SPC Guiding Case No. 155: China Construction Bank Co., Ltd. Huaihua Branch v. China Huarong Asset Management Co., Ltd. Hunan Branch et al. (Action by a Non-party Against Enforcement)

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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 / mortgage right

Holding

In compulsory enforcement of a mortgage right, where a non-party brings an action against enforcement on the ground that it purchased the mortgaged immovable property before the mortgage registration and therefore enjoys a right with priority over the mortgage right, and claims exclusion from compulsory enforcement pursuant to the Provisions of the Supreme People's Court on Several Issues Concerning the Handling of Enforcement Objections and Reconsideration Cases by People's Courts, but does not deny the mortgagee's priority right to be compensated from the mortgaged immovable property, 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

In a contract dispute case involving China Huarong Asset Management Co., Ltd. Hunan Branch ("Huarong Hunan Branch"), Huaihua Yingtai Construction Investment Co., Ltd. ("Yingtai Company"), Dongxing Construction Engineering Group Co., Ltd. ("Dongxing Company"), Hunan Chenxi Huazhong Cement Co., Ltd. ("Huazhong Cement Company"), and Xie and Chen, the Hunan Provincial Higher People's Court (the "Hunan Higher Court") rendered the civil judgment (2014) Xiang Gao Fa Min Er Chu Zi No. 32 (the "Judgment No. 32") on December 12, 2014, ordering termination of the Debt Restructuring Agreement signed between Huarong Hunan Branch and Yingtai Company, ordering Yingtai Company to repay Huarong Hunan Branch the debt of RMB 98 million plus restructuring income, liquidated damages, and attorney fees, and ordering Dongxing Company, Huazhong Cement Company, Xie, and Chen to bear joint and several liability. If the repayment obligations were not performed on time, Huarong Hunan Branch was entitled to be compensated with priority from the proceeds of discounting, auctioning, or selling the immovable property of 3,194.52 square meters and 2,709.09 square meters for which Yingtai Company had completed mortgage registration, together with the corresponding land use rights. Neither party appealed, and the judgment became effective. Yingtai Company failed to perform the repayment obligations determined by Judgment No. 32 on time, and Huarong Hunan Branch applied to the Hunan Higher Court for compulsory enforcement. After the Hunan Higher Court filed the enforcement case, it issued an auction announcement planning to auction the immovable property in issue over which Huarong Hunan Branch enjoyed priority compensation as determined by Judgment No. 32.

China Construction Bank Co., Ltd. Huaihua Branch ("CCB Huaihua Branch") filed an enforcement objection with the Hunan Higher Court on the ground that it had signed a housing sale and purchase contract and paid the purchase price. On December 12, 2017, that court rendered the enforcement ruling (2017) Xiang Zhi Yi No. 75, rejecting CCB Huaihua Branch's objection. CCB Huaihua Branch then brought an action by a non-party against enforcement, requesting that the immovable property in issue not be subject to

enforcement, and that it be confirmed that Huarong Hunan Branch's priority compensation right over the immovable property in issue could not prevail against CCB Huaihua Branch.

Judgment

On September 10, 2018, the Hunan Provincial Higher People's Court rendered the civil ruling (2018) Xiang Min Chu No. 10, dismissing the lawsuit of China Construction Bank Co., Ltd. Huaihua Branch. CCB Huaihua Branch, dissatisfied with that ruling, appealed to the Supreme People's Court. On September 23, 2019, the Supreme People's Court rendered the ruling (2019) Zui Gao Fa Min Zhong No. 603: 1. revoking the civil ruling (2018) Xiang Min Chu No. 10 of the Hunan Provincial Higher People's Court; and 2. directing the Hunan Provincial Higher People's Court to try the case.

Reasoning

The Supreme People's Court held that Article 227 of the Civil Procedure Law provides: "During enforcement, where a non-party raises a written objection to the subject matter of enforcement, the people's court shall review the objection within fifteen days from the date of receiving the written objection, and shall rule to suspend enforcement against the subject matter if the grounds are established, or rule to reject the objection if the grounds are not established. Where the non-party or a party is dissatisfied with the ruling and considers that the original judgment or ruling is erroneous, the matter shall be handled according to the trial supervision procedure; where the matter is unrelated to the original judgment or ruling, the party may file a lawsuit with the people's court within fifteen days from the date of service of the ruling." Article 305 of the Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China (the "Civil Procedure Law Interpretation") further provides: "For a non-party to bring an action against enforcement, in addition to satisfying Article 119 of the Civil Procedure Law, it shall also satisfy the following conditions: (1) the non-party's application for enforcement objection has been rejected by a ruling of the people's court; (2) there is a clear litigation claim to exclude enforcement against the subject matter of enforcement, and the litigation claim is unrelated to the original judgment or ruling; and (3) the action is brought within fifteen days from the date of service of the enforcement objection ruling. The people's court shall decide whether to file the case within fifteen days from the date of receiving the complaint." It can be seen that Article 305 of the Civil Procedure Law Interpretation clarifies that a non-party bringing an action against enforcement shall satisfy the condition that "the litigation claim is unrelated to the original judgment or ruling." Therefore, "unrelated to the original judgment or ruling" prescribed in Article 227 of the Civil Procedure Law should mean that the "litigation claim" is unrelated to the original judgment or ruling.

The main text of the original judgment on which Huarong Hunan Branch based its application for compulsory enforcement, that is, Judgment No. 32, ordered Yingtai Company to repay Huarong Hunan Branch the debt of RMB 98 million plus restructuring income, liquidated damages, and attorney fees, and provided that Huarong Hunan Branch was entitled to be compensated with priority from the proceeds of discounting, auctioning, or selling the immovable property in issue as mortgaged property. In this case, CCB Huaihua Branch's first-instance litigation claims were to exclude compulsory enforcement against the immovable property in issue and to confirm that Huarong Hunan Branch's priority compensation right over the immovable property in issue could not prevail against CCB Huaihua Branch, and its grounds for the lawsuit were that it signed the housing purchase contract, paid the purchase price, and took possession of the immovable property in issue before the mortgage was completed, thereby claiming exclusion from compulsory enforcement against the immovable property in issue. CCB Huaihua Branch in this case did not deny the mortgage right enjoyed by Huarong Hunan Branch over the immovable property in issue, nor did it request correction of Judgment No. 32; in substance, what its claims sought to resolve was the issue of the order of priority between the rights and interests over the immovable property in issue arising from the housing purchase and the mortgage right enjoyed by Huarong Hunan Branch over the immovable property in issue. This fell within the situation "unrelated to the original judgment or ruling" and was a matter to be tried in an action against enforcement, and should be filed and tried.

Relevant Legal Provisions

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

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