settlement, if Chuzhou Jian'an Company considered that Zhuiri Electric Company's delayed payment caused it damage, it could separately file a lawsuit to resolve it, and could not apply to enforce the first-instance judgment solely on that ground.

(The judges of the effective judgment: Yu Ming, Zhu Yan, and Yang Chun.)

Relevant Legal Provisions

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

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