SPC Guiding Case No. 156: Wang Yanyan v. Xu Yijun and Beijing Jinbi Real Estate Development Co., Ltd. (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 / exclusion from compulsory enforcement / selective application

Holding

Article 28 of the Provisions of the Supreme People's Court on Several Issues Concerning the Handling of Enforcement Objections and Reconsideration Cases by People's Courts prescribes the right of a buyer of immovable property to exclude the enforcement of monetary claims, and Article 29 prescribes the right of a consumer home buyer to exclude the enforcement of monetary claims. Where a non-party requests exclusion from compulsory enforcement of commercial housing registered in the name of the real estate development enterprise subject to enforcement, it may choose to apply either Article 28 or Article 29; where the non-party claims application of Article 28, the people's court shall review it.

Basic Facts

In 2007, Xu Yijun sued Beijing Jinbi Real Estate Development Co., Ltd. ("Jinbi Company") in the Beijing Second Intermediate People's Court (the "Beijing Second Intermediate Court") over a dispute arising from an entrustment agency sale contract for commercial housing. After trial, the Beijing Second Intermediate Court rendered a judgment terminating the Agreement signed between Xu Yijun and Jinbi Company, and ordering Jinbi Company to return to Xu Yijun the advance payment, capital occupation fee, liquidated damages, interest, and so forth. Neither party appealed the judgment, and the judgment became effective. Later, because Jinbi Company failed to voluntarily perform the judgment, Xu Yijun applied to the Beijing Second Intermediate Court for enforcement in 2009. The Beijing Second Intermediate Court issued a ruling sealing the housing in issue.

After the housing in issue was sealed, Wang Yanyan filed an enforcement objection with the Beijing Second Intermediate Court on the grounds that she had signed a lawful and valid Commercial Housing Sale and Purchase Contract with Jinbi Company, paid the full purchase price, lawfully possessed the housing, and failed to complete the transfer registration procedures for reasons not attributable to herself, and requested that the enforcement against the housing be suspended in accordance with law. The Beijing Second Intermediate Court rejected Wang Yanyan's objection. Wang Yanyan, dissatisfied with that ruling, filed an action by a non-party against enforcement with the Beijing Second Intermediate Court. In her retrial application, Wang Yanyan claimed that the court should support her enforcement objection as long as she satisfied either Article 28 or Article 29 of the Provisions of the Supreme People's Court on Several Issues Concerning the Handling of Enforcement Objections and Reconsideration Cases by People's Courts (the "Objection and Reconsideration Provisions"). She argued that the second-instance judgment had incorrectly applied Article 29 for adjudication instead of Article 28, constituting an error in the application of law.

Judgment

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On June 19, 2015, the Beijing Second Intermediate People's Court rendered the judgment (2015) Er Zhong Min Chu Zi No. 00461: suspending the enforcement procedures against the housing in Unit X, Building X, Rulin Yuan, Chaoyang District, Beijing. Xu Yijun, dissatisfied with the first-instance judgment, appealed to the Beijing Higher People's Court. On December 30, 2015, the Beijing Higher People's Court rendered the civil judgment (2015) Gao Min Zhong Zi No. 3762: 1. revoking the judgment (2015) Er Zhong Min Chu Zi No. 00461 of the Beijing Second Intermediate People's Court; and 2. dismissing Wang Yanyan's claims. Wang Yanyan, dissatisfied with the second-instance judgment, applied to the Supreme People's Court for retrial. On April 29, 2016, the Supreme People's Court rendered the ruling (2016) Zui Gao Fa Min Shen No. 254: directing the Beijing Higher People's Court to retry the case.

Reasoning

The Supreme People's Court held that Article 28 of the Objection and Reconsideration Provisions applies to the situation where, in the enforcement of a monetary claim, a buyer raises an objection to immovable property registered in the name of the person subject to enforcement. Article 29, by contrast, applies to the situation where, in the enforcement of a monetary claim, a buyer raises an objection to commercial housing registered in the name of the real estate development enterprise subject to enforcement. Although the two provisions apply to different situations, where the person subject to enforcement is a real estate development enterprise and the immovable property subject to enforcement is commercial housing registered in its name, thereby satisfying both the situation of "immovable property registered in the name of the person subject to enforcement" and the situation of "commercial housing registered in the name of the real estate development enterprise subject to enforcement," then Articles 28 and 29 of the Objection and Reconsideration Provisions overlap in their application. Where a non-party requests exclusion from compulsory enforcement of commercial housing registered in the name of the real estate development enterprise subject to enforcement, it may choose to apply either Article 28 or Article 29; where the non-party claims application of Article 28, the people's court shall review it. In this case, the first-instance judgment found upon trial that Wang Yanyan satisfied the circumstances of Article 28 of the Objection and Reconsideration Provisions and had a right capable of excluding enforcement, whereas the second-instance judgment held that the existing evidence could not determine that Wang Yanyan satisfied Article 29 of the Objection and Reconsideration Provisions, and directly dismissed Wang Yanyan's claims without reviewing whether she satisfied Article 28, which was indeed an error in the application of law.

Regarding whether Wang Yanyan had paid the purchase price. Wang Yanyan claimed that she had paid the full purchase price, and submitted the payment receipt issued by Jinbi Company, the Commercial Housing Sale and Purchase Contract, witness testimony, and some withdrawal records in support; Jinbi Company acknowledged Wang Yanyan's payment. Whether the above evidence was sufficient to prove that Wang Yanyan had paid the purchase price should be determined during the retrial proceedings after ascertaining the relevant facts based on the trial circumstances.

Relevant Legal Provisions

Articles 28 and 29 of the Provisions of the Supreme People's Court on Several Issues Concerning the Handling of Enforcement Objections and Reconsideration Cases by People's Courts.

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