SPC Guiding Case No. 148: Gao Guang v. Sanya Tiantong International Hotel Co., Ltd., Hainan Bochao Real Estate Development Co., Ltd., et al. (Third-Party Revocation Action)

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Keywords

Civil / third-party revocation action / corporate legal person / shareholder / plaintiff standing

Holding

A shareholder of a company has no direct interest relationship with an effective judgment in a civil lawsuit between the company as a legal person and another person, and does not satisfy the conditions of a third party prescribed in Article 56 of the Civil Procedure Law. Where it brings a third-party revocation action in its capacity as a shareholder, the people's court shall not accept the case.

Basic Facts

On November 3, 2005, Gao Guang and Zou as shareholders (promoters) initiated the establishment of Hainan Bochao Real Estate Development Co., Ltd. ("Bochao Company"), with Gao Guang and Zou each contributing 50 percent of the capital, and Zou serving as executive director and legal representative of the company.

On June 16, 2011, Bochao Company, Sanya South Coast Tourism Service Co., Ltd. ("South Coast Company"), Sanya Tiantong International Hotel Co., Ltd. ("Tiantong Company"), and Beijing Tianshi Real Estate Development Co., Ltd. ("Tianshi Company") jointly signed an Agreement, making clear provisions on the current status, investment amount, and confirmation of hotel property rights, the handling of hotel property rights transfer registration procedures, engineering settlement and the handover of settlement materials, and liability for breach of contract concerning the Bihai Huayun Hotel (now Tiantong International Hotel) in the Haipo Development Zone of Sanya Bay, Sanya City, Hainan Province. On August 1, 2012, Tiantong Company, with Bochao Company and South Coast Company as defendants and Tianshi Company as a third party, brought a lawsuit with the Hainan Provincial Higher People's Court in a joint venture and cooperative development real estate contract dispute, requesting that the house ownership of the Bihai Huayun Hotel (now Tiantong International Hotel), including the land use right within the scope of the housing occupation, belong to Tiantong Company, and that Bochao Company pay Tiantong Company liquidated damages of RMB 7.2 million. The Hainan Provincial Higher People's Court rendered the civil judgment (2012) Qiong Min Yi Chu Zi No. 3, supporting Tiantong Company's claims. After the judgment was rendered, none of the parties appealed.

On August 28, 2012, Gao Guang filed a lawsuit requesting dissolution of the company, on the ground that Bochao Company's operation and management had encountered serious difficulties and its continued existence would cause major losses to shareholder interests. On September 12, 2013, the Haikou Intermediate People's Court of Hainan Province rendered the civil judgment (2013) Hai Zhong Fa Min Er Chu Zi No. 5, ordering the dissolution of Bochao Company. Bochao Company appealed that judgment. On December 19, 2013, the Hainan Provincial Higher People's Court rendered the civil judgment (2013) Qiong Min Er Zhong Zi No. 35 in that case, dismissing the appeal and affirming the original judgment. On September 18, 2014, the Haikou Intermediate People's Court designated Hainan Tianhao Law Firm as the

administrator of Bochao Company, responsible for its liquidation.

On April 20, 2015, the administrator of Bochao Company, with Tiantong Company, Tianshi Company, and South Coast Company as defendants, sued in the Hainan Provincial Higher People's Court, requesting confirmation that the Agreement signed by Bochao Company on June 16, 2011 was invalid, and that the land use right of 15,370.84 square meters and the above-ground buildings of 29,851.55 square meters located in the Haipo Resort Zone of Sanya Bay Road, Sanya City, Hainan Province, be returned and registered under the name of the administrator of Bochao Company. The Hainan Provincial Higher People's Court ruled to dismiss the lawsuit of the administrator of Bochao Company. During the litigation, Tianshi Company and Tiantong Company, after receiving the litigation documents of that case, contacted the administrator of Bochao Company and provided it with a copy of the civil judgment (2012) Qiong Min Yi Chu Zi No. 3. Gao Guang then, based on this, brought this third-party revocation action with the Hainan Provincial Higher People's Court against the civil judgment (2012) Qiong Min Yi Chu Zi No. 3.

