SPC Guiding Case No. 34: Li Xiaoling and Li Pengyu (Application for Enforcement against Xiamen Marine Industry (Group) Co., Ltd. and Xiamen Marine Industry Corporation — Enforcement Reconsideration)

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

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Keywords

Civil litigation / enforcement reconsideration / successor in right / application for enforcement

Holding

Where the obligee determined by an effective legal instrument lawfully transfers the creditor's right before entering the enforcement procedure, the assignee of the creditor's right, that is, the successor in right, may directly apply for enforcement as the applicant for enforcement, and it is not necessary for the enforcement court to make a ruling changing the applicant for enforcement.

Basic Facts

In the loan contract dispute between the plaintiff, Investments 2234 China Fund I B.V. (hereinafter "Company 2234"), and the defendants, Xiamen Marine Industry (Group) Co., Ltd. (hereinafter "Marine Group Company") and Xiamen Marine Industry Corporation (hereinafter "Marine Industry Corporation"), the Supreme People's Court rendered a final judgment on January 11, 2012, ordering: Marine Industry Corporation should repay Company 2234's loan principal of RMB 22.74 million and corresponding interest from the effective date of the judgment; and Company 2234 had a mortgage right over the land use right at No. 3 Fengchao Mountain Road. Before that judgment was made, on June 8, 2011, Company 2234 transferred its creditor's right of RMB 22.74 million principal against Marine Group Company and Marine Industry Corporation to Li Xiaoling and Li Pengyu, and signed a Creditor's Right Transfer Agreement. On April 19, 2012, Li Xiaoling and Li Pengyu applied to the Fujian Provincial Higher People's Court (hereinafter the "Fujian Higher Court") for enforcement based on the above judgment and the Creditor's Right Transfer Agreement. On April 24, the Fujian Higher Court issued enforcement notice (2012) Min Zhi Xing Zi No. 8 to Marine Group Company and Marine Industry Corporation. Marine Group Company refused to accept the enforcement notice, and raised an enforcement objection with the Fujian Higher Court, mainly on the grounds that there was no legal basis for directly changing the subject of enforcement in the enforcement notice, and that the applicant for enforcement Li Pengyu was a public servant, whose acquisition of non-performing creditor's rights was invalid, and therefore the creditor's right transfer contract was invalid. In the objection review, the Fujian Higher Court found that: Li Pengyu was a state public servant, and he himself stated that, in the creditor's right transfer, he had not actually contributed capital, and had withdrawn from the transferred creditor's right share in September 2011.

The Fujian Higher Court held that: I. On the issue of the validity of the creditor's right transfer contract. In accordance with Article 6 of the Minutes of the Symposium of the Supreme People's Court on the Trial of Cases Involving the Transfer of Non-Performing Financial Creditor's Rights (hereinafter the "Minutes"), which provides that the transfer of non-performing creditor's rights by financial asset management companies is invalid where "the assignee is a state public servant or a staff member of a financial regulatory agency," and Item 14 of Article 53 of the Civil Servant Law of the People's Republic of China, which explicitly prohibits state public servants from engaging in or participating in profit-making activities, and other relevant

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provisions, Li Pengyu, as one of the assignees of the creditor's right, was a state public servant, and his purchase of the creditor's right was subject to restrictions on his status. Li Pengyu stated that he had withdrawn from the transferred creditor's right share, but the court in the accepted enforcement case did not review this and still listed Li Pengyu as the applicant for enforcement, which was obviously improper. II. On the issue of directly changing the subject of the applicant for enforcement in the enforcement notice. The Reply of the Supreme People's Court (2009) Zhi Ta Zi No. 1, "Reply on Whether a People's Court May Rule to Change the Subject of the Applicant for Enforcement When Non-Performing Financial Creditor's Rights Determined by a Judgment Are Transferred Multiple Times" (hereinafter "Reply No. 1"), holds that: "The Several Provisions of the Supreme People's Court on Several Issues Concerning Enforcement Work by People's Courts (for Trial Implementation) (hereinafter the 'Enforcement Provisions') have already made clear the qualifications of the applicant for enforcement. Item 2 of Paragraph 1 of Article 18 provides: 'A people's court shall meet the following conditions in accepting an enforcement case: ... (2) the applicant for enforcement is the obligee determined by the effective legal instrument or his or her successor or successor in right.' The 'successor in right' in that item includes persons who succeed to a creditor's right through the transfer of the creditor's right. Where an assignee that lawfully acquires a creditor's right from a financial asset management company transfers the creditor's right again to other ordinary assignees, the enforcement court may, in accordance with the above provisions and based on the creditor's right transfer agreement and the application of the assignee or assignor, rule to change the subject of the applicant for enforcement." On this basis, the court, in directly treating the assignee in this case as the subject of the applicant for enforcement in the enforcement notice without making a ruling to change it, was procedurally improper, and on August 6, 2012, rendered enforcement ruling (2012) Min Zhi Yi Zi No. 1, revoking the enforcement notice (2012) Min Zhi Xing Zi No. 8.

