SPC Guiding Case No. 149: Changsha Guangda Architectural Decoration Co., Ltd. v. Industrial and Commercial Bank of China Co., Ltd. Guangzhou Yuexiu Sub-branch, Lin Chuanwu, Changsha Guangda Architectural Decoration Co., Ltd. Guangzhou Branch, et al. (Third-Party Revocation Action)

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

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Keywords

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

Holding

Where a branch office of a corporate legal person engages in civil activities in its own name and independently participates in civil litigation, and the people's court renders a judgment ordering the branch office to bear civil liability externally, if the corporate legal person brings a third-party revocation action against that effective judgment, it does not satisfy the conditions of a third party prescribed in Article 56 of the Civil Procedure Law, and the people's court shall not accept the case.

Basic Facts

On July 12, 2011, Lin Chuanwu signed a Personal Loan/Guarantee Contract with Industrial and Commercial Bank of China Co., Ltd. Guangzhou Yuexiu Sub-branch ("ICBC Yuexiu Sub-branch"). Changsha Guangda Architectural Decoration Co., Ltd. Guangzhou Branch ("Guangda Guangzhou Branch") issued a Guarantee Letter, providing joint and several liability guarantee for Lin Chuanwu's loan from ICBC Yuexiu Sub-branch. Later, because Lin Chuanwu owed payments, ICBC Yuexiu Sub-branch sued Lin Chuanwu, Guangda Guangzhou Branch, and others in court, requesting that Lin Chuanwu repay the principal and interest of the debt and that Guangda Guangzhou Branch bear joint and several repayment liability. After a first-instance trial by the Tianhe District People's Court of Guangzhou City, Guangdong Province and a second-instance trial by the Guangzhou Intermediate People's Court, the court ordered Lin Chuanwu to repay the outstanding principal and interest, one item of which ordered Guangda Guangzhou Branch to bear joint and several repayment liability for Lin Chuanwu's debt.

In 2017, Changsha Guangda Architectural Decoration Co., Ltd. ("Guangda Company") brought a third-party revocation action with the Guangzhou Intermediate People's Court, on the ground that the effective judgment had not listed Guangda Company as a co-defendant to participate in the litigation and had erroneously determined the nature of the Guarantee Letter, causing Guangda Company to be unable to assert its rights, and requested revocation of the civil judgment (2016) Yue 01 Min Zhong No. 15617 rendered by the Guangzhou Intermediate People's Court.

Judgment

On December 4, 2017, the Guangzhou Intermediate People's Court rendered the civil ruling (2017) Yue 01 Min Che No. 10, dismissing the lawsuit of the plaintiff, Changsha Guangda Architectural Decoration Co., Ltd. After the ruling was pronounced, Changsha Guangda Architectural Decoration Co., Ltd. appealed. On June 22, 2018, the Guangdong Provincial Higher People's Court rendered the civil ruling (2018) Yue Min Zhong No. 1151, dismissing the appeal and affirming the original ruling.

Reasoning

The court's effective judgment held: Article 56 of the Civil Procedure Law provides: "Where a third party considers that it has an independent claim to the subject matter of the litigation between both parties, it has the right to bring an action. Where a third party has no independent claim to the subject matter of the litigation between both parties, but the result of the case has a legal interest relationship with it, it may apply to participate in the litigation, or the people's court may notify it to participate in the litigation. A third party ordered by a people's court to bear civil liability has the litigation rights and obligations of a party. Where a third party as prescribed in the preceding two paragraphs fails to participate in the litigation for reasons not attributable to itself, but there is evidence proving that all or part of the content of a legally effective judgment, ruling, or mediation statement is erroneous and damages its civil rights and interests, it may, within six months from the date it knew or should have known that its civil rights and interests were damaged, bring a lawsuit with the people's court that rendered the judgment, ruling, or mediation statement." Based on the above legal provisions, the "third party" bringing a third-party revocation action refers to a third party with an independent claim, or a third party without an independent claim that has a legal interest relationship with the result of the case, but does not include the two parties to the litigation. In the already effective case (2016) Yue 01 Min Zhong No. 15617, the defendant Guangda Guangzhou Branch was a branch office of Guangda Company and not a legal person, but it was lawfully established and obtained a business license, and had certain operating funds and the capacity to operate business within its approved business scope. According to Article 74(2) of the General Provisions of the Civil Law — "Where a branch office engages in civil activities in its own name, the civil liability arising therefrom shall be borne by the legal person; it may also first be borne with the property managed by the branch office, and where insufficient, shall be borne by the legal person" — Guangda Company, in case (2016) Yue 01 Min Zhong No. 15617, was a party bearing civil liability, and its litigation status was not that of a third party as prescribed in Article 56 of the Civil Procedure Law. Therefore, Guangda Company's filing of this lawsuit in the capacity of a third party did not satisfy the statutory conditions for applying a third-party revocation action.

Relevant Legal Provisions

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

Article 74(2) of the General Provisions of the Civil Law of the People's Republic of China.

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