Judgment

On August 23, 2016, the Hainan Provincial Higher People's Court rendered the civil ruling (2015) Qiong Min Yi Chu Zi No. 43, dismissing the lawsuit of the plaintiff, Gao Guang. Gao Guang appealed. On June 22, 2017, the Supreme People's Court rendered the civil ruling (2017) Zui Gao Fa Min Zhong No. 63, dismissing the appeal and affirming the original ruling.

Reasoning

The Supreme People's Court held: This case was a third-party revocation action brought by Gao Guang against the effective civil judgment (2012) Qiong Min Yi Chu Zi No. 3 of the Hainan Provincial Higher People's Court. The function of the third-party revocation action system is mainly to protect the lawful rights and interests of third parties who did not participate in the original lawsuit and were damaged by erroneous effective judgments. Where a third party fails to participate in the original lawsuit for reasons other than itself, resulting in the people's court rendering an erroneous judgment, in such circumstances the law grants the third party that should have participated in the original lawsuit the right to revoke the original effective judgment through a separate action. Therefore, the subject bringing a third-party revocation action must satisfy the identity condition of a person who should have participated in the original lawsuit as a third party. In this case, Gao Guang did not satisfy the conditions for participating in the litigation of that case as a third party.

1. Gao Guang had no independent claim to the subject matter of the litigation in case (2012) Qiong Min Yi Chu Zi No. 3, and was not a third party with an independent claim in that case. A third party with an independent claim refers to a subject that has the right to raise litigation claims in the capacity of an independent substantive right holder with respect to the subject matter of the litigation disputed between the parties. In case (2012) Qiong Min Yi Chu Zi No. 3, Tiantong Company raised its various litigation claims based on the Agreement it entered into with Bochao Company, and the Hainan Provincial Higher People's Court conducted the trial and rendered the judgment based on the provisions of the Agreement. Gao Guang was only one of the shareholders of Bochao Company and was not a contractual party to the Agreement, and had no right to raise litigation claims based on the provisions of that agreement.

2. Gao Guang was not a third party without an independent claim in case (2012) Qiong Min Yi Chu Zi No. 3. A third party without an independent claim refers to a subject that, although having no independent claim to the subject matter of the litigation between both parties, has a legal interest relationship with the result of the case. The legal interest relationship between a third party and the result of the case may be direct or indirect. In this case, the civil judgment (2012) Qiong Min Yi Chu Zi No. 3 only confirmed the legal obligations that Bochao Company should bear, and did not order Gao Guang to bear civil liability; therefore, Gao Guang had no direct interest relationship with the result of the case (2012) Qiong Min Yi Chu Zi No. 3. Regarding whether there was an indirect interest relationship: generally speaking, a shareholder and a company are a

natural community of interests. A company's shareholder enjoys the right to returns on assets of the company's property, and the results of the company's external transaction activities and civil litigation generally affect the company's asset situation, thereby indirectly affecting the shareholder's right to returns. From this perspective, a shareholder has a legal indirect interest relationship with the result of the civil litigation conducted by the company. However, because the interests of the company and the interests of the shareholders are consistent, the company's external activities should be presumed to be the manifestation of the collective will of the shareholders, and the company's claims in litigation should also be deemed to represent the overall interests of the shareholders. Therefore, although the result of the company's litigation will indirectly affect the interests of the shareholders, the interests and opinions of the shareholders have already been represented and expressed by the company in the litigation process, and the shareholders should no longer be added as third parties to participate in the litigation. In this case, although Gao Guang was a shareholder of Bochao Company, in the litigation between Bochao Company and South Coast Company, Tianshi Company, and Tiantong Company, the opinions of the shareholders had already been represented by Bochao Company, and therefore Gao Guang, as a shareholder, should no longer participate in the litigation of that case as a third party without an independent claim. As for the conflicts of interest caused by disagreements among different shareholders, those should be handled separately in accordance with law between shareholder and shareholder, and between shareholder and company.

Relevant Legal Provisions

Article 56 of the Civil Procedure Law of the People's Republic of China.

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