SPC Guiding Case No. 35: Guangdong Longzheng Investment Development Co., Ltd. v. Guangdong Jingmao Auction House Co., Ltd. (Entrusted Auction Enforcement Reconsideration)

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Keywords

Civil litigation / enforcement reconsideration / entrusted auction / malicious collusion / auction invalidity

Holding

Where an auction house has an associated relationship with the buyer, and the auction conduct has the following circumstances that harm the lawful rights and interests of the rights holders related to the subject matter, the people's court may deem the auction house and the buyer to have maliciously colluded and rule in accordance with law that the auction is void: (1) during the auction, no other unrelated bidder participated in the bidding, or although other bidders participated in the bidding, sufficient bidding was not conducted; (2) the appraised price of the auction subject matter was obviously lower than the actual price, and the transaction was still concluded at that appraised price.

Basic Facts

In the illegal loan dispute among Guangzhou Baiyun Lifa Industrial Company (hereinafter "Lifa Company"), Guangzhou Guangfeng Real Estate Construction Co., Ltd. (hereinafter "Guangfeng Company"), Guangzhou Yinfeng Real Estate Co., Ltd. (hereinafter "Yinfeng Company"), and Guangzhou Jinhui Real Estate Construction Co., Ltd. (hereinafter "Jinhui Company"), the Guangdong Provincial Higher People's Court (hereinafter the "Guangdong Higher Court") rendered civil judgment (1996) Yue Fa Jing Yi Chu Zi No. 4 on May 20, 1997, ordering Guangfeng Company and Yinfeng Company to jointly repay Lifa Company's loan of RMB 160,647,776.07 and interest, and Jinhui Company to bear joint and several liability for compensation.

During the enforcement of the above judgment, the Guangdong Higher Court, on February 11, 1998, ruled to seal the unsold portion of Guangfeng Building registered under Guangfeng Company's name, with an area of 18,851.86 square meters. The next day, it entrusted Guangdong Jingmao Auction House Co., Ltd. (hereinafter "Jingmao Auction House") to conduct the auction. In June of the same year, the Guangdong Yuecai Real Estate Appraisal Office entrusted by the court issued an appraisal report, concluding that the auction price of that portion of Guangfeng Building's property on June 12, 1998 was RMB 102,493,594. The case was later suspended from disposal for some reason.

In early 2001, the Guangdong Higher Court restarted the disposal procedure and, on April 4 of the same year, entrusted Jingmao Auction House to auction the entire Guangfeng Building. In early November of the same year, the Guangdong Higher Court published a notice in newspapers of the proposed auction of the entire Guangfeng Building, requiring all rights holders or home buyers related to Guangfeng Building to declare their rights and register with Jingmao Auction House before November 30, 2001, pending processing by the Guangdong Higher Court. In accordance with the notice, the rights declared to Jingmao Auction House included applications for delivery of pre-sold houses and resettlement houses of Guangfeng Building, and applications for the return of house purchase funds, project funds, bank loans, etc., totaling over RMB 1.5 billion, of which the house purchase funds paid by home buyers exceeded RMB 200 million.

On August 26, 2003, the Guangdong Higher Court entrusted Guangdong Caixing Asset Appraisal Co., Ltd. (i.e., the former Guangdong Yuecai Real Estate Appraisal Office) to appraise the entire Guangfeng Building. On September 10 of the same year, that office issued an appraisal report, concluding that the market value of the entire Guangfeng Building (with a land area of 3,009 square meters and a building area of 34,840 square meters) was RMB 34.45 million, and recommending a reserve price of 70% of the market value, namely RMB 24.12 million. On October 17 of the same year, Jingmao Auction House auctioned the entire Guangfeng Building to Guangdong Longzheng Investment Development Co., Ltd. (hereinafter "Longzheng Company") for RMB 24.12 million. On October 28 of the same year, the Guangdong Higher Court rendered civil ruling (1997) Yue Gao Fa Zhi Zi No. 7, confirming the transfer of the entire Guangfeng Building to Longzheng Company for RMB 24.12 million. On January 5, 2004, the court issued a notice of assistance in enforcement to the Guangzhou land and housing administration department, requiring the transfer of the entire Guangfeng Building's property rights to the buyer, Longzheng Company, and declaring that the rights and interests of all the original rights holders of Guangfeng Building, including home buyers, transferees, mortgagees, and demolished households, would be handled by the court in accordance with law. After Longzheng Company obtained Guangfeng Building, it continued to invest funds to complete the construction on the basis of the original main frame structure, and after completion renamed it "Times International Building."

