SPC Guiding Case No. 171: Zhongtian Construction Group Co., Ltd. v. Henan Henghe Real Estate Co., Ltd. (Construction Contract Dispute)

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Keywords

Civil / construction project construction contract / priority right to be compensated / exclusion period

Holding

Where an enforcement court, upon the application of another creditor, enforces against the construction project of a contract-letting party, and the contractor asserts to the enforcement court that it enjoys the priority right to be compensated for the construction project price and that the exclusion period has not expired, the contractor shall be deemed to have exercised the priority right to be compensated for the construction project price in accordance with the law. Where the contract-letting party defends on the ground that the contractor's exercise of the priority right to be compensated for the construction project price at the time of suing exceeded the exclusion period, the people's court shall not support the defense.

Basic Facts

On September 17, 2012, Henan Henghe Real Estate Co., Ltd. ("Henghe Company") and Zhongtian Construction Group Co., Ltd. ("Zhongtian Company") entered into the Construction Contract for the Henghe International Business Convention and Exhibition Center Project, agreeing that Zhongtian Company would carry out the construction of the project in issue. On June 25, 2013, Henghe Company issued a Notice of Winning Bid to Zhongtian Company, notifying it that it had won the bid for the Henghe International Business Convention and Exhibition Center project located on Kaiyuan Avenue, Luolong District, Luoyang City. On June 26, 2013, Henghe Company and Zhongtian Company entered into a Construction Contract, in which the parties agreed on such project matters as the construction period, the project price, and liability for breach of contract. After the contract was signed, Zhongtian Company entered the site and commenced construction. During the construction period, because Henghe Company was in arrears with the project payments, Zhongtian Company delivered contact letters to Henghe Company on multiple occasions on November 12 and November 26, 2013, and December 23, 2014, requesting that Henghe Company immediately pay the overdue project payments, pay liquidated damages as agreed, and bear the corresponding losses. In April and May 2014, Henghe Company and Dehui Engineering Management (Beijing) Co., Ltd. entered into a Construction Cost Consulting Contract, entrusting Dehui Engineering Management (Beijing) Co., Ltd. to conduct the settlement review of the project in issue. On November 3, 2014, Dehui Engineering Management (Beijing) Co., Ltd. issued the Settlement Review Report for the Henghe International Business Convention and Exhibition Center. Henghe Company, Zhongtian Company, and Dehui Engineering Management (Beijing) Co., Ltd. respectively affixed their official seals and signed on the review summary table in the review report. On November 24, 2014, Zhongtian Company received notice that the Intermediate People's Court of Jiaozuo City, Henan Province would auction the project in issue pursuant to the application of other creditors of Henghe Company. On December 1, 2014, the Ninth Construction Company of Zhongtian Company submitted to the Intermediate People's Court of Jiaozuo City, Henan Province the Contact Letter Concerning the Auction of the Henghe International Business Convention and Exhibition Center Project under Construction, which stated that Zhongtian Company was the contractor

of the Henghe International Business Convention and Exhibition Center project under construction, that since the commencement of the project Zhongtian Company had completed project work with an output value of RMB 287 million, and that Zhongtian Company requested that its priority right to be compensated be confirmed in accordance with the law and that it be allowed to participate in the entire auction process. Both Zhongtian Company and Henghe Company acknowledged that the project in issue was shut down on February 5, 2015.

On January 31, 2018, the Higher People's Court of Henan Province accepted the lawsuit brought by Zhongtian Company against Henghe Company. Zhongtian Company requested termination of the Construction Contract entered into between the parties and confirmation that Henghe Company owed Zhongtian Company the project price and that Zhongtian Company enjoyed the priority right to be compensated.

Judgment

The Higher People's Court of Henan Province rendered Civil Judgment (2018) Yu Min Chu No. 3 on October 30, 2018: 1. The two Construction Contracts entered into between Henghe Company and Zhongtian Company on September 17, 2012 and June 26, 2013 were invalid; 2. It was confirmed that Henghe Company owed Zhongtian Company project payments of RMB 288,428,047.89 and the corresponding interest (calculated on the base amount of RMB 288,428,047.89, from March 1, 2015 to April 10, 2018, at the benchmark loan interest rate for the corresponding period published by the People's Bank of China); 3. Within the scope of the project price of RMB 288,428,047.89, Zhongtian Company enjoyed the priority right to be compensated from the discounted price or auction price of the Henghe International Business Convention and Exhibition Center project constructed by it; 4. The remaining claims of Zhongtian Company were dismissed. After the judgment was pronounced, Henghe Company appealed. The Supreme People's Court rendered Civil Judgment (2019) Zui Gao Fa Min Zhong No. 255 on June 21, 2019: dismissing the appeal and affirming the original judgment.

Reasoning

The Supreme People's Court held: Article 22 of the Interpretation of the Supreme People's Court on Issues Concerning the Application of Law in the Trial of Cases Involving Disputes over Construction Project Construction Contracts (II) provides that "the period for a contractor to exercise the priority right to be compensated for the construction project price is six months, calculated from the date on which the contract-letting party should pay the construction project price." According to Article 1 of the Reply of the Supreme People's Court on Issues Concerning the Priority Right to Be Compensated for Construction Project Prices, the priority right to be compensated for the construction project price takes effect prior to the mortgage established on the construction project and the ordinary claims enjoyed by the contract-letting party's other creditors. Where a people's court, upon the application of the contract-letting party's other creditors or mortgagees, adopts compulsory enforcement measures against the construction project, this will affect the contractor's priority right to be compensated for the construction project price. In such a case, if the contractor asserts to the enforcement court that it enjoys the priority right to be compensated for the construction project price over the construction project, this constitutes a lawful way of exercising the priority right to be compensated for the construction project price. Dehui Engineering Management (Beijing) Co., Ltd., the cost agency jointly entrusted by Henghe Company and Zhongtian Company, issued the Review Report on the project price in issue on November 3, 2014. On November 24, 2014, Zhongtian Company received notice that the Intermediate People's Court of Jiaozuo City, Henan Province would auction the project in issue pursuant to the application of other creditors of Henghe Company. On December 1, 2014, the Ninth Construction Company of Zhongtian Company submitted to the Intermediate People's Court of Jiaozuo City, Henan Province the Contact Letter Concerning the Auction of the Henghe International Business Convention and Exhibition Center Project under Construction, requesting that its priority right to be compensated over the construction project in issue be confirmed in accordance with the law. On February 5,

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2015, Zhongtian Company stopped construction of the project in issue. On August 4, 2015, Zhongtian Company sent Henghe Company the Work Contact Sheet Concerning the Assertion of the Priority Right to Be Compensated for the Henghe International Business Convention and Exhibition Center Project Price, requesting to enjoy the priority right to be compensated for the project price in issue. On May 5, 2016, the Ninth Construction Company of Zhongtian Company again submitted to the Intermediate People's Court of Luoyang City, Henan Province the Application for Participation in Distribution by Priority Right to Be Compensated, confirming and safeguarding in accordance with the law its priority right to be compensated for the construction project price in issue. Therefore, Henghe Company's appellate ground that Zhongtian Company failed to assert its priority right to be compensated by way of litigation within the six-month exclusion period and that its claim of priority right to be compensated should not be supported could not stand.

Relevant Legal Provisions

Article 286 of the Contract Law of the People's Republic of China (Note: the currently effective provision is Article 807 of the Civil Code of the People's Republic of China).

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