SPC Guiding Case No. 125: Chen Zaiguo v. Liu Rongkun, Guangdong Shantou Fishery Products Import & Export Co., Ltd. et al. (Enforcement Supervision — Application to Set Aside Auction)

Dan Young Business Consultancy — www.danyoungcpa.com

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

Keywords

Enforcement; enforcement supervision; judicial auction; online judicial auction; compulsory enforcement measures.

Holding

An online judicial auction is a judicial auction conducted by a people's court through an internet auction platform, and it constitutes a compulsory enforcement measure. Disputes arising from online judicial auctions by the people's court shall be handled by applying the provisions of the Civil Procedure Law and relevant judicial interpretations.

Basic Facts

In enforcing a loan contract dispute between the applicant for enforcement Liu Rongkun and the person subject to enforcement Guangdong Shantou Fishery Products Import & Export Co., Ltd. and others, the Shantou Intermediate People's Court of Guangdong Province (hereinafter the "Shantou Intermediate Court") auctioned, on April 25, 2016, through the Taobao judicial auction network platform, the land use right of the plot with number 13-1 at No. 145 Yongtai Road, Shengping District, Shantou City, belonging to the person subject to enforcement. Petitioner Chen Zaiguo placed bids five times in succession, the last time confirming the successful bid at 10:17:26 on April 26, 2016, at a price of RMB 5,282,360.00. After the successful bid, Chen Zaiguo did not pay the outstanding auction amount.

On August 3, 2016, Chen Zaiguo raised an enforcement objection to the Shantou Intermediate Court, arguing that certain aspects of the auction process did not apply the Auction Law and other relevant legal provisions, and requesting the revocation of the auction and the return of the deposit of RMB 230,000.

Judgment

On September 18, 2016, the Shantou Intermediate People's Court of Guangdong Province rendered Enforcement Ruling (2016) Yue 05 Zhi Yi No. 38, dismissing Chen Zaiguo's objection. Chen Zaiguo refused to accept it and applied to the Guangdong Provincial High People's Court for reconsideration. On December 12, 2016, the Guangdong Provincial High People's Court rendered Enforcement Ruling (2016) Yue Zhi Fu Zi No. 243, dismissing Chen Zaiguo's reconsideration application and upholding Enforcement Ruling (2016) Yue 05 Zhi Yi No. 38 of the Shantou Intermediate People's Court. Petitioner Chen Zaiguo refused to accept it and filed a petition with the Supreme People's Court. On September 2, 2017, the Supreme People's Court rendered (2017) Zui Gao Fa Zhi Jian No. 250, dismissing the petition of petitioner Chen Zaiguo.

Reasoning

The Supreme People's Court held:

I. On the legal regulation of online judicial auctions.

Under the Auction Law of the People's Republic of China, the Auction Law applies to auction activities conducted by auction enterprises within the territory of the People's Republic of China, and regulates the

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rights and obligations among equal subjects such as the auctioneer, the principal, the bidder, and the buyer. Where an auctioneer accepts a principal's commission to auction the subject matter of auction, it is the result of "mutual consent" between the auctioneer and the principal; such commissioned auction is a contractual relationship and falls within the private law domain. A judicial auction by a people's court is a compulsory enforcement act in which the people's court, exercising its compulsory enforcement power in accordance with law, forcibly auctions and liquidates seized, distrained, or frozen property so as to satisfy debts; in essence, it is a judicial act with a public law character. This compulsory enforcement power does not come from authorization by the parties, does not require the consent of the parties, and is not subject to the will of the parties; rather, it is based on the compulsory enforcement power conferred on the people's court by law, that is, it derives from the provisions of the Civil Procedure Law and relevant judicial interpretations. Even in a traditional judicial auction, where the people's court commissions an auction enterprise to conduct the auction, the relationship between that auction enterprise and the people's court is not one of equality, and the auction activities of that auction enterprise can only be conducted within the scope of the people's court's authorization. Therefore, in a judicial auction, the people's court shall apply the provisions of the Civil Procedure Law and relevant judicial interpretations concerning the people's court's compulsory enforcement. An online judicial auction is a preferred method of the people's court's judicial auction, and it shall likewise apply the provisions of the Civil Procedure Law and relevant judicial interpretations concerning the people's court's compulsory enforcement.

II. On whether there were any unlawful or irregular circumstances in this online judicial auction.

In an online judicial auction, the bidding process, the bidder numbers, the bidding time, and whether the auction was successful are all displayed on the trading platform, and such display has a certain public-notice effect and is binding on bidders. This is also confirmed by the bidding records provided by the petitioner. Moreover, at the time of this online judicial auction, neither the Civil Procedure Law nor relevant judicial interpretations provided that a confirmation of successful bid must be signed after an online judicial auction is concluded. Therefore, the petitioner's claim that the rights and obligations could not be determined because no confirmation of successful bid was signed cannot be supported.

Regarding the petitioner's claims that bidder plates A7822 and J8809 deliberately infiltrated the bidding venue and maliciously colluded, that the subject matter was bid up from the reserve price of RMB 2.3 million to RMB 5.3 million, and that upon later verification the bidder with plate A7822 was the commissioned auctioneer of the subject matter Liu Rongkun: an online judicial auction is a means by which the people's court, in accordance with law, publicly disposes of property through an internet auction platform by online electronic bidding, and in essence constitutes the people's court's "self-auction," so there is no issue of a commissioned auctioneer. Article 15, Paragraph 2 of the Provisions of the Supreme People's Court on Auction and Sale of Property in Civil Enforcement by the People's Court expressly provides that the applicant for enforcement and the person subject to enforcement may participate in bidding; as the applicant for enforcement, Liu Rongkun could participate in bidding so long as he satisfied the qualification conditions for online judicial auction. In an online judicial auction, whether a bidder raises the bid, whether a bidder abandons the bid, when a bidder raises the bid, and when a bidder abandons the bid are entirely determined by the bidder's own assessment of the value of the subject matter of auction. From the bidding records provided by the petitioner, after the petitioner bid RMB 2,377,360 at 9:40:53 on April 26, 2016, when the bidders' bids reached RMB 5,182,360, the petitioner raised his bids at 10:01:16, 10:05:10, 10:08:29, and 10:17:26 on April 26, 2016 respectively, which was sufficient to determine that the petitioner had a clear judgment regarding his own bid-raising conduct. The claim that the two bidders with plates A7822 and J8809 deliberately infiltrated the bidding venue and maliciously colluded, based merely on their continuous multiple bid raises, lacks sufficient basis and cannot be supported.

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

Relevant Legal Provisions

Article 204 of the Civil Procedure Law of the People's Republic of China.

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