SPC Guiding Case No. 36: China Investment Credit Guarantee Co., Ltd. v. Haitong Securities Co., Ltd. et al. (Securities Interests Dispute — 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 / matured creditor's right / assistance in performance

Holding

Where the person subject to enforcement, before receiving the enforcement notice from the enforcement court, receives a notice from the enforcement court of another case requiring it to directly pay to the creditor of the applicant for enforcement a debt already confirmed by an effective legal instrument of a court, and performs the debt, the enforcement court may not include that portion of the performed debt within the scope of enforcement.

Basic Facts

In the securities interests dispute among China Investment Credit Guarantee Co., Ltd. (hereinafter "China Investment Company"), Haitong Securities Co., Ltd. (hereinafter "Haitong Securities"), and the Fuzhou Guangda Road Securities Business Department of Haitong Securities Co., Ltd. (hereinafter the "Haitong Securities Business Department"), the Fujian Provincial Higher People's Court (hereinafter the "Fujian Higher Court") rendered civil mediation statement (2009) Min Min Chu Zi No. 3 on June 11, 2009, which had become legally effective. China Investment Company applied to the Fujian Higher Court for enforcement on June 25, 2009. The Fujian Higher Court accepted the case for enforcement on July 3 of the same year, and on the 15th of that month issued to the persons subject to enforcement, the Haitong Securities Business Department and Haitong Securities, enforcement notice (2009) Min Zhi Xing Zi No. 99, ordering them to perform the obligations determined by the legal instrument.

The persons subject to enforcement, Haitong Securities and the Haitong Securities Business Department, refused to accept the enforcement notice (2009) Min Zhi Xing Zi No. 99 of the Fujian Higher Court and raised a written objection to that court. The objection stated that: on June 12, 2009, the persons subject to enforcement, in accordance with the Notice on Performance of Matured Debt of the Dongcheng District People's Court of Beijing (hereinafter the "Beijing Dongcheng Court"), performed to Pan Ding, the enforcement creditor of China Investment Company, the matured debt of RMB 11,222,761.55 owed to China Investment Company, and that amount was remitted into the account of the Beijing Dongcheng Court; and the Shanghai No. 2 Intermediate People's Court (hereinafter the "Shanghai No. 2 Intermediate Court"), for the purpose of enforcing the dispute case between Shanghai Zhongwei Asset Management Co., Ltd. and China Investment Company, issued to them a notice of assistance in enforcement, and on June 22, 2009, deducted and transferred RMB 8,777,238.45 from Haitong Securities' bank deposits. The above totaled RMB 20 million paid to China Investment Company's creditors, so there no longer existed any fact that they had not performed the payment obligation determined by civil mediation statement (2009) Min Min Chu Zi No. 3, and the enforcement notice issued to them by the Fujian Higher Court should be revoked. For this reason, the Fujian Higher Court rendered ruling (2009) Min Zhi Yi Zi No. 1, finding that the objection of the persons subject to enforcement was established, and revoking the enforcement notice (2009) Min Zhi Xing Zi No. 99. The applicant for enforcement, China Investment Company, refused to accept this and filed a

reconsideration application with the Supreme People's Court. The applicant for enforcement's main reason was that: both the Notice on Performance of Matured Debt of the Beijing Dongcheng Court and the notice of assistance in enforcement of the Shanghai No. 2 Intermediate Court violated the spirit of the reply letter (2000) Zhi Jian Zi No. 304 of the Supreme People's Court to the Jiangsu Provincial Higher People's Court that debts determined by court judgments do not apply to the provisions of Article 300 of the Opinions on Several Issues Concerning the Application of the Civil Procedure Law of the People's Republic of China (hereinafter "Article 300 of the Opinions"), and the Fujian Higher Court's ruling was erroneous.

Judgment

On April 13, 2010, the Supreme People's Court rendered enforcement ruling (2010) Zhi Fu Zi No. 2, dismissing the reconsideration request of China Investment Credit Guarantee Co., Ltd., and upholding the ruling (2009) Min Zhi Yi Zi No. 1 of the Fujian Higher Court.

Reasoning

The Supreme People's Court held that: the reply letter (2000) Zhi Jian Zi No. 304 of the Supreme People's Court was a reply to an individual case and did not have general effect. With the adjustment of the Civil Procedure Law regarding enforcement jurisdiction, the view in that letter — based on the fact that enforcement could only be under the jurisdiction of the court of first instance — that matured debts determined by court judgments do not apply to Article 300 of the Opinions, was no longer reasonable. The correct interpretation of this issue should be: a debt determined by a court judgment (or mediation statement, hereinafter generally referred to as a judgment) may also be enforced by a non-judgment court in accordance with the procedure prescribed in Article 300 of the Opinions. Because the matured debt has already been determined by a court judgment, a third party (the debtor of the person subject to enforcement) cannot raise an objection that the debt does not exist (denying the conclusion of the effective judgment). In this case, the Beijing Dongcheng Court and the Shanghai No. 2 Intermediate Court were exactly enforcing the debt determined by civil mediation statement (2009) Min Min Chu Zi No. 3 of the Fujian Higher Court in accordance with the above spirit. The person subject to enforcement, Haitong Securities, had no right to raise an objection to the debt determined by the effective mediation statement, could not resist the compulsory deduction and transfer act of the Shanghai No. 2 Intermediate Court, and its voluntary performance in accordance with the notice of the Beijing Dongcheng Court was also lawful.

The time at which the persons subject to enforcement, the Haitong Securities Business Department and Haitong Securities, received the notices of the relevant courts and their assistance in the enforcement of the relevant courts was before the Fujian Higher Court issued the enforcement notice to them. After their assistance in the enforcement of the relevant courts, their RMB 20 million debt owed to the applicant for enforcement, China Investment Company, under civil mediation statement (2009) Min Min Chu Zi No. 3 had been extinguished, and the persons subject to enforcement had the right to request that the Fujian Higher Court not enforce compulsory execution based on that mediation statement again.

In summary, ruling (2009) Min Zhi Yi Zi No. 1 of the Fujian Higher Court was clear in its factual findings and correct in its application of law. Therefore, the reconsideration request of China Investment Company was dismissed, and ruling (2009) Min Zhi Yi Zi No. 1 of the Fujian Higher Court was upheld.

Relevant Legal Provisions

Paragraph 1 of Article 224 of the Civil Procedure Law of the People's Republic of China.

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