SPC Guiding Case No. 167: Beijing Datang Fuel Co., Ltd. v. Shandong Baifu Logistics Co., Ltd. (Sales Contract Dispute)

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Keywords

Civil / sales contract / subrogation action / failure to obtain satisfaction / filing a separate lawsuit

Holding

Where, in the enforcement of a subrogation action, the enforcement procedure is closed because the counterpart has no property available for enforcement, and the creditor separately claims its rights against the debtor in respect of the claim not actually satisfied, the people's court shall support the claim.

Basic Facts

From January 20, 2012 to May 29, 2013, Beijing Datang Fuel Co., Ltd. ("Datang Company") and Shandong Baifu Logistics Co., Ltd. ("Baifu Company") entered into a total of 41 purchase contracts, agreeing that Baifu Company would sell Datang Company goods such as ferronickel, nickel ore, clean coal, and metallurgical coke. In performing the contracts, the parties used rolling settlement to pay for the goods, but the amount of each payment did not correspond one-to-one with the amount of goods payment agreed in each contract. From March 15, 2012 to January 8, 2014, Datang Company paid Baifu Company goods payments totaling RMB 1,827,867,179.08, and Baifu Company cumulatively issued value-added tax invoices to Datang Company totaling RMB 1,869,151,565.63. Datang Company claimed that the cumulative value of goods supplied by Baifu Company was RMB 1,715,683,565.63, while Baifu Company claimed that it had supplied goods in full in accordance with the amount of the value-added tax invoices issued.

On November 25, 2014, Datang Company, as plaintiff, with Ningbo Wanxiang Import and Export Co., Ltd. ("Wanxiang Company") as defendant and Baifu Company as third party, brought a creditor subrogation action before the Intermediate People's Court of Ningbo City, Zhejiang Province. The court rendered Civil Judgment (2014) Zhe Yong Shang Chu Zi No. 74, ordering Wanxiang Company to pay Datang Company RMB 36,369,405.32. On September 28, 2016, Datang Company applied to the People's Court of Xiangshan County, Zhejiang Province for compulsory enforcement of Civil Case (2014) Zhe Yong Shang Chu Zi No. 74. The court issued an enforcement notice to Wanxiang Company on October 8, 2016, but Wanxiang Company still failed to perform its obligations after the deadline; Wanxiang Company still owed the enforcement amount of RMB 36,369,405.32 plus interest, and was to bear litigation costs of RMB 209,684 and enforcement fees of RMB 103,769.41. Upon enforcement investigation, the court found that Wanxiang Company had two motor vehicles in its name, which the court had sealed but had not actually taken control of. Datang Company failed to provide property of Wanxiang Company available for enforcement within the time limit and did not raise an objection to the court. The court rendered Enforcement Ruling (2016) Zhe 0225 Zhi No. 3676 on March 25, 2017, closing the enforcement procedure.

Datang Company, with Baifu Company as defendant, brought this lawsuit before the Higher People's Court of Shandong Province, requesting an order that Baifu Company return the principal and interest to it.

Judgment

The Higher People's Court of Shandong Province rendered Civil Judgment (2018) Lu Min Chu No. 10 on August 13, 2018: 1. Shandong Baifu Logistics Co., Ltd. shall return goods payments of RMB 75,814,208.13

to Beijing Datang Fuel Co., Ltd.; 2. Shandong Baifu Logistics Co., Ltd. shall compensate Beijing Datang Fuel Co., Ltd. for the interest loss during the period of occupation of the goods payments (calculated on the base amount of RMB 75,814,208.13, from November 25, 2014 to the date of actual payment by Shandong Baifu Logistics Co., Ltd., at the benchmark loan interest rate for the same period and type published by the People's Bank of China); 3. The remaining claims of Beijing Datang Fuel Co., Ltd. were dismissed. Datang Fuel Co., Ltd., dissatisfied with the first-instance judgment, appealed. The Supreme People's Court rendered Civil Judgment (2019) Zui Gao Fa Min Zhong No. 6 on June 20, 2019: 1. Revoke Civil Judgment (2018) Lu Min Chu No. 10 of the Higher People's Court of Shandong Province; 2. Shandong Baifu Logistics Co., Ltd. shall return goods payments of RMB 153,468,000 to Beijing Datang Fuel Co., Ltd.; 3. Shandong Baifu Logistics Co., Ltd. shall compensate Beijing Datang Fuel Co., Ltd. for the interest loss during the period of occupation of the goods payments (calculated on the base amount of RMB 153,468,000, from November 25, 2014 to the date of actual payment by Shandong Baifu Logistics Co., Ltd., at the benchmark loan interest rate for the same period and type published by the People's Bank of China); 4. The remaining claims of Beijing Datang Fuel Co., Ltd. were dismissed.

