SPC Guiding Case No. 170: Rao Guoli v. Materials Supply Station et al. (House Leasing Contract Dispute)

Dan Young Business Consultancy — www.danyoungcpa.com

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Keywords

Civil / house leasing contract / validity of contract / administrative rules / public order and good morals / dilapidated building

Holding

A violation of administrative rules generally does not affect the validity of a contract. However, where a leasing contract is concluded in violation of administrative rules, stipulating that a dilapidated building — which has been identified by an appraisal institution as having serious structural hazards or as likely to cause a major safety accident and which should be demolished as soon as possible — be leased for the operation of a hotel, thereby endangering the personal and property safety of unspecified members of the public, such conduct harms the public interest and is contrary to public order and good morals. The leasing contract shall be found invalid in accordance with the law, and the legal liability of each party shall be determined according to the degree of fault of the parties to the contract.

Basic Facts

The Jingpin Holiday Hotel, Qingshanhu District, Nanchang City ("Jingpin Hotel") was organized in the form of sole proprietorship, operated by Rao Guoli, with its business scope and mode being hotel services. On July 27, 2011, Jingpin Hotel won, through public bidding, the right to lease the office building at No. 1 Qingshan South Road, Nanchang City, owned by a materials supply station, and issued a Letter of Undertaking to the materials supply station, undertaking that, after winning the bid, it would strictly follow the reinforcement and renovation plan issued by the reinforcement design unit and by authoritative departments such as the Jiangxi Provincial Construction Engineering Safety and Quality Supervision Administration to carry out scientific and safe reinforcement of the office building at No. 1 Qingshan South Road, and would use the building only after obtaining legally effective written documents. On August 29 of the same year, Jingpin Hotel and the materials supply station entered into a Leasing Contract, stipulating that the materials supply station would lease the 4,120-square-meter office building at No. 1 Qingshan South Road, Nanchang City (including No. 1 and No. 3 Qingshan South Road, Donghu District, Nanchang City as recorded in the property ownership certificate) to Jingpin Hotel for the operation of a business hotel. The lease term was 15 years, from September 1, 2011 to August 31, 2026. In addition to stipulating the rent and other fee standards, the method of payment, and liability for breach of contract, Article 5 of the contract specially stipulated: 1. The leased property has been identified by the relevant authorities as a dilapidated building and may be used only after reinforcement. Jingpin Hotel has fully understood the aforesaid problems and defects of the leased property. Jingpin Hotel undertakes to reinforce the leased property to ensure that it meets the standards for commercial real estate use, and Jingpin Hotel shall bear all costs. 2. The application for approval, construction, and acceptance of the reinforcement project plan (the acceptance authority being the Jiangxi Provincial Construction Engineering Safety and Quality Supervision Administration or a department of equivalent qualification) shall all be the responsibility of Jingpin Hotel, with the materials supply station providing assistance as needed. 3. If Jingpin Hotel uses the leased property without authorization before it is qualified through reinforcement, it shall bear all liability. After the contract was signed, the materials supply station delivered the leased premises as agreed. Jingpin Hotel paid the materials supply station a

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performance bond of RMB 200,000 and a bid bond of RMB 10 million. After winning the bid, the materials supply station returned RMB 8 million of the bid bond.

On October 26, 2011, Jingpin Hotel entered into an Agreement for the reinforcement and renovation project with Shanghai Yongxiang Reinforcement Technology Engineering Co., Ltd., by which Jingpin Hotel contracted out the reinforcement and renovation of the leased premises to Shanghai Yongxiang Reinforcement Technology Engineering Co., Ltd. on a lump-sum labor-and-materials basis (all civil construction parts within the drawings), with the renovation scope covering the main load-bearing columns, walls, beams and slabs, the reinforcement of new walls, all interior plastering, and all contents within the drawings, including drawings, elevators, and heat pumps. The commencement date was October 26, 2011 and the completion date was January 26, 2012. On January 3, 2012, during the reinforcement construction, most of the building in issue collapsed.

