SPC Guiding Case No. 154: Wang Siguang v. Zhongtian Construction Group Co., Ltd. and Baishan Hefeng Real Estate Co., Ltd. (Action by a Non-party Against Enforcement)

Dan Young Business Consultancy — www.danyoungcpa.com

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

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Keywords

Civil / action by a non-party against enforcement / unrelated to the original judgment or ruling / priority right to be compensated from construction project price

Holding

In the course of compulsory enforcement of a construction project price, where a housing buyer brings an action by a non-party against enforcement against the housing subject to enforcement, requesting confirmation that it enjoys a civil right and interest over the housing in issue that can exclude compulsory enforcement, but does not deny the creditor's priority right to be compensated from the construction project price as confirmed by the original effective judgment, this falls within the situation "unrelated to the original judgment or ruling" prescribed in Article 227 of the Civil Procedure Law, and the people's court shall accept the case in accordance with law.

Basic Facts

On October 29, 2016, the Jilin Provincial Higher People's Court, in a construction project construction contract dispute in which Zhongtian Construction Group Co., Ltd. ("Zhongtian Company") sued Baishan Hefeng Real Estate Co., Ltd. ("Hefeng Company"), rendered the civil judgment (2016) Ji Min Chu No. 19: Hefeng Company shall pay Zhongtian Company the project price of RMB 42,746,020 plus interest, and the equipment transfer price of RMB 230,000; Zhongtian Company may be compensated with priority from the proceeds of discounting or auctioning of Buildings B1, B2, B3, and B4 of Chunjiang Garden and Buildings 16, 17, and 24 of Zone B. After the judgment became effective, Zhongtian Company applied to the Jilin Provincial Higher People's Court for enforcement of that judgment, and that court ruled that the case be enforced by the Baishan Intermediate People's Court of Jilin Province. On November 10, 2017, the Baishan Intermediate People's Court of Jilin Province, upon Zhongtian Company's application, rendered the enforcement ruling (2017) Ji 06 Zhi No. 82 (5), sealing the shops No. 11XX–XX of Buildings B1, B2, B3, and B4 of Chunjiang Garden.

Wang Siguang filed an enforcement objection with the Baishan Intermediate People's Court of Jilin Province. On November 24, 2017, the Baishan Intermediate People's Court of Jilin Province rendered the enforcement ruling (2017) Ji 06 Zhi Yi No. 87, rejecting Wang Siguang's objection. Thereafter, Wang Siguang, on the ground that he had signed a written sale and purchase contract and taken possession and used the housing before the sealing of the above housing, brought an action by a non-party against enforcement with the Baishan Intermediate People's Court of Jilin Province, requesting the court to order the lawful release of the seal and the cessation of enforcement against the shops No. 11XX–XX of Buildings B1, B2, B3, and B4 of Chunjiang Garden in the Hunjiang District of Baishan City purchased by Wang Siguang.

On November 26, 2013, Hefeng Company (seller) and Wang Siguang (buyer) signed a Commercial Housing Sale and Purchase Contract, agreeing that the seller acquired, by way of transfer, the land use right on the land north of Xingtai Bridge in Baishan City, Jilin Province, and that the seller, with approval, constructed

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commercial housing Chunjiang Garden on the above land; the commercial housing purchased by the buyer was pre-sale commercial housing. The buyer made payment on time by another method, namely that the buyer had paid more than 50 percent of the total housing price, and the remaining housing price would be paid within 10 days through a bank mortgage loan; the seller shall deliver the commercial housing to the buyer before December 31, 2014 according to the contract; for pre-sale commercial housing, within 30 days from the effective date of the contract, the seller shall apply to the property rights office for registration and filing.

On February 17, 2014, the lender (mortgagee) China Merchants Bank Co., Ltd., the borrower Wang Siguang, the mortgagor Wang Siguang, and the guarantor Hefeng Company jointly signed a Personal Housing Purchase Loan and Guarantee Contract, agreeing that the mortgagor was willing to mortgage to the lender all rights and interests in the housing purchased from the housing seller as stipulated in the contract, as security for repayment of the principal and interest of the loan and all other related expenses under the contract. On November 26, 2013, Hefeng Company issued a housing purchase receipt to Wang Siguang. The immovable property archive query certificate issued by the Baishan Immovable Property Registration Center showed that the mortgagor Wang Siguang established a pre-sale commercial housing mortgage notice in favor of China Merchants Bank Co., Ltd. Tonghua Branch over the housing with immovable property right certificate number Baishan Fangquan Zheng Bai BQ Zi No. XXXXXX and a building area of 5,339.04 square meters. On August 23, 2013, the shops in issue obtained a commercial housing pre-sale permit from the property rights department, and completed commercial housing pre-sale permit registration. On December 26, 2018, the Baishan Power Supply Company of Jilin Provincial Electric Power Co., Ltd. issued monthly electricity fee details, showing the electricity usage of Shop 1-4 of Chunjiang Garden B1 from January 2017 to February 2018.

