SPC Guiding Case No. 120: Qinghai Jintai Financing Guarantee Co., Ltd. v. Shanghai Jinqiao Engineering Construction Development Co., Ltd. and Qinghai Sangong Real Estate Co., Ltd. (Enforcement Reconsideration)

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Keywords

Enforcement; enforcement reconsideration; general guaranty; serious inconvenience of enforcement.

Holding

Where, during the trial of a case, a guarantor provides a guaranty for the person subject to enforcement, undertaking to bear guaranty liability when the person subject to enforcement has no property available for enforcement or its property is insufficient to satisfy the debt, the enforcement court shall apply the enforcement rules for a general guaranty to the guarantor. Where the person subject to enforcement has property but it is seriously inconvenient to enforce, the guarantor's property within the scope of its guaranty liability may be enforced.

Basic Facts

During the trial of a construction contract dispute between Shanghai Jinqiao Engineering Construction Development Co., Ltd. (hereinafter "Jinqiao Company") and Qinghai Haixi Jiahe Hotel Management Co., Ltd. (later renamed Qinghai Sangong Real Estate Co., Ltd., hereinafter "Jiahe Company"), the Qinghai Provincial High People's Court (hereinafter the "Qinghai High Court"), based on Jinqiao Company's application, took property preservation measures, freezing Jiahe Company's account deposits of RMB 15 million (the account actually had a balance of more than RMB 230,000) and sealing 32,438.8 square meters of the company's land use rights. Thereafter, Jiahe Company, on the grounds that it needed to handle a bank loan, applied to have the account released, with guarantor Song Wanling providing a guaranty of RMB 15 million in bank deposits. After freezing Song Wanling's deposits of RMB 15 million, the Qinghai High Court released the freezing measures on Jiahe Company's account. On May 22, 2014, Qinghai Jintai Financing Guarantee Co., Ltd. (hereinafter "Jintai Company") provided a letter of guaranty to the Qinghai High Court, undertaking that, if Jiahe Company were unable to bear liability, it would be willing to bear the liability that Jiahe Company should bear, with a maximum guaranty amount of RMB 15 million, and applied to release the freezing measures on Song Wanling's guaranty deposits. Based on this, the Qinghai High Court released the freezing measures on Song Wanling's RMB 15 million in guaranty deposits. After the case entered the enforcement procedure, upon investigation by the Qinghai High Court, the person subject to enforcement Qinghai Sangong Real Estate Co., Ltd. (formerly Qinghai Haixi Jiahe Hotel Management Co., Ltd.), apart from the mortgaged land use rights and construction in progress (the construction in progress was valued at more than RMB 400 million), had no other property available for enforcement. The account frozen at the preservation stage, after the freezing was released due to the provision of guaranty, saw deposits and withdrawals of more than RMB 89 million. During enforcement, the Qinghai High Court made an enforcement ruling requiring Jintai Company to pay off Jinqiao Company's debt of RMB 15 million within three days, and deducted RMB 8.2 million from guarantor Jintai Company's bank deposits. Jintai Company raised an objection, claiming that the person subject to enforcement Qinghai Sangong Real Estate Co., Ltd. still had construction in progress and corresponding land use rights, and requested the return of the deducted funds.

Source: https://www.danyoungcpa.com/spc-guiding-case-120-china/

Judgment

On May 11, 2017, the Qinghai Provincial High People's Court rendered Enforcement Ruling (2017) Qing Zhi Yi No. 12: dismissing the objection of Qinghai Jintai Financing Guarantee Co., Ltd. Qinghai Jintai Financing Guarantee Co., Ltd. refused to accept it and filed a reconsideration application with the Supreme People's Court. On December 21, 2017, the Supreme People's Court rendered Enforcement Ruling (2017) Zui Gao Fa Zhi Fu No. 38: dismissing the reconsideration application of Qinghai Jintai Financing Guarantee Co., Ltd. and upholding Enforcement Ruling (2017) Qing Zhi Yi No. 12 of the Qinghai Provincial High People's Court.

Reasoning

The Supreme People's Court held that Article 85 of the Provisions of the Supreme People's Court on Several Issues Concerning the Enforcement Work of the People's Courts (for Trial Implementation) provides: "Where, during the trial of a case, a guarantor provides a guaranty for the person subject to enforcement, and based on this the people's court does not take preservation measures on the person subject to enforcement's property or releases the preservation measures, if after the conclusion of the case the person subject to enforcement has no property available for enforcement or its property is insufficient to satisfy the debt, the people's court has the power to rule to enforce the guarantor's property within the scope of its guaranty liability even if the effective legal instrument does not determine that the guarantor bears liability." The guaranty liability in the above provision and the undertaking made by Jintai Company are similar to the general guaranty liability provided in the Guaranty Law. Article 17, Paragraphs 1 and 2 of the Guaranty Law of the People's Republic of China provide: "Where the parties agree in the guaranty contract that the guarantor shall bear guaranty liability when the debtor is unable to perform the debt, it is a general guaranty. A guarantor under a general guaranty may refuse to bear guaranty liability to the creditor before the principal contract dispute has been tried or arbitrated and the debt still cannot be performed after compulsory enforcement of the debtor's property in accordance with law." Article 131 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the Guaranty Law of the People's Republic of China provides: "'Inability to satisfy' as used in this Interpretation means the state in which the debt has still not been satisfied after the completion of enforcement of the debtor's deposits, cash, securities, finished products, semi-finished products, raw materials, means of transport, and other movable property that can be enforced, and other property that is convenient to enforce." Under the above provisions, in a general guaranty situation, it is not the case that only when the debtor has no property whatsoever available for enforcement can the general guarantor be required to bear liability; that is, where the debtor has property but its property is seriously inconvenient to enforce, the general guarantor's property may be enforced. By reference to the spirit of the above provisions, since Qinghai Sangong Real Estate Co., Ltd. only had construction in progress and corresponding land use rights available for enforcement, which was neither economical nor convenient, under such circumstances the people's court could directly enforce Jintai Company's property.

(The judges of the effective judgment: Zhao Jinshan, Ge Hongtao, and Shao Changmao.)

Relevant Legal Provisions

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

2. Article 17, Paragraphs 1 and 2 of the Guaranty Law of the People's Republic of China.

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