Reasoning

The Supreme People's Court held: with respect to the issue of the claim of RMB 36,369,405.32 involved in Civil Judgment (2014) Zhe Yong Shang Chu Zi No. 74, Datang Company had the right to separately claim the amount from Baifu Company.

First, Article 20 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the Contract Law of the People's Republic of China (I) provides that where a subrogation action brought by a creditor against a sub-debtor is found by the people's court after trial to be established, the sub-debtor shall perform the satisfaction obligation to the creditor, and the corresponding creditor-debtor relationship between the creditor and the debtor and between the debtor and the sub-debtor shall thereby be extinguished. According to this provision, the premise for finding that the corresponding creditor-debtor relationship between the creditor and the debtor is extinguished is that the sub-debtor has actually performed the corresponding satisfaction obligation to the creditor. In the enforcement case involved in this case, because no property of Wanxiang Company was enforced, the People's Court of Xiangshan County, Zhejiang Province had already rendered a ruling closing the enforcement procedure; therefore, where Wanxiang Company had not actually performed the satisfaction obligation, the creditor-debtor relationship between Datang Company and Baifu Company was not extinguished, and Datang Company had the right to separately claim against Baifu Company.

Second, the subrogation action is a debt preservation system, which is designed to prevent the debtor's property from being improperly reduced or from failing to increase when it should increase, thereby creating obstacles to the creditor's realization of its claim, rather than to require the creditor to choose one of the debtor and the sub-debtor as the subject of performance of the obligation. If the creditor were required to choose one, it would be tantamount to requiring the creditor, before bringing a subrogation action, to fully investigate the sub-debtor's solvency, otherwise it should bear the risk that the debt cannot be satisfied. This would not only increase the economic cost of the creditor's bringing a subrogation action but also seriously dampen the creditor's enthusiasm for bringing a subrogation action, contrary to the purpose of establishing the subrogation action system.

Third, this case does not violate the principle of "no second action for the same matter." According to Article 247 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 main conditions for determining whether a duplicate lawsuit is constituted are whether the parties, the subject matter of the lawsuit, and the claims are identical, or whether the claims in the later lawsuit substantially negate the result of the earlier judgment. A subrogation action is different from an action against the debtor. From the perspective of the parties, in a subrogation action, the creditor is the plaintiff and the sub-debtor is the defendant, whereas in an action against the debtor, the creditor is the

plaintiff and the debtor is the defendant, and the identities of the defendants in the two actions are not identical. From the perspective of the subject matter of the lawsuit and the claims, although a subrogation action requires the sub-debtor to perform the satisfaction obligation directly to the creditor, it is directed at the creditor-debtor relationship between the debtor and the sub-debtor, whereas an action against the debtor requires the debtor to perform the satisfaction obligation to the creditor and is directed at the creditor-debtor relationship between the creditor and the debtor; the two also differ in the scope of the subject matter, the legal relationship, and other aspects. From the perspective of the requirements for filing, unlike an action against the debtor, a subrogation action not only requires satisfaction of the filing conditions prescribed by the Civil Procedure Law but also requires satisfaction of the litigation conditions prescribed by Article 11 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the Contract Law of the People's Republic of China (I). Based on the above differences, a subrogation action and an action against the debtor are not the same cause of action; the two merely have a legal relevance, and therefore Datang Company's bringing of this lawsuit did not constitute a duplicate lawsuit.

Relevant Legal Provisions

Article 20 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the Contract Law of the People's Republic of China (I) (Note: the currently effective provision is Article 537 of the Civil Code of the People's Republic of China).

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