SPC Guiding Case No. 43: The Haikou Binhai Avenue (Tianfu Hotel) Securities Business Department of Guotai Junan Securities Co., Ltd. (Application for Compensation for Wrongful Enforcement)

Dan Young Business Consultancy — www.danyoungcpa.com

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

Discussed and adopted by the Judicial Committee of the Supreme People's Court; issued on December 25, 2014.

Keywords

State compensation / judicial compensation / wrongful enforcement / execution reversal

Holding

1. Where a compensation claimant applies for state compensation on the ground that a people's court has the unlawful infringement circumstances specified in Article 38 of the State Compensation Law of the People's Republic of China, the people's court shall examine both whether the judicial act complained of by the compensation claimant was unlawful and whether state compensation liability should be borne.

2. Where, in hearing an execution objection case, a people's court revokes the original execution act and restores the executed property to its pre-execution state because the parties' execution settlement agreement on which the original execution act was based infringed the lawful rights and interests of a person not involved in the case, such revocation ruling and execution reversal do not constitute wrongful execution under Article 38 of the State Compensation Law of the People's Republic of China.

Basic Facts

The compensation claimant, the Haikou Binhai Avenue (Tianfu Hotel) Securities Business Department of Guotai Junan Securities Co., Ltd. (hereinafter the "Guotai Haikou Business Department"), applied, alleging that the Hainan Provincial Higher People's Court (hereinafter the "Hainan Higher Court"), without conducting a retrial of the original effective judgment or of its rulings (1999) Qiong Gao Fa Zhi Zi No. 9-10, 9-11, 9-12, and 9-13 (hereinafter respectively referred to as the "9-10, 9-11, 9-12, and 9-13 Rulings"), rendered ruling (1999) Qiong Gao Fa Zhi Zi No. 9-16 (hereinafter the "9-16 Ruling"), and, on the basis of that ruling, conducted execution reversal and revoked the original 9-11, 9-12, and 9-13 Rulings, causing the Guotai Haikou Business Department to lose real property it had lawfully acquired; this should be confirmed as unlawful and state compensation should be paid.

The Hainan Higher Court responded that: its 9-16 Ruling merely corrected errors in its earlier execution rulings and did not change the original execution basis, so it was not necessary to go through the trial supervision procedure. Its 9-16 Ruling and the execution reversal were based on a finding that the execution objection raised by a person not involved in the case was established, restoring the disputed property to the ownership status at the time the execution case commenced; there was no causal relationship between that act and the creditor's rights of the Guotai Haikou Business Department as determined by judgment, or its as-yet-unclear loss claims. The Guotai Haikou Business Department's compensation claim could not be established and should be dismissed.

Upon trial, the court found that: on September 21, 1998, the Hainan Higher Court rendered civil judgment (1998) Qiong Jing Chu Zi No. 8 in the securities repurchase dispute in which the Guotai Haikou Business Department sued Hainan International Leasing Co., Ltd. (hereinafter "Hainan Leasing Company"), ordering Hainan Leasing Company to pay the Guotai Haikou Business Department securities repurchase principal of

RMB 36.2 million and interest of RMB 16,362,296 calculated up to November 30, 1997, and to pay interest on the RMB 36.2 million principal, calculated at an annual rate of 18% from December 1, 1997 until full payment.

In December 1998, the Guotai Haikou Business Department applied to the Hainan Higher Court for execution of that judgment. After accepting the case, the Hainan Higher Court issued an execution notice to Hainan Leasing Company and found upon investigation that the company had no property available for execution. Hainan Leasing Company claimed that it had a matured creditor's right against a third party, Hainan Zhongbiao Property Development Co., Ltd. (hereinafter "Zhongbiao Company"). Zhongbiao Company acknowledged this and expressed willingness to directly offset part of the property of Jingrui Building to the Guotai Haikou Business Department to repay part of its debt to Hainan Leasing Company. The Hainan Higher Court therefore rendered the 9-10 Ruling on June 13, 2000, sealing part of the property of Jingrui Building, and announced the same on that day. On June 29 of the same year, the Guotai Haikou Business Department, Hainan Leasing Company, and Zhongbiao Company jointly signed an Execution Settlement Agreement, agreeing that Hainan Leasing Company and Zhongbiao Company would use part of the property of Jingrui Building owned by Zhongbiao Company to offset the debts owed to the Guotai Haikou Business Department. On that basis, the Hainan Higher Court rendered the 9-11 Ruling on June 30, approving the settlement agreement.

During the process of handling the transfer registration, a person not involved in the case, the Liquidation Group of Hainan Development Bank (hereinafter the "Haifazhan Liquidation Group"), and Hainan Chuangren Real Estate Co., Ltd. (hereinafter "Chuangren Company") raised execution objections, claiming that the property offset by the Hainan Higher Court's 9-11 Ruling belonged to them and that the ruling harmed their lawful rights and interests. After review, the Hainan Higher Court rendered the 9-12 and 9-13 Rulings respectively, dismissing the objections. On March 14, 2002, the Guotai Haikou Business Department, in accordance with the 9-11 Ruling, completed the registration of the change of ownership of the offset property in its own name and paid the relevant taxes and fees. After the Haifazhan Liquidation Group and Chuangren Company appealed, the Hainan Higher Court, upon further review, held that: the 9-11 Ruling had offset to the Guotai Haikou Business Department