On June 2, 2011, after re-examining the case in accordance with the opinions of the relevant departments, the Guangdong Higher Court rendered enforcement ruling (1997) Yue Gao Fa Zhi Zi No. 7-1, finding that the shareholders of Jingmao Auction House and the buyer Longzheng Company were relatives and had an associated relationship. The two appraisal prices of Guangfeng Building differed greatly: the first appraisal covered about half the area of Guangfeng Building's property, while the second appraisal covered the entire building's property, but the second appraisal price was only 35% of the first appraisal price; even considering market changes, the price change was obviously abnormal. According to Jingmao Auction House's report, three bidders participated in the auction, but the other two bidders did not raise their placards to bid, and Longzheng Company succeeded in the auction with a single placard raise at the starting price of RMB 24.12 million. However, the court, after coordinating with the relevant judicial organs, was unable to find those two persons, and later notified Jingmao Auction House in writing to provide the bidding materials of those two persons, but Jingmao Auction House failed to provide them as required; Jingmao Auction House also failed to file with the administration for industry and commerce in accordance with Article 4 of the Interim Measures for the Supervision and Administration of Auctions, which provides that "an auction enterprise holding an auction activity shall file with the administration for industry and commerce at the place of the auction activity within seven days before the auction date, ... and shall, within seven days after the end of the auction activity, submit the list of bidders and copies of identity certificates to the administration for industry and commerce at the place of the auction activity for filing." The existing evidence could not confirm that the other two bidders participated in the bidding. In summary, it could be found that the auctioneer Jingmao Auction House and the bidder Longzheng Company engaged in malicious collusion in the auction of Guangfeng Building, causing the auction of Guangfeng Building to fail to conduct fair bidding and harming the interests of home buyers and other creditors. In accordance with Article 58 of the General Principles of the Civil Law of the People's Republic of China (hereinafter the "General Principles of the Civil Law") and Article 65 of the Auction Law of the People's Republic of China (hereinafter the "Auction Law"), the court ruled that the auction was void and revoked the civil ruling (1997) Yue Gao Fa Zhi Zi No. 7 made by the court on October 28, 2003. Against this, the buyer Longzheng Company and Jingmao Auction House respectively raised objections with the Guangdong Higher Court.

After the objections of Longzheng Company and Jingmao Auction House were dismissed, they further applied to the Supreme People's Court for reconsideration. The main reasons for reconsideration were: there was a reasonable explanation for the great difference between the two appraisal values of Guangfeng Building, and the appraisal results were unrelated to the auction house and the buyer; the auction reserve

price was also determined based on the actual situation at the time, and the auction transaction price was caused by objective market factors at the time; Jingmao Auction House's failure to provide the materials of the other two bidders did not violate Paragraph 2 of Article 54 of the Auction Law, which provides that "the retention period of auction materials shall be calculated from the date of termination of the entrusted auction contract and shall be not less than five years"; the auction process of Guangfeng Building was open and lawful, auction notices had been published in newspapers four times before the auction, and the law did not prohibit a company whose shareholders are relatives of the auction house's shareholders from participating in bidding. Therefore, there was no fact that the auction house and the buyer maliciously colluded and harmed the interests of home buyers and other creditors. The Guangdong Higher Court's presumption that the bidders and the auction house engaged in malicious collusion was erroneous.

Judgment

On October 9, 2011, the Guangdong Higher Court rendered enforcement ruling (2011) Yue Gao Fa Zhi Yi Zi No. 1: upholding the opinion of enforcement ruling (1997) Yue Gao Fa Zhi Zi No. 7-1 and dismissing the objection. After the ruling was served, Longzheng Company and Jingmao Auction House applied to the Supreme People's Court for reconsideration. On June 15, 2012, the Supreme People's Court rendered enforcement ruling (2012) Zhi Fu Zi No. 6: dismissing the reconsideration requests of Longzheng Company and Jingmao Auction House.