The Jiangxi Provincial Construction Industry Work Safety Supervision and Administration Station issued a House Safety Appraisal Opinion on June 18, 2007, with the following appraisal results and recommendations: 1. The design and construction of the main structural load-bearing members of the building do not meet the requirements of the current national design and construction codes, and their strength cannot meet the requirements of the bearing capacity of the upper structure, giving rise to relatively serious structural hazards. 2. The building was not designed for seismic resistance and has no seismic-resistant structural measures, and does not conform to the requirements of the Code for Seismic Design of Buildings (GB50011-2001). In the event of an earthquake or other accident, a major safety accident will be caused. 3. According to the Standard for the Appraisal of Dangerous Buildings (GB50292-1999), the building, graded by the danger level of the building, is a Class D dangerous building and should be demolished. 4. Recommendations: (1) The load on the building should be reduced immediately to decrease the load on the structure. (2) The problematic structural members should be reinforced. (3) At present, observation of the building should be strengthened, and measures should be taken to ensure the safe transition of the building to demolition. If any abnormal phenomena are discovered, all personnel should be immediately evacuated from the building and the relevant authorities should be reported to. (4) It is recommended that all structures be demolished as soon as possible.

Rao Guoli filed claims with the first-instance court: 1. Terminate the Leasing Contract entered into with the materials supply station on August 29, 2011; 2. The materials supply station shall return the bonds of RMB 2.2 million to him; 3. The materials supply station shall compensate him for various economic losses totaling RMB 2.81 million; 4. The litigation costs of this case shall be borne by the materials supply station.

The materials supply station filed a counterclaim with the first-instance court: 1. Order Rao Guoli to bear tort liability and compensate it RMB 24.635 million; 2. Order Rao Guoli to bear all litigation costs.

In the retrial, Rao Guoli changed his first claim above to: confirm that the Leasing Contract in issue was invalid. The materials supply station also changed its claim to: Rao Guoli shall compensate the materials supply station for losses of RMB 4.187 million.

Judgment

The Intermediate People's Court of Nanchang City, Jiangxi Province rendered Civil Judgment (2013) Hong Min Yi Chu Zi No. 2 on September 1, 2017: 1. Terminate the Leasing Contract entered into between Jingpin Hotel operated by Rao Guoli and the materials supply station on August 29, 2011; 2. The materials supply station shall return the bid bond of RMB 2 million to Rao Guoli; 3. Rao Guoli shall compensate the materials supply station RMB 8.043 million, and after offsetting the RMB 2 million bond returned by the materials supply station to Rao Guoli under Item 2 of this judgment, Rao Guoli shall pay the materials supply station RMB 6.043 million within 15 days after this judgment takes effect; 4. The remaining claims of Rao Guoli were dismissed; 5. The remaining claims of the materials supply station were dismissed. After the first-instance judgment, Rao Guoli appealed. The Higher People's Court of Jiangxi Province rendered Civil Judgment

(2018) Gan Min Zhong No. 173 on April 24, 2018: 1. Uphold Items 1 and 2 of Civil Judgment (2013) Hong Min Yi Chu Zi No. 2 of the Intermediate People's Court of Nanchang City; 2. Revoke Items 3, 4, and 5 of Civil Judgment (2013) Hong Min Yi Chu Zi No. 2 of the Intermediate People's Court of Nanchang City; 3. The materials supply station shall return the performance bond of RMB 200,000 to Rao Guoli; 4. Rao Guoli shall compensate the materials supply station for economic losses of RMB 1.824 million; 5. After offsetting the amounts determined under Items 1, 3, and 4 of this judgment, the materials supply station shall return RMB 3.757 million to Rao Guoli, to be paid within 10 days after this judgment takes effect; 6. The remaining claims of Rao Guoli were dismissed; 7. The remaining claims of the materials supply station were dismissed. Both Rao Guoli and the materials supply station, dissatisfied with the second-instance judgment, applied to the Supreme People's Court for retrial. The Supreme People's Court rendered Civil Ruling (2018) Zui Gao Fa Min Shen No. 4268 on September 27, 2018, deciding to try the case by retrial. On December 19, 2019, the Supreme People's Court rendered Civil Judgment (2019) Zui Gao Fa Min Zai No. 97: 1. Revoke Civil Judgment (2018) Gan Min Zhong No. 173 of the Higher People's Court of Jiangxi Province and Civil Judgment (2013) Hong Min Yi Chu Zi No. 2 of the Intermediate People's Court of Nanchang City; 2. Confirm that the Leasing Contract entered into between Jingpin Hotel operated by Rao Guoli and the materials supply station was invalid; 3. The materials supply station shall return the bonds of RMB 2.2 million to Rao Guoli within 10 days after this judgment takes legal effect; 4. The remaining claims of Rao Guoli were dismissed; 5. The claims of the materials supply station were dismissed.

