SPC Guiding Case No. 121: Zhuzhou Haichuan Industrial Co., Ltd. v. the Cai’e Sub-branch of Bank of China Co., Ltd., Changsha and Hunan Deyihong Metal Materials Co., Ltd. (Property Preservation Enforcement Reconsideration)

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

Keywords

Enforcement; enforcement reconsideration; obligation to assist in enforcement; assumption of custody costs.

Holding

Where the subject matter of preservation in a property preservation enforcement case is non-monetary movable property kept by another person, that custodian shall assist in enforcement pursuant to the notice of the people's court. Where the custody contract or lease contract has expired without renewal, and the person subject to preservation does not pay the custody or lease fees, the person assisting in enforcement has no obligation to continue custody without compensation. Where the value of the preserved subject matter is sufficient to pay the custody fees, the people's court may maintain the seizure until an effective legal instrument is rendered in the case, and the proceeds obtained from enforcing the preserved subject matter shall be used to pay the custodian's custody fees in priority. Where the value of the preserved subject matter is insufficient to pay the custody fees, and the applicant for preservation pays the custody fees, the seizure measures may continue; where the custody fees are not paid, the preserved subject matter may be disposed of and the proceeds of liquidation may continue to be preserved.

Basic Facts

In trying a financial loan contract dispute between Bank of China Co., Ltd. Changsha Cai'e Sub-branch (hereinafter "BOC Cai'e Sub-branch") and Hunan Deyihong Metal Materials Co., Ltd. (hereinafter "Deyihong Company") and others, the Hunan Provincial High People's Court (hereinafter the "Hunan High Court"), based on the application of BOC Cai'e Sub-branch, made a civil litigation property preservation ruling, freezing Deyihong Company's bank deposits of RMB 48 million, or sealing or distraining other property of equivalent value. Deyihong Company rented the factory premises of Zhuzhou Haichuan Industrial Co., Ltd. (hereinafter "Haichuan Company") for production and operation, with the lease term until March 1, 2015; it stored lead concentrate owned by it and pledged to BOC Cai'e Sub-branch there. On June 4, 2015, the Hunan High Court issued a notice of assistance in enforcement and an announcement stating that, during the period when the people's court sealed the lead concentrate owned by Deyihong Company and stored in Haichuan Company's warehouse, without permission, no entity or individual may transfer, conceal, damage, sell, mortgage, or give away the above seized assets; otherwise, their legal liability would be pursued in accordance with law. On March 1, 2015, after the lease contract between Deyihong Company and Haichuan Company expired, Deyihong Company neither renewed the contract nor returned the rented factory premises to Haichuan Company, and further failed to pay the rent and water and electricity fees. Haichuan Company then sued Deyihong Company in the Shifeng District People's Court of Zhuzhou City, Hunan Province on the grounds of a lease contract dispute. Later, the Shifeng District People's Court of Zhuzhou City, Hunan Province rendered a judgment, ordering the termination of the lease contract involved, and ordering Deyihong Company to return the rented factory premises to Haichuan Company within fifteen days from the date the judgment took effect, and to remove the goods stored in the rented factory premises; Deyihong Company was ordered to pay the outstanding rent and interest within fifteen days from the date the judgment took effect. Based on the judgment, Haichuan Company applied for compulsory enforcement

regarding Deyihong Company's vacating of the premises. At the same time, Haichuan Company, as an interested party, raised an enforcement objection to the notice of assistance in enforcement and announcement issued by the Hunan High Court, and requested that the preservation applicant BOC Cai'e Sub-branch move the above lead concentrate out of the warehouse and compensate it for its rent losses.

Judgment

On November 23, 2016, the Hunan Provincial High People's Court rendered Enforcement Ruling (2016) Xiang Zhi Yi No. 15: dismissing the objection of Zhuzhou Haichuan Industrial Co., Ltd. Zhuzhou Haichuan Industrial Co., Ltd. refused to accept it and applied to the Supreme People's Court for reconsideration. On September 2, 2017, the Supreme People's Court rendered Enforcement Ruling (2017) Zui Gao Fa Zhi Fu No. 2:

1. Enforcement Ruling (2016) Xiang Zhi Yi No. 15 of the Hunan Provincial High People's Court is revoked.

2. The Hunan Provincial High People's Court shall ascertain the condition of the seized property involved, determine the custodian of the seized property in accordance with law, and clarify its rights and obligations.

Reasoning

The Supreme People's Court held that in the enforcement case of the property preservation ruling in the loan contract dispute between BOC Cai'e Sub-branch and Deyihong Company and others, the Hunan High Court, based on the content in the relevant civil ruling that "freeze Deyihong Company's bank deposits of RMB 48 million, or seal or distrain other property of equivalent value," took sealing measures on the lead concentrate owned by Deyihong Company and stored in Haichuan Company's warehouse, which was not improper. However, in the implementation of enforcement, although it could not be denied that Haichuan Company owed an obligation to assist the preservation enforcement court, the lease contract between the person subject to preservation and the site owner had expired without renewal, and there was an effective legal instrument ordering the person subject to preservation to move the stored goods out; under such circumstances, requiring Haichuan Company to bear the de facto assistance obligation completely and unconditionally was unreasonable. The objection of Haichuan Company, the person assisting in enforcement, was in substance a claim that, upon the expiry of the site lease, the continued occupation of the site by the property seized by the people's court caused it losses equivalent to rent that were difficult to compensate. After discovering this situation, the Hunan High Court should not have avoided the issue of the actual custodian's rent losses or custody fees; it should have further improved the custody procedures for the seized property and clarified the relevant rights and obligations. If the seized pledged property indeed had a sufficiently high value to compensate for the rent losses, then the seizure should be maintained until an effective judgment was rendered, and in the enforcement procedure, the proceeds from disposing of the seized property should be used to compensate the custodian's rent losses in priority. However, the inspection report commissioned by Haichuan Company from a quality supervision and inspection institution showed that the lead concentrate involved was worthless waste residue, and the Hunan High Court should also verify this fact in enforcement. If the situation was true, then appropriate measures should be taken to handle the seized property, and it was inappropriate to require the person assisting in enforcement to continue keeping the worthless property without compensation. Where the value of the preserved subject matter was insufficient to pay the custody fees, and the applicant for preservation paid the custody fees, the seizure measures could continue; where the custody fees were not paid, the preserved subject matter could be disposed of and the proceeds of liquidation could continue to be preserved. The enforcement court's dismissal of Haichuan Company's objection merely on the grounds that the preservation measures on Deyihong Company's property were lawful and that the lease contract dispute between Haichuan Company and Deyihong Company was another legal relationship was improper and should be corrected.

(The judges of the effective judgment: Huang Jinlong, Liu Shaoyang, and Ma Lan.)

Relevant Legal Provisions

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

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