SPC Guiding Case No. 152: Anshan SME Credit Guarantee Center v. Wang Wei and Lu Jinying (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 / right of revocation / plaintiff standing

Holding

Where, after a creditor applies for compulsory enforcement, the person subject to enforcement and another person reach a mediation agreement in another civil lawsuit, relinquish their right to recover property, and substantially reduce the debt, thereby seriously affecting the realization of the creditor's claim, and this satisfies the conditions for the creditor to exercise the right of revocation prescribed in Article 74 of the Contract Law, the creditor has plaintiff standing to bring a third-party revocation action against the civil mediation statement.

Basic Facts

In December 2008, the Anshan SME Credit Guarantee Center (the "Guarantee Center") signed a guarantee contract with the Huangshatuo Credit Cooperative of the Tai'an County Rural Credit Cooperative (the "Huangshatuo Credit Cooperative"), providing joint and several liability guarantee for the loan obtained by Wang Wei's Anshan Jinqiao Live Pig Breeding Farm (the "Breeding Farm") from that credit cooperative. Wang Wei issued a personal joint and several liability guarantee letter to the Guarantee Center, providing counter-guarantee for the borrower's debt. Later, because the Breeding Farm and Wang Wei failed to repay the loan, the Guarantee Center paid the Huanghshatuo Credit Cooperative a subrogation payment of RMB 2,973,197.54 in April 2010. In 2012, the Guarantee Center sued the Breeding Farm, Wang Wei, and others in the Tiedong District People's Court, demanding that the Breeding Farm and Wang Wei repay the subrogation payment. On June 2013, the Tiedong District People's Court of Anshan City, Liaoning Province rendered a judgment: (1) Wang Wei shall, within fifteen days from the effective date of the judgment, pay the Guarantee Center the subrogated bank debt of RMB 2,973,197.54 and bank interest; (2) Zhang Mou shall bear mortgage guarantee liability for the principal and interest in the preceding item with the mortgaged housing for which mortgage registration had been completed; and (3) the remaining claims of the Guarantee Center were dismissed. That judgment had already become legally effective.

In December 2010, Wang Wei transferred the Breeding Farm to Lu Jinying for a transfer price of RMB 4.5 million, agreeing that a payment of more than RMB 1.63 million would be made immediately after signing the contract, and the remaining amount would be paid in full by December 1, 2011. If Lu Jinying failed to pay on time, all assets of the Breeding Farm would remain with Wang Wei, and the down payment would be treated as liquidated damages belonging to Wang Wei. After signing the contract, Lu Jinying paid the agreed down payment. Wang Wei delivered the Breeding Farm to Lu Jinying, but Lu Jinying failed to pay the remaining transfer price as agreed. In January 2014, the Tiedong District People's Court, based on the Guarantee Center's application, enforced RMB 300,000 of the asset transfer price owed by Lu Jinying to Wang Wei, and handed that amount over to the Guarantee Center.

In November 2013, Wang Wei sued Lu Jinying, requesting an order that all assets of the Breeding Farm belong to her and that Lu Jinying bear liability for breach of contract. Upon trial, the Anshan Intermediate People's Court of Liaoning Province held that the Asset Transfer Contract signed between Wang Wei and Lu

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Jinying was lawful and valid, and that Lu Jinying's failure to pay the remaining amount within the time specified in the contract constituted a breach of contract. Accordingly, it rendered the civil judgment (2013) An Min San Chu Zi No. 66: 1. Lu Jinying shall return the assets of the Breeding Farm to Wang Wei; and 2. Lu Jinying shall compensate Wang Wei for actual losses and liquidated damages of RMB 1,632,573. From this should be deducted the RMB 300,000 paid by Lu Jinying on behalf of Wang Wei, so that in actual performance Wang Wei would pay Lu Jinying RMB 300,000. Lu Jinying appealed to the Liaoning Provincial Higher People's Court. During the second instance of that case, Wang Wei and Lu Jinying voluntarily reached a mediation agreement. In August 2014, the Liaoning Provincial Higher People's Court issued the civil mediation statement (2014) Liao Min Er Zhong Zi No. 00183 to confirm it. The main content of the mediation agreement was that the Breeding Farm would belong to Lu Jinying, the two parties agreed to change the original transfer price of RMB 4.5 million to RMB 3,132,573, Lu Jinying had already paid Wang Wei RMB 1,632,573 and would pay a further RMB 1.5 million, excluding the RMB 300,000 already paid by Lu Jinying to the Guarantee Center, and so forth.

Lu Jinying, based on the mediation statement, applied to the Guarantee Center and the enforcement court for the return of the RMB 300,000 already enforced. The Guarantee Center learned of the sale and purchase contract dispute lawsuit between Wang Wei and Lu Jinying and the content of the mediation statement, and immediately brought this third-party revocation action.

