SPC Guiding Case No. 255: Enforcement Case of Tianshui [X] Property Management Co., Ltd. and Ming [X]

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Keywords

Enforcement / enforcement implementation / resisting enforcement / risk warning / voluntary performance

Holding

During enforcement, where the judgment debtor has the ability to enforce but refuses to enforce a judgment or ruling of a people's court, the people's court may issue to the judgment debtor a risk warning of suspected commission of the crime of refusing to enforce a judgment or ruling, informing it of the criminal liability it may bear for refusing to enforce a judgment or ruling, so as to urge the judgment debtor to perform voluntarily.

Basic Facts

In a lease contract dispute between Tianshui [X] Property Management Co., Ltd. and Ming [X], the Maiji District People's Court of Tianshui, Gansu Province rendered Civil Judgment (2020) Gan 0503 Min Chu No. 2444 on November 5, 2020: Ming [X] shall vacate and return the housing involved to Tianshui [X] Property Management Co., Ltd., and pay corresponding housing occupation fees and property management fees. After the judgment was pronounced, Ming [X] was dissatisfied and appealed. On March 18, 2021, the Tianshui Intermediate People's Court of Gansu Province rendered Civil Judgment (2021) Gan 05 Min Zhong No. 58, affirming the items requiring vacation and return of the housing, and adjusting the amounts of housing occupation fees and property management fees. After the judgment took effect, Ming [X] refused to perform. On May 20, 2021, Tianshui [X] Property Management Co., Ltd. applied to the Maiji District People's Court for compulsory enforcement.

During the enforcement, on May 27, 2021, the Maiji District People's Court issued to Ming [X] an enforcement notice and an order to report property, notifying him to vacate the housing involved within a time limit and pay the enforcement amount. Upon expiration of the time limit, Ming [X] still refused to vacate. The Maiji District People's Court subsequently posted a housing vacation announcement ordering Ming [X] to vacate the housing before a specified date, but Ming [X] still refused to cooperate with the enforcement, and gathered family members and relatives and friends to block the enforcement site, causing dozens of onlookers to gather and making it impossible to carry out the enforcement work.

In order to uphold enforcement authority and lawfully safeguard the lawful rights and interests of the winning party, the Maiji District People's Court formally informed Ming [X], in the form of a risk warning of suspected refusal-to-enforce crime, of the provisions of the Criminal Law of the People's Republic of China concerning the crime of refusing to enforce a judgment or ruling, issuing to him a “disciplinary warning” and informing him that his act of refusing to vacate the housing had already been suspected of constituting the crime of refusing to enforce a judgment or ruling, and that if he still failed to vacate the housing involved before the specified date, the people's court would transfer the leads of his suspected crime to the public security organ in accordance with the law. At the same time, the court actively organized negotiation between the parties, offsetting part of the housing occupation fees with the natural gas installation fees invested by Ming [X].

Judgment

Ming [X] vacated and handed over the housing involved to Tianshui [X] Property Management Co., Ltd. before the date specified by the people's court, and paid in full the housing occupation fees and property

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management fees after offset. On October 21, 2021, the Maiji District People's Court issued Case Closure Notice (2021) Gan 0503 Zhi No. 732, and the enforcement of this case was completed.

Reasoning

The key to handling this case lay in what measures to adopt to prompt the judgment debtor to perform the obligations determined in the effective legal instrument.

First, during enforcement, the people's court shall strictly and properly enforce, and lawfully highlight the compulsory nature of enforcement work. Article 236(1) of the Civil Procedure Law of the People's Republic of China (amended in 2017) provides: “Civil judgments and rulings that have become legally effective must be performed by the parties...” Accordingly, the parties shall voluntarily perform civil judgments and rulings that have become legally effective. Where a party has the ability to enforce but refuses to enforce, the people's court may enforce in accordance with the law and, as appropriate, take measures such as fines and detention; where refusal to enforce is serious, criminal liability for the crime of refusing to enforce a judgment or ruling shall be pursued in accordance with the law. Enforcement work is a means of realizing the rights and interests of the winning party through state coercive force. The people's court shall lawfully highlight the compulsory nature of enforcement work, intensify enforcement efforts, and lawfully punish acts of circumventing, evading and resisting enforcement, so as to safeguard the timely realization of the rights and interests of the winning party.

Second, the people's court shall emphasize proper and civilized enforcement during the enforcement process. Compulsory enforcement shall be fair, reasonable and appropriate, take into account the lawful rights and interests of all parties and interested persons, and avoid excessive enforcement. In this case, Ming [X] refused to perform the judgment obligations, did not cooperate with the vacation of the housing involved, and gathered family members and relatives and friends to block the enforcement site, resisting the enforcement of the people's court, which had already been suspected of constituting the crime of refusing to enforce a judgment or ruling. Based on the consideration of proper and civilized enforcement, the people's court issued a risk warning of suspected refusal-to-enforce crime to the judgment debtor, informing Ming [X] in advance of the criminal liability he might bear for refusing to enforce a judgment or ruling, and granting a certain grace period. Although Ming [X] had previously engaged in acts of refusing to perform, after being warned of the legal risk, he issued a performance commitment and vacated and handed over the housing involved and paid the relevant fees before the specified date; comprehensively considering his circumstances, he was not transferred to the public security organ for handling. This enforcement method effectively urged the judgment debtor to voluntarily perform the obligations determined in the effective legal instrument, achieving a good enforcement effect.

Relevant Legal Provisions

Article 313 of the Criminal Law of the People's Republic of China

Article 247 of the Civil Procedure Law of the People's Republic of China (Article 236 of the Civil Procedure Law of the People's Republic of China as amended in 2017 applied in this case)

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