SPC Guiding Case No. 33: Cargill International SA (Switzerland) v. Fujian Jinshi Oil Manufacturing Co., Ltd. et al. (Confirmation of Contract Invalidity Dispute)

Dan Young Business Consultancy — www.danyoungcpa.com

Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Keywords

Civil / confirmation of contract invalidity / malicious collusion / return of property

Holding

1. Where a debtor transfers its main property to its affiliated company at an obviously unreasonably low price, and the affiliated company, knowing that the debtor is in debt, does not actually pay the consideration, it may be found that the debtor and its affiliated company maliciously colluded and harmed the interests of the creditor, and the property transfer contract related thereto shall be determined to be void.

2. Article 59 of the Contract Law of the People's Republic of China applies to the situation where a third party is the owner of the property; where a creditor has an ordinary creditor's right against the debtor, the court shall, in accordance with Article 58 of the Contract Law of the People's Republic of China, order that the property obtained through the void contract be returned to the original property owner, and may not, in accordance with Article 59, directly order the debtor's affiliated company to return to the creditor the debtor's property obtained through a contract that "maliciously colluded and harmed the interests of a third party."

Basic Facts

Cargill International SA (hereinafter "Cargill") had a commercial cooperation relationship with Fujian Jinshi Oil Manufacturing Co., Ltd. (hereinafter "Fujian Jinshi Company"), Dalian Jinshi Oil Manufacturing Co., Ltd., Shenyang Jinshi Soybean Industry Co., Ltd., Sichuan Jinshi Oil Meal Co., Ltd., Beijing Kemameijia Grain and Oil Co., Ltd., and Yifeng Hong Kong Co., Ltd. (these six companies hereinafter collectively referred to as the "Jinshi Group"). Due to a dispute between Cargill and the Jinshi Group over the sale of soybeans, the parties, during the arbitration before the Federation of Oils, Seeds and Fats Associations, reached a Settlement Agreement on June 26, 2005, agreeing that the Jinshi Group would repay the debt by installments within five years, and would mortgage to Cargill all the assets of Fujian Jinshi Company under the Jinshi Group, including land use rights, buildings and fixtures, all equipment, and other property, as security for repayment of the debt. On October 10, 2005, the Federation of Oils, Seeds and Fats Associations rendered Arbitration Award No. 3929 in accordance with the Settlement Agreement, confirming that the Jinshi Group should pay Cargill USD 13.37 million. In May 2006, because the Jinshi Group failed to perform the arbitration award and Fujian Jinshi Company did not cooperate in the mortgage of assets, Cargill applied to the Xiamen Intermediate People's Court of Fujian Province for recognition and enforcement of Arbitration Award No. 3929. On June 26, 2007, the Xiamen Intermediate People's Court, after review, ruled to recognize and enforce the legal effect of the arbitration award. After that ruling took effect, Cargill applied for compulsory enforcement.

On May 8, 2006, Fujian Jinshi Company and Fujian Tianyuan Biological Protein Technology Co., Ltd. (hereinafter "Tianyuan Company") signed a Sales Contract for State-owned Land Use Rights and Assets, agreeing that Fujian Jinshi Company would transfer all its fixed assets, including state-owned land use rights, factory buildings, office buildings, and oil production equipment, to Tianyuan Company at a price of

RMB 25.69 million (unless otherwise specified, hereinafter all amounts are in RMB), of which the state-owned land use rights were priced at RMB 4.64 million and the buildings and equipment at RMB 21.05 million, to be paid in full within 30 days after the contract took effect. Wang Xiaoqi and Liu Feng signed the contract as the legal representatives of Fujian Jinshi Company and Tianyuan Company respectively. Fujian Jinshi Company had obtained the 32,138-square-meter state-owned land use right involved in this case for RMB 4.821 million on December 31, 2001. On May 10, 2006, Fujian Jinshi Company and Tianyuan Company conducted the handover of the subject matter under the sales contract. On June 15 of the same year, Tianyuan Company transferred RMB 25 million to the account of Fujian Jinshi Company at the same bank through its account at the Zhangzhou Sub-branch of the Agricultural Bank of China. On the same day, Fujian Jinshi Company remitted two amounts of RMB 13 million and RMB 12 million from that account to the account of Dalian Jinshi Oil Manufacturing Co., Ltd. under the Jinshi Group, with the purpose noted as current account funds. On June 19 of the same year, Tianyuan Company obtained the above state-owned land use right certificate.