Reasoning

The Supreme People's Court held that: an auction conducted upon entrustment by a people's court is a judicial compulsory auction, which is different from auctions conducted by citizens, legal persons, and other organizations entrusting auction agencies on their own; the people's court has the authority to examine the legality of the auction procedure and auction results. Therefore, even if the auction has been concluded, where the people's court finds that the auction it entrusted was unlawful, it may still, in accordance with Article 58 of the General Principles of the Civil Law, Article 65 of the Auction Law, and other legal provisions, rule that an auction is void where malicious collusion during the auction caused the auction to fail to conduct fair bidding and harmed the lawful rights and interests of others.

Whether the buyer maliciously colluded with the auction agency during the auction should be comprehensively examined from the auction process, auction results, and other aspects. If the buyer has an associated relationship with the auction agency, the auction process did not conduct sufficient bidding, and the buyer and the auction agency knew that the appraised price and transaction price of the subject matter were obviously too low and still concluded the transaction at that low price, harming the lawful rights and interests of the rights holders related to the subject matter, it may be found that the two parties maliciously colluded.

In this case, where an associated relationship exists between Jingmao Auction House and the buyer due to the kinship of their shareholders, unless it can be proved that other unrelated bidders participated in the bidding during the auction and sufficient bidding was conducted, it may be presumed that Jingmao Auction House and the buyer colluded. The burden of proving that sufficient bidding was conducted shall be borne by Jingmao Auction House and the buyer with which it has an associated relationship. After the auction ended in 2003, Jingmao Auction House indicated in its auction report to the Guangdong Higher Court that two other natural persons participated in the bidding, but did not raise placards to bid on site, and the auction was concluded at the reserve price with only one bid, without bidding. The buyer Longzheng Company and Jingmao Auction House could not provide the information of the other two bidders. Upon review, the filing materials submitted to the administration for industry and commerce provided by them in reconsideration did not include the bidding materials of the other two bidders. The fact that the auction materials had passed the retention period was not a reason for their inability to provide the information of the bidders. Accordingly, it could not be found that other bidders participated in the bidding, and it could be found that Jingmao Auction House and the buyer Longzheng Company colluded.

Since the auction in this case was concluded directly at the reserve price of 70% of the market value determined by the appraisal agency, whether the appraisal price was reasonable was directly related to whether the auction result was fair and reasonable. The previous appraisal of half of the property had already exceeded RMB 100 million, but the appraisal price of the entire property this time was only 35% of the previous appraisal price of half the property. The auction house knew that the price was too low, yet purchased the property through relatives without multiple rounds of bidding, seriously infringing upon the interests of others. The price of auctioning the entire building differed greatly from the price of appraising part of the property, and the explanations of the auction house and the buyer were unconvincing; it could be found that the two parties maliciously colluded. At the same time, the rights related to Guangfeng Building included applications for delivery of pre-sold houses and resettlement houses of Guangfeng Building and applications for the return of house purchase funds, project funds, bank loans, etc., totaling over RMB 1.5 billion, and the house purchase funds registered and paid by home buyers alone exceeded RMB 200 million. However, the auction price in this case was only RMB 24.12 million, which was of no benefit to the applicant for enforcement in this case who had no priority right of repayment, and was clearly a fruitless auction. Since Jingmao Auction House was responsible for accepting the declaration of rights related to Guangfeng Building, and the buyer had an associated relationship with it, it could be found that Jingmao Auction House and the buyer should also be deemed to have known the above issues. Therefore, with respect to the infringement of the rights and interests of the rights holders related to Guangfeng Building caused by the auction in this case, Jingmao Auction House and the buyer Longzheng Company constituted malicious collusion.

In summary, the Guangdong Higher Court's finding that the auctioneer Jingmao Auction House and the buyer Longzheng Company engaged in malicious collusion in the auction of Guangfeng Building, causing the auction of Guangfeng Building to fail to conduct fair bidding and harming the interests of home buyers and other creditors, was correct. Therefore, enforcement rulings (1997) Yue Gao Fa Zhi Zi No. 7-1 and (2011) Yue Gao Fa Zhi Yi Zi No. 1 were not improper, and the reconsideration reasons of Jingmao Auction House and Longzheng Company could not be established.

Relevant Legal Provisions

Article 58 of the General Principles of the Civil Law of the People's Republic of China.

Article 65 of the Auction Law of the People's Republic of China.

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