Judgment

On May 23, 2017, the Liaoning Provincial Higher People's Court rendered the civil judgment (2016) Liao Min Che No. 8: 1. revoking the civil mediation statement (2014) Liao Min Er Zhong Zi No. 00183 of the Liaoning Provincial Higher People's Court and the civil judgment (2013) An Min San Chu Zi No. 66 of the Anshan Intermediate People's Court; 2. ordering defendant Lu Jinying to return the assets of the Jinqiao Live Pig Breeding Farm to defendant Wang Wei within ten days from the effective date of the judgment; and 3. treating the down payment of RMB 1,632,573 already paid by defendant Lu Jinying to defendant Wang Wei as compensation to Wang Wei for actual losses and liquidated damages, but deducting from it the RMB 300,000 paid on behalf of Wang Wei to the Guarantee Center, so that in actual performance Wang Wei would pay Lu Jinying RMB 300,000. Lu Jinying appealed. On May 30, 2018, the Supreme People's Court rendered the civil judgment (2017) Zui Gao Fa Min Zhong No. 626: 1. affirming item 1 of the civil judgment (2016) Liao Min Che No. 8 of the Liaoning Provincial Higher People's Court; 2. revoking items 2 and 3 of the civil judgment (2016) Liao Min Che No. 8 of the Liaoning Provincial Higher People's Court; and 3. dismissing the remaining claims of the Anshan SME Credit Guarantee Center.

Reasoning

The Supreme People's Court held in its judgment that, in this case, although the creditor-debtor relationship formed between the Guarantee Center and Wang Wei based on loan subrogation and the sale and purchase contract relationship formed between Wang Wei and Lu Jinying due to the transfer of the Breeding Farm were two different legal relationships, Wang Wei formed the creditor-debtor relationship in issue with the Guarantee Center for the purpose of establishing the Breeding Farm, and the subject that signed the loan contract with the Huanghshatuo Credit Cooperative was also the Breeding Farm; therefore, the Breeding Farm transferred by Wang Wei and Lu Jinying was related to the formation of the Guarantee Center's creditor's rights against Wang Wei. When Wang Wei and Lu Jinying filed a lawsuit over a dispute arising from the transfer of the Breeding Farm, the Guarantee Center's creditor's rights against Wang Wei had already been confirmed by an effective civil judgment and had entered the enforcement procedure. During the litigation and enforcement of that judgment, the Tiedong District People's Court had ruled to freeze Wang Wei's due creditor's rights against the Breeding Farm (investor Lu Jinying). Lu Jinying had also confirmed to the Tiedong District People's Court the amount of the transfer price it owed Wang Wei, agreed to perform to the Guarantee Center through the court, and had actually paid RMB 300,000. The Tiedong District People's Court had also sealed and frozen the relevant property of the Breeding Farm and served an assistance

execution notice on the Breeding Farm. Therefore, the changes in the rights and obligations under the Breeding Farm asset transfer contract between Wang Wei and Lu Jinying were directly implicated with the above enforcement against Wang Wei's property and could affect the interests of the Guarantee Center. Article 74 of the Contract Law provides: "Where the debtor transfers property at an obviously unreasonable low price, causing damage to the creditor, and the transferee knows the situation, the creditor may also request the people's court to revoke the debtor's act." Because in this case Wang Wei and Lu Jinying reached, during litigation, an agreement to transfer the Breeding Farm at a transaction price of RMB 3,132,573, and that agreement was confirmed by the civil mediation statement (2014) Liao Min Er Zhong Zi No. 00183 issued by the people's court and had become legally effective, under such circumstances the Guarantee Center considered that the asset transfer act of Wang Wei and Lu Jinying satisfied the circumstances prescribed in Article 74 of the Contract Law, yet could not separately bring an action to exercise the right of revocation according to Article 74 of the Contract Law. Therefore, although the relationship between the Guarantee Center and Wang Wei in this case was a creditor-debtor relationship, based on the relationship between the formation of the Guarantee Center's creditor's rights against Wang Wei and the Breeding Farm transferred by Wang Wei, the impact of the preservative and enforcement measures taken by the court during litigation and enforcement procedures over Wang Wei's due creditor's rights formed from the transfer of the Breeding Farm on the result of the sale and purchase contract dispute case between Wang Wei and Lu Jinying on the interests of the Guarantee Center, as well as the basic facts of this case that the civil rights and interests the Guarantee Center claimed to have been damaged were obstructed from bringing a revocation action under Article 74 of the Contract Law due to the civil mediation statement (2014) Liao Min Er Zhong Zi No. 00183, it could be determined that the result of the sale and purchase contract dispute case between Wang Wei and Lu Jinying had a legal interest relationship with the Guarantee Center, and the Guarantee Center had the right to bring this third-party revocation action.

Relevant Legal Provisions

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

Article 74 of the Contract Law of the People's Republic of China.

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