SPC Guiding Case No. 150: China Minsheng Bank Co., Ltd. Wenzhou Branch v. Zhejiang Shankou Construction Engineering Co., Ltd. and Qingtian Yiligao Shoes Co., Ltd. (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 / priority right to be compensated from construction project price / mortgage right / plaintiff standing

Holding

Where the priority right to be compensated from a construction project price and a mortgage right are directed at the same subject matter, and the realization of the mortgage right is affected by the existence and scope of the priority right to be compensated from the construction project price, it shall be determined that the realization of the mortgage right has a legal interest relationship with the result of the case concerning the priority right to be compensated from the construction project price, and the mortgagee has plaintiff standing to bring a third-party revocation action against the effective judgment confirming the priority right to be compensated from the construction project price.

Basic Facts

China Minsheng Bank Co., Ltd. Wenzhou Branch ("Wenzhou Minsheng Bank") sued Qingtian Yiligao Shoes Co., Ltd. ("Qingtian Yiligao Shoes Company"), Zhejiang Yiligao Shoes Co., Ltd., and others in the Wenzhou Intermediate People's Court of Zhejiang Province (the "Wenzhou Intermediate Court") in a financial loan contract dispute. The Wenzhou Intermediate Court ordered: 1. Zhejiang Yiligao Shoes Co., Ltd. shall repay Wenzhou Minsheng Bank the loan principal of RMB 56.9 million and the interest for the term, the compound interest on the interest for the term, and the overdue interest within ten days from the effective date of the judgment; and 2. if Zhejiang Yiligao Shoes Co., Ltd. fails to perform the repayment obligation within the time limit determined in item 1 above, Wenzhou Minsheng Bank shall be entitled to be compensated with priority from the proceeds of auctioning or selling the housing and industrial land located in the Chiyan Industrial Zone, Chuanliao Town, Qingtian County, provided as mortgage by the defendant Qingtian Yiligao Shoes Company. After the judgment became effective, because the defendants in the case failed to perform their obligations within the time limit determined in the judgment, Wenzhou Minsheng Bank applied to the Wenzhou Intermediate Court for compulsory enforcement.

During the enforcement process, Wenzhou Minsheng Bank learned on February 28, 2017 that the Qingtian County People's Court of Zhejiang Province had issued to the Wenzhou Intermediate Court a Letter on Participation in Enforcement Distribution numbered (2016) Zhe 1121 Zhi No. 2877, based on the civil judgment (2016) Zhe 1121 Min Chu No. 1800, requiring the Wenzhou Intermediate Court to give priority, over the mortgage right and other creditor's rights, to the construction project price debt of RMB 5.593 million owed by Qingtian Yiligao Shoes Company to Zhejiang Shankou Construction Engineering Co., Ltd. ("Shankou Construction Company") as confirmed by that judgment, to be compensated with priority from the proceeds of discounting or auctioning the construction project located in the Chiyan Industrial Zone, Chuanliao Town, Qingtian County.

Wenzhou Minsheng Bank considered that the construction project in issue passed completion acceptance on October 21, 2011, but Shankou Construction Company did not claim the priority right to be compensated until April 20, 2016, which had clearly exceeded the six-month time limit, and therefore requested revocation of the civil judgment (2016) Zhe 1121 Min Chu No. 1800 and confirmation that Shankou Construction Company did not enjoy a priority right to be compensated from the proceeds of discounting, auctioning, or selling the construction project in issue.

Judgment

On December 25, 2017, the Yunhe County People's Court of Zhejiang Province rendered the civil judgment (2017) Zhe 1125 Min Che No. 1: 1. revoking item 1 of the civil judgment (2016) Zhe 1121 Min Chu No. 1800 of the Qingtian County People's Court of Zhejiang Province; and 2. dismissing the remaining claims of the plaintiff, China Minsheng Bank Co., Ltd. Wenzhou Branch. After the first-instance judgment was pronounced, Zhejiang Shankou Construction Engineering Co., Ltd. appealed to the Lishui Intermediate People's Court of Zhejiang Province. On April 25, 2018, the Lishui Intermediate People's Court rendered the civil judgment (2018) Zhe 11 Min Zhong No. 446, dismissing the appeal and affirming the original judgment. Zhejiang Shankou Construction Engineering Co., Ltd. applied to the Zhejiang Provincial Higher People's Court for retrial. On December 14, 2018, the Zhejiang Provincial Higher People's Court rendered the civil ruling (2018) Zhe Min Shen No. 3524, rejecting the retrial application of Zhejiang Shankou Construction Engineering Co., Ltd.

Reasoning

The court's effective judgment held: The object of review in a third-party revocation action is the effective judgment of the original case, and to safeguard the authority and stability of effective judgments, the filing review of a third-party revocation action is stricter than that of ordinary civil cases. As Shankou Construction Company stated, Article 292 of the Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China provides that a third party bringing a revocation action shall provide evidentiary materials demonstrating that all or part of the content of the effective judgment, ruling, or mediation statement is erroneous, that is, at the acceptance stage, a certain degree of substantive review must be conducted from the perspective of evidentiary materials as to whether the content of the original effective judgment is erroneous. However, the above judicial interpretation provision is still, in essence, a provision on the conditions for bringing a third-party revocation action, and there is a difference between the conditions for bringing the action and the evidentiary requirements for the final substantive judgment; the above judicial interpretation provision does not mean that a third party must complete all its burden of proof at the time of bringing the action. When bringing a revocation action, a third party should provide preliminary evidentiary materials to prove that the original judgment may be erroneous and damage its civil rights and interests. When Wenzhou Minsheng Bank brought the revocation action, it had already provided evidentiary materials proving that it was the mortgagee over the same subject matter, that Shankou Construction Company's participation in the distribution of the proceeds of discounting or auctioning the mortgaged property based on item 1 of the original effective judgment would directly affect the priority compensation of Wenzhou Minsheng Bank's creditor's rights, and that Shankou Construction Company had far exceeded the six-month time limit from the completion acceptance of the project in issue to the filing of the original lawsuit, and had not adopted methods with publicity effect such as litigation or arbitration when claiming the exercise of the construction project price priority right within six months. Therefore, from the perspective of reviewing the conditions for bringing the action, Wenzhou Minsheng Bank had already provided preliminary evidence proving that the content of item 1 of the original effective judgment might be erroneous and would damage the realization of its mortgage right. Its filing of the lawsuit to revoke item 1 of the main text of the original effective judgment satisfied the conditions for bringing the action prescribed by law.

Relevant Legal Provisions

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

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