Reasoning

The Supreme People's Court held: according to the House Safety Appraisal Opinion issued by the Jiangxi Provincial Construction Industry Work Safety Supervision and Administration Station on June 18, 2007, before the Leasing Contract in issue was signed, the building under the contract had the following safety hazards: first, the design and construction of the main structural load-bearing members could not meet the requirements of the current national design and construction codes, and their strength could not meet the requirements of the bearing capacity of the upper structure, giving rise to relatively serious structural hazards; second, the building was not designed for seismic resistance and had no seismic-resistant structural measures, and did not conform to the national standard of the Code for Seismic Design of Buildings, and in the event of an earthquake or other accident, a major safety accident would be caused. The House Safety Appraisal Opinion also issued a warning that a local earthquake that had occurred earlier had caused a certain degree of damage to the structure of the building in issue, which should attract sufficient attention from the owner and its superior authorities. On the basis of the above findings, the appraisal result and recommendation of the Jiangxi Provincial Construction Industry Work Safety Supervision and Administration Station regarding the building in issue was that the leased building in issue was a Class D dangerous building whose entire structure should be demolished as soon as possible. Accordingly, upon appraisal by an authorized appraisal institution, the building in issue had been determined to be a Class D dangerous building with serious structural hazards or likely to cause a major safety accident, which should be demolished as soon as possible. According to Article 6.1 of the Standard for the Appraisal of Dangerous Buildings of the Ministry of Housing and Urban-Rural Development of the People's Republic of China (effective December 1, 2016), a building graded as Class D dangerous refers to a building whose load-bearing structure can no longer meet the requirements of safe use and which is in a dangerous state as a whole, constituting an entirely dangerous building. Although Article 7.0.5 of the Standard for the Appraisal of Dangerous Buildings provides that a building assessed as a partially dangerous building or an entirely dangerous building may be handled in the following ways: 1. use under observation; 2. use after treatment; 3. stop using; 4. demolish as a whole; 5. handle in accordance with the relevant provisions, in this case the authorized appraisal institution had already made clear that the building in issue should be demolished and recommended that the entire structure of the dangerous building be demolished as soon as possible. Therefore, the dangerous building in issue did not have the circumstance of being able to continue to be used after reinforcement. Article 6 of the Measures for the Administration of Leasing of Commodity Housing

provides that buildings that do not meet the mandatory standards for construction projects such as safety and disaster prevention may not be leased. Although the Measures for the Administration of Leasing of Commodity Housing is, in terms of its level of effect, a departmental rule, the provision of Article 6 thereof embodies the protection of public safety and the maintenance of public order and good morals. In combination with the facts of this case, where the building in issue had been determined to be a Class D dangerous building with serious structural hazards or likely to cause a major safety accident and that should be demolished as soon as possible, the parties nevertheless signed the Leasing Contract stipulating that the building be leased for the operation of a business hotel that might endanger the personal and property safety of unspecified members of the public, which clearly harmed the public interest and was contrary to public order and good morals. From the perspective of maintaining public safety and establishing a correct social value orientation, the determination of the validity of the contract in the circumstances of this case should be handled strictly; the judiciary should not support or encourage such conduct of pursuing economic benefits while ignoring public safety in violation of the public interest and public order and good morals. Therefore, in accordance with Article 153, paragraph 2 of the General Provisions of the Civil Law of the People's Republic of China on the invalidity of civil juristic acts contrary to public order and good morals, and Article 52, item (4) of the Contract Law of the People's Republic of China on the invalidity of contracts that harm the public interest, the Leasing Contract was confirmed to be invalid. With respect to the issue of the compensation paid by the materials supply station to others after the collapse of the building in issue, because the materials supply station should bear primary liability for the invalidity of the Leasing Contract, in accordance with Article 58 of the Contract Law of the People's Republic of China, which provides that "where a contract is invalid, if both parties were at fault, each shall bear the corresponding liability," the above expenses should be borne by the materials supply station itself. Because Rao Guoli was also at fault for the invalidity of the Leasing Contract, in accordance with Article 58 of the Contract Law of the People's Republic of China, his losses should also be borne by himself. With respect to the RMB 2.2 million in bonds paid by Rao Guoli to the materials supply station, because the Leasing Contract was an invalid contract, the money obtained by the materials supply station based on the contract should be returned to Rao Guoli in accordance with the law.

Relevant Legal Provisions

Article 153 of the General Provisions of the Civil Law of the People's Republic of China, and Articles 52 and 58 of the Contract Law of the People's Republic of China (Note: the currently effective provisions are Articles 153 and 157 of the Civil Code of the People's Republic of China).

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