On February 21, 2008, Tianyuan Company and Zhangzhou Development Zone Huifengyuan Trading Co., Ltd. (hereinafter "Huifengyuan Company") signed a Sales Contract, agreeing that Huifengyuan Company would purchase the above land use right and the buildings and equipment thereon, etc., at a total price of RMB 26.69 million, of which the land price was RMB 6.03 million, the building price RMB 3.34 million, and the equipment price RMB 17.32 million. Huifengyuan Company obtained the above state-owned land use right certificate in March 2008. Huifengyuan Company only paid RMB 5.69 million to Tianyuan Company on April 7, 2008, and did not pay the remaining price thereafter.

The direct or indirect controllers of Tianyuan Company, Fujian Jinshi Company, Dalian Jinshi Oil Manufacturing Co., Ltd., and other companies under the Jinshi Group were Wang Zhengliang, Wang Xiaoli, Wang Xiaoqi, and Liu Feng. Wang Zhengliang was the father of Wang Xiaoqi and Wang Xiaoli, and Liu Feng was the husband of Wang Xiaoqi. On October 15, 2009, Zhongfang Grain and Oil Import and Export Co., Ltd. (hereinafter "Zhongfang Grain and Oil Company") obtained 80% of the equity of Tianyuan Company. On January 15, 2010, Tianyuan Company changed its name to Zhongfang Grain and Oil (Fujian) Co., Ltd. (hereinafter "Zhongfang Fujian Company").

Huifengyuan Company was established on February 19, 2008, with original shareholders Song Mingquan and Yang Shuli. On September 16, 2009, Zhongfang Grain and Oil Company and Song Mingquan and Yang Shuli signed an Equity Transfer Agreement, agreeing that Zhongfang Grain and Oil Company would purchase 80% of the equity of Huifengyuan Company. On the same day, Zhongfang Grain and Oil Company (Party A), Huifengyuan Company (Party B), Song Mingquan and Yang Shuli (Party C), and Shenyang Jindou Food Co., Ltd. (Party D) signed an Equity Pledge Agreement, agreeing that: Party C would pledge its 20% equity of Huifengyuan Company to Party A as security for the performance of the "contractual obligations" by Party B, Party C, and Party D; the "contractual obligations" referred to all responsibilities and obligations arising from the "Red Bean Incident" of Party B and Party C under the Equity Transfer Agreement and the Equity Pledge Agreement; the "Red Bean Incident" referred to the series of litigation and arbitration disputes involving the Jinshi Group arising from the mixing of red beans into imported soybeans between Cargill and the Jinshi Group, as well as the related series of litigation and arbitration disputes involving Huifengyuan Company. It was also agreed that the "contractual obligations" of Party B and Party C would be deemed fully performed on the date the following circumstances simultaneously occurred: 1. all trial and enforcement procedures of any litigation and arbitration cases arising from the "Red Bean Incident" had been concluded, and Party B had not suffered property losses; 2. the possible revocation right of Cargill with respect to the contracts involving Party B had been extinguished because the maximum period prescribed by law (five years) had elapsed. On November 18, 2009, Zhongfang Grain and Oil Company obtained 80% of the equity of Huifengyuan Company. Huifengyuan Company did not conduct actual operations after its establishment.

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Because Fujian Jinshi Company no longer had property available for enforcement, resulting in inability to enforce, Cargill brought a lawsuit before the Fujian Provincial Higher People's Court, requesting: first, to confirm that the Sales Contract for State-owned Land Use Rights and Assets signed between Fujian Jinshi Company and Zhongfang Fujian Company was void; second, to confirm that the Sales Contract for state-owned land use rights and assets signed between Zhongfang Fujian Company and Huifengyuan Company was void; third, to order Huifengyuan Company and Zhongfang Fujian Company to return the property obtained under the contracts to the property owner.