The Query Certificate issued by the Baishan Housing Property Rights Management Center recorded: "Upon query, Buildings B-1, 2, 3, and 4 of Baishan Hefeng Real Estate Co., Ltd. completed commercial housing pre-sale permit registration on August 23, 2013. No initial registration of housing property rights has been completed, because the development entity has not applied to the Housing Property Rights Management Center."

Judgment

On April 18, 2018, the Baishan Intermediate People's Court of Jilin Province rendered the civil judgment (2018) Ji 06 Min Chu No. 12: 1. the shops No. 11XX–XX of Buildings B1, B2, B3, and B4 of Chunjiang Garden in the Hunjiang District of Baishan City shall not be enforced; and 2. the remaining claims of Wang Siguang were dismissed. Zhongtian Construction Group Co., Ltd., dissatisfied with the first-instance judgment, appealed to the Jilin Provincial Higher People's Court. On September 4, 2018, the Jilin Provincial Higher People's Court rendered the civil ruling (2018) Ji Min Zhong No. 420: 1. revoking the civil judgment (2018) Ji 06 Min Chu No. 12 of the Baishan Intermediate People's Court of Jilin Province; and 2. dismissing Wang Siguang's lawsuit. Wang Siguang, dissatisfied with the ruling, applied to the Supreme People's Court for retrial. On March 28, 2019, the Supreme People's Court rendered the civil ruling (2019) Zui Gao Fa Min Zai No. 39: 1. revoking the civil ruling (2018) Ji Min Zhong No. 420 of the Jilin Provincial Higher People's Court; and 2. directing the Jilin Provincial Higher People's Court to try the case.

Reasoning

The Supreme People's Court held that, according to Wang Siguang's claims in the retrial, the focus of the retrial was whether the action against enforcement brought by Wang Siguang fell within the situation of a non-party's enforcement objection being "unrelated to the original judgment or ruling" as prescribed in Article 227 of the Civil Procedure Law.

According to the literal meaning of Article 227 of the Civil Procedure Law, a non-party's enforcement objection "unrelated to the original judgment or ruling" means that the enforcement objection raised by the

non-party does not contain a claim that the original judgment or ruling is erroneous. A non-party's claim to exclude enforcement of the priority right to be compensated from the construction project price is not the same concept as denying the priority right to be compensated from the construction project price itself. The former is that the non-party, on the premise of acknowledging or at least not denying the other party's right, compares the enforcement order of the two rights and claims that the civil right and interest it enjoys according to relevant laws and judicial interpretations can exclude the enforcement of the other party's priority right to be compensated from the construction project price; the latter is to fundamentally deny the priority right to be compensated from the construction project price itself, claiming that the disputed priority right to be compensated from the construction project price does not exist. In short, a party's claim that its right and interest is superior to the other party's right and interest in the enforcement against a specific subject matter cannot be equated with denying the existence of the other party's right and interest; a party's claim that its right and interest will affect the enforcement of an effective judgment cannot be equated with its belief that the effective judgment is erroneous. According to the claims and specific grounds of Wang Siguang's action by a non-party against enforcement, he did not deny the priority right to be compensated from the construction project price enjoyed by Zhongtian Company as confirmed by the original effective judgment; Wang Siguang's action against enforcement was intended to request the court to confirm that he enjoyed a civil right and interest over the housing in issue that could exclude compulsory enforcement. Even if the courts of first and second instance supported Wang Siguang's claims on the enforcement objection, it would not shake the finding of the effective judgment that Zhongtian Company enjoyed the priority right to be compensated from the construction project price, but could only affect the specific enforcement of that effective judgment. Wang Siguang's enforcement objection did not contain a claim that the effective civil judgment (2016) Ji Min Chu No. 19 was erroneous, and fell within the situation of a non-party's enforcement objection being "unrelated to the original judgment or ruling" as prescribed in Article 227 of the Civil Procedure Law. The court of second instance found that Wang Siguang's objection, as a non-party claiming to exclude enforcement against the subject matter of enforcement, was in substance an objection to the above effective judgment and should be handled according to the trial supervision procedure, and accordingly ruled to dismiss Wang Siguang's lawsuit, which was an error in the application of law, and the retrial court corrected it. Given that the court of second instance had not rendered a substantive judgment, the retrial court, based on the specific circumstances of the case, ruled to revoke the second-instance ruling and directed the court of second instance to continue the trial of the case.

Relevant Legal Provisions

Article 227 of the Civil Procedure Law of the People's Republic of China.

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