Li Xiaoling refused to accept this and applied to the Supreme People's Court for reconsideration, mainly on the following grounds: I. Li Pengyu's status as a public servant did not affect his qualification as the subject of the creditor's right assignee. II. Before applying for enforcement, the two applicants had completed the creditor's right transfer with Company 2234 and notified the debtor (that is, the person subject to enforcement), and were lawful creditors; in accordance with the relevant provisions of the Enforcement Provisions, an applicant only needs to submit the effective legal instrument, proof of succession to the right, etc., to have the qualification as the applicant for enforcement, and this qualification had already been reviewed at the case filing stage and a case acceptance notice had been served on the applicant; Reply No. 1 applies to the situation of changing upon the assignee's application during the enforcement procedure, while the applicant in this case did not apply to change the subject of enforcement during the enforcement process, so it was not necessary to rule to change the subject of the applicant for enforcement.

Judgment

On December 11, 2012, the Supreme People's Court rendered enforcement ruling (2012) Zhi Fu Zi No. 26: revoking the enforcement ruling (2012) Min Zhi Yi Zi No. 1 of the Fujian Higher Court, and ordering the Fujian Higher Court to re-issue enforcement notices to the two persons subject to enforcement.

Reasoning

The Supreme People's Court held that: the issues in dispute in the reconsideration of this case were whether, where the obligee determined by an effective legal instrument lawfully transfers the creditor's right before entering the enforcement procedure, the assignee of the creditor's right, that is, the successor in right, may directly apply for enforcement as the applicant for enforcement, whether it is necessary to rule to change the subject of the applicant for enforcement, and how to handle the issue of the validity of the creditor's right transfer contract during enforcement.

I. On the issue of whether it is necessary to rule to change the subject of the applicant for enforcement. Changing the subject of the applicant for enforcement is to change the new obligee to the applicant for enforcement in an enforcement procedure that has already commenced based on the application of the

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original applicant for enforcement. In accordance with Articles 18 and 20 of the Enforcement Provisions, the successor in right has the right to apply for enforcement in his or her own name; as long as he or she submits to the people's court proof of succession to the right, proving that he or she is the successor in right determined by the effective legal instrument, this meets the conditions for accepting an enforcement case. This situation does not belong to the strict sense of changing the subject of the applicant for enforcement, but the legal basis of the two is the same, so it may also be understood as a change of the subject of the applicant for enforcement in a broad sense, that is, resolving the issue of subject change at the case filing stage. The opinion of Reply No. 1 is that Article 18 of the Enforcement Provisions may serve as the legal basis for changing the subject of the applicant for enforcement, and that the assignee of the creditor's right may be regarded as the successor in right in that provision. In this case, the original obligee determined by the effective judgment, Company 2234, had transferred the creditor's right before the commencement of enforcement, and did not participate in the enforcement procedure as the applicant for enforcement; rather, the assignees of the right, Li Xiaoling and Li Pengyu, directly applied for enforcement in accordance with Article 18 of the Enforcement Provisions. Because their application had been accepted and filed by the court, and the manner of acceptance was not by ruling but by issuing an acceptance notice, the assignees of the creditor's right had already become the applicants for enforcement, so it was not necessary for the enforcement court to make a ruling changing the subject and then issue an enforcement notice; instead, it should directly issue an enforcement notice. In practice, some courts in this situation first treat the original obligee as the applicant for enforcement, and make a ruling changing the subject after the commencement of enforcement; because this only increases the workload and has no substantive impact, it is not considered procedurally problematic. But it cannot be conversely held that the failure to make a ruling changing the subject is a procedural error.

II. On the issue of the validity of the creditor's right transfer contract, in principle it should be resolved by filing a separate lawsuit, and the enforcement procedure is not an appropriate procedure for examining, judging, and resolving this issue. Article 5 of the Minutes, invoked by the person subject to enforcement in asserting the invalidity of the transfer contract, also provides: in a lawsuit in which the assignee claims the creditor's right against the debtor, where the debtor raises a defense that the non-performing creditor's right transfer contract is invalid, the people's court shall inform it to file a separate lawsuit with the same people's court for invalidation of the non-performing creditor's right transfer contract; where the debtor does not file a separate lawsuit, the people's court shall not support its defense. On the issue of Li Pengyu's qualification as the applicant for enforcement: because it was found in the objection review of this case that Li Pengyu clearly stated that he had withdrawn from the assignment of the creditor's right and would no longer participate in the enforcement of this case, Li Pengyu should no longer be listed as the applicant for enforcement in subsequent enforcement. However, in the absence of other factors, that fact did not affect the qualification of the other assignee of the creditor's right, Li Xiaoling, to receive the assignment and apply for enforcement. Where Li Xiaoling requests continued enforcement, the Fujian Higher Court should continue enforcement with Li Xiaoling as the applicant for enforcement.

Relevant Legal Provisions

Paragraph 1 of Article 236 of the Civil Procedure Law of the People's Republic of China.

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