Judgment

On October 23, 2011, the Fujian Provincial Higher People's Court rendered civil judgment (2007) Min Min Chu Zi No. 37, confirming that the Sales Contract for State-owned Land Use Rights and Assets between Fujian Jinshi Company and Tianyuan Company (later renamed Zhongfang Fujian Company), and the Sales Contract between Tianyuan Company and Huifengyuan Company, were void; ordering Huifengyuan Company to return to Fujian Jinshi Company the state-owned land use rights obtained under the above contracts within 30 days from the effective date of the judgment, and Zhongfang Fujian Company to return to Fujian Jinshi Company the buildings and equipment obtained under the above contracts within 30 days from the effective date of the judgment. After the judgment was pronounced, Fujian Jinshi Company, Zhongfang Fujian Company, and Huifengyuan Company appealed. On August 22, 2012, the Supreme People's Court rendered civil judgment (2012) Min Si Zhong Zi No. 1, dismissing the appeals and affirming the original judgment.

Reasoning

The Supreme People's Court held that: since Cargill was registered in Switzerland, this case was a foreign-related case, and the parties had no objection to applying the laws of the People's Republic of China to try this case. This case originated from the creditor Cargill's belief that the sales contracts between the debtor Fujian Jinshi Company and its affiliated enterprise Tianyuan Company, and between Tianyuan Company and Huifengyuan Company, concerning land use rights and assets such as buildings and equipment on the ground, should be determined void because they fell within the circumstance of "malicious collusion harming the interests of the state, collective, or a third party" in Item 2 of Article 52 of the Contract Law of the People's Republic of China, and requesting the return of the original property. The issues in dispute in this case were: whether the contracts concluded among Fujian Jinshi Company, Tianyuan Company (later renamed Zhongfang Fujian Company), and Huifengyuan Company constituted contracts of malicious collusion harming the interests of Cargill, and what the legal consequences were after the contracts involved in this case were determined void.

I. On whether the contracts concluded among Fujian Jinshi Company, Tianyuan Company, and Huifengyuan Company constituted contracts of "malicious collusion harming the interests of a third party": first, during the signing and performance of the Sales Contract for State-owned Land Use Rights and Assets by Fujian Jinshi Company and Tianyuan Company, the actual controllers of the two companies were relatives, and Liu Feng and Wang Xiaoqi, as the legal representatives of the two companies respectively, signed the contract. Therefore, it could be found that, in the process of signing and performing the contract transferring Fujian Jinshi Company's state-owned land use rights, buildings, and equipment, Tianyuan Company was very clear about Fujian Jinshi Company's situation, and was clear about the fact that the Jinshi Group, including Fujian Jinshi Company, had been confirmed by the arbitration award to owe Cargill a debt of USD 13.37 million due to the "Red Bean Incident."

Second, the Sales Contract for State-owned Land Use Rights and Assets was concluded on May 8, 2006, in which it was agreed that Tianyuan Company would purchase Fujian Jinshi Company's assets at a price of RMB 25.69 million, with the state-owned land use rights priced at RMB 4.64 million and the buildings and equipment at RMB 21.05 million, and the price was not determined based on the appraisal report of the relevant accounting firm. The court of first instance, based on Fujian Jinshi Company's balance sheet of May

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31, 2006, which recorded the original price of fixed assets as RMB 44,042,705.75 and the net value of fixed assets after depreciation as RMB 32,354,833.70, while the Sales Contract for State-owned Land Use Rights and Assets priced the buildings and equipment at only RMB 21.05 million, correctly found that the price agreed in the Sales Contract for State-owned Land Use Rights and Assets for purchasing Fujian Jinshi Company's assets was an unreasonably low price. In the situation of knowing that the debtor Fujian Jinshi Company owed the creditor Cargill a huge debt, Tianyuan Company purchased Fujian Jinshi Company's main assets at an obviously unreasonably low price, which was sufficient to prove that it and Fujian Jinshi Company had subjective malice when signing the Sales Contract for State-owned Land Use Rights and Assets, constituting malicious collusion, and the performance of that contract was sufficient to harm the interests of the creditor Cargill.

