SPC Guiding Case No. 153: Yong’an Yancheng Real Estate Development Co., Ltd. v. Zheng Yaonan, Far East (Xiamen) Real Estate Development Co., Ltd., et al. (Third-Party Revocation Action)

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Keywords

Civil / third-party revocation action / act of disposing of property

Holding

Where a creditor brings a third-party revocation action against an effective judgment that confirms the debtor's act of disposing of property, and circumstances affecting the realization of the creditor's claim have arisen — such as the debtor entering bankruptcy proceedings or having no property available for enforcement — it shall be determined that the creditor knew or should have known that the effective judgment damaged its civil rights and interests, and the six-month period for bringing the action shall begin to run.

Basic Facts

In May 2003, the Fujian Provincial Higher People's Court accepted a loan dispute case in which Zheng Yaonan sued Far East (Xiamen) Real Estate Development Co., Ltd. ("Far East Xiamen Company"). On June 2, 2003, that court issued the civil mediation statement (2003) Min Min Chu Zi No. 2, confirming that Far East Xiamen Company owed Zheng Yaonan a total of RMB 123,129,527.72 in loan principal and interest, and that Zheng Yaonan voluntarily waived the interest thereafter; if Far East Xiamen Company failed to repay any installment according to the repayment plan, Zheng Yaonan was entitled to demand early repayment of all unrepaid amounts. Far East Xiamen Company was wholly owned by Far East Real Estate Development Co., Ltd. registered in Hong Kong ("Hong Kong Far East Company"), with its legal representative being Zhang Qiongyue. Lei Yuansi was the legal representative of Yong'an Yancheng Real Estate Development Co., Ltd. ("Yancheng Company"). Zhang Qiongyue and Lei Yuansi were both shareholders and directors of Hong Kong Far East Company, each holding 50 percent of the shares of Hong Kong Far East Company. Lei Yuansi had petitioned the Fujian Provincial People's Procuratorate, which on August 19, 2003 issued a Procuratorial Recommendation to the Fujian Provincial Higher People's Court, recommending retrial of case (2003) Min Min Chu Zi No. 2 in accordance with law. The Fujian Provincial Higher People's Court issued a Crime Clue Referral Letter to the Fujian Provincial Public Security Department, considering that Zheng Yaonan and Zhang Qiongyue were suspected of maliciously colluding to encroach upon the assets of Far East Xiamen Company, thereby harming the lawful rights and interests of Hong Kong Far East Company.

On April 8, 2015, Zheng Yaonan and Gao Mouzhen signed a Creditor's Rights Transfer Agreement and had it notarized, agreeing to transfer all creditor's rights under the civil mediation statement (2003) Min Min Chu Zi No. 2 to Gao Mouzhen; as of the date of signing the agreement, the consideration for the transfer of creditor's rights had been paid in full; after signing the agreement, Gao Mouzhen could directly claim all the above creditor's rights and interests from Far East Xiamen Company in her own name and enjoy lawful creditor's rights and interests. On April 10, 2015, Far East Xiamen Company declared that it was aware of the creditor's rights transfer.

On December 21, 2015, the Xiamen Intermediate People's Court of Fujian Province ruled to accept a non-party's bankruptcy liquidation application against Far East Xiamen Company, and designated Fujian Yinghe Law Firm as the bankruptcy administrator. On March 15, 2016, the bankruptcy administrator issued to Yancheng Company the Notification Letter on the Bankruptcy Case of Far East Xiamen Company, informing the creditors of Far East Xiamen Company of matters concerning the review of creditor's rights declaration materials, and stating that the current statistics of creditor's rights declaration information accepted by the bankruptcy administrator were as follows: 1. ... 5. Yancheng Company declared RMB 14,158,920; 6. Gao Mouzhen declared RMB 312,294,743.65; totaling RMB 725,856,487.91. If a creditor had an objection to another party's declared creditor's rights after reviewing the declaration materials, it should raise the objection in writing to the bankruptcy administrator before March 18.

Yancheng Company, on the ground that case (2003) Min Min Chu Zi No. 2 was a fraudulent lawsuit in which the parties maliciously colluded to transfer assets and that it affected its interests as a bankruptcy creditor, submitted a complaint to the Fujian Provincial Higher People's Court requesting revocation of the civil mediation statement (2003) Min Min Chu Zi No. 2.

Judgment

On July 31, 2017, the Fujian Provincial Higher People's Court rendered the civil ruling (2016) Min Min Che No. 6, dismissing the lawsuit of Yong'an Yancheng Real Estate Development Co., Ltd. Yong'an Yancheng Real Estate Development Co., Ltd., dissatisfied with the first-instance ruling, appealed to the Supreme People's Court. On September 21, 2018, the Supreme People's Court rendered the civil ruling (2017) Zui Gao Fa Min Zhong No. 885: 1. revoking the civil ruling (2016) Min Min Che No. 6 of the Fujian Provincial Higher People's Court; and 2. directing the Fujian Provincial Higher People's Court to try the case.

Reasoning

The Supreme People's Court held that, according to Article 56(3) of the Civil Procedure Law, a third party may bring a lawsuit with the people's court within six months from the date it knew or should have known that its civil rights and interests were damaged. The starting point of that six-month period is the date the party knew or should have known that its civil rights and interests were damaged. In this case, on the premise that Far East Xiamen Company had sufficient assets to repay all debts, the civil mediation statement (2003) Min Min Chu Zi No. 2 had no impact on the realization of Yancheng Company's creditor's rights; under the circumstance that Far East Xiamen Company was operating normally, it was also difficult to determine that the civil mediation statement (2003) Min Min Chu Zi No. 2 would damage Yancheng Company's creditor's rights. However, under the circumstance that Far East Xiamen Company entered bankruptcy proceedings because it could not fully repay all debts owed, that both Yancheng Company and Gao Mouzhen, the assignee of Zheng Yaonan's creditor's rights, were its bankruptcy creditors, and that Gao Mouzhen declared creditor's rights based on the civil mediation statement (2003) Min Min Chu Zi No. 2, the degree of realization of Yancheng Company's bankruptcy creditor's rights would be damaged by the civil mediation statement (2003) Min Min Chu Zi No. 2 on which Gao Mouzhen's bankruptcy creditor's rights were based; therefore, it should be determined that Yancheng Company would know or should have known that its civil rights and interests were damaged only after learning the information that Far East Xiamen Company had entered bankruptcy proceedings. Yancheng Company signed for receipt of the relevant creditor declaration materials prepared by the bankruptcy administrator on March 15, 2016, and submitted a complaint to the Fujian Provincial Higher People's Court on September 12, 2016 requesting revocation of the civil mediation statement (2003) Min Min Chu Zi No. 2, which did not exceed the six-month period for bringing the action. Although Lei Yuansi, then general manager of Yancheng Company, had filed a petition in July 2003 concerning case (2003) Min Min Chu Zi No. 2, he did so in his capacity as shareholder and director of Hong Kong Far East Company and director and general manager of Far East Xiamen Company, to protect the interests of Far East Xiamen Company rather than Yancheng Company's creditor's rights, and at that time it was uncertain whether Yancheng Company had suffered damage from the civil mediation statement (2003)

Min Min Chu Zi No. 2; therefore, there was no issue of whether it knew or should have known, and thus no issue of commencing the six-month period for bringing the action according to Article 56(3) of the Civil Procedure Law.

Relevant Legal Provisions

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

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