Third, after the signing of the Sales Contract for State-owned Land Use Rights and Assets, although Tianyuan Company transferred RMB 25 million to the account of Fujian Jinshi Company at the same bank, the transfer did not note the purpose of the funds, and Fujian Jinshi Company remitted the RMB 25 million in two amounts to the account of its affiliated enterprise Dalian Jinshi Oil Manufacturing Co., Ltd. on the same day; moreover, according to the financial statements of Fujian Jinshi Company and Tianyuan Company for that year, the entry or expenditure of the RMB 25 million was not reflected, but rather it was reflected that Tianyuan Company still owed Fujian Jinshi Company "other payables" of RMB 121,224,155.87. The court of first instance's finding on this basis that Tianyuan Company did not actually pay the price to Fujian Jinshi Company in accordance with the Sales Contract for State-owned Land Use Rights and Assets was reasonable.

Fourth, from the company registration materials, the shareholder composition of Huifengyuan Company at its establishment seemed unrelated to Fujian Jinshi Company, but from the process of changes in Huifengyuan Company's equity, it could be seen that Huifengyuan Company, when signing the Sales Contract with Tianyuan Company, was aware of the source of the transferred assets and of Fujian Jinshi Company's debt to Cargill. The price agreed in the Sales Contract was RMB 26.69 million, not much different from the price at which Tianyuan Company purchased the assets from Fujian Jinshi Company. Apart from the RMB 5.69 million already paid to Tianyuan Company, Huifengyuan Company did not pay the rest. The court of first instance's finding on this basis that Huifengyuan Company and Tianyuan Company maliciously colluded when signing the Sales Contract and that this was sufficient to harm the interests of the creditor Cargill was not improper.

In summary, the Sales Contract for State-owned Land Use Rights and Assets signed between Fujian Jinshi Company and Tianyuan Company, and the Sales Contract signed between Tianyuan Company and Huifengyuan Company, were contracts of malicious collusion harming the interests of Cargill. In accordance with Item 2 of Article 52 of the Contract Law, both should be determined void.

II. On the legal consequences after the contracts involved in this case were determined void: with respect to the handling of void contracts, people's courts generally should, in accordance with Article 58 of the Contract Law, which provides that "after a contract is void or revoked, the property obtained under the contract shall be returned; where it cannot be returned or it is not necessary to return it, compensation shall be made at a discounted price. The party at fault shall compensate the other party for the losses caused thereby; where both parties are at fault, each shall bear corresponding liability," order the party that obtained the property to return it. Both contracts involved in this case were determined void, and the property involved in the two contracts was the same, of which the state-owned land use rights had been changed from Fujian Jinshi Company through Tianyuan Company to the name of Huifengyuan Company; in the absence of evidence proving that the buildings involved in this case had been transferred from Tianyuan Company to the name of Huifengyuan Company and that the equipment involved had been delivered by Tianyuan Company to Huifengyuan Company, it was not improper for the court of first instance to directly order Huifengyuan Company, which obtained the state-owned land use rights, and Tianyuan Company, which obtained the

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buildings and equipment, to return their respective obtained property to Fujian Jinshi Company.

Article 59 of the Contract Law provides: "Where the parties maliciously collude and harm the interests of the state, the collective, or a third party, the property obtained thereby shall be turned over to the state or returned to the collective or the third party." This provision should apply to the situation where a third party can be determined to be the owner of the property. In this case, Cargill held an ordinary creditor's right against Fujian Jinshi Company, and the property involved in this case was Fujian Jinshi Company's property, not Cargill's property; therefore, the court could only order the return of the disputed property to Fujian Jinshi Company, and could not directly order its return to Cargill.

Relevant Legal Provisions

Item 2 of Article 52 of the Contract Law of the People's Republic of China.

Articles 58 and 59 of the Contract Law of the People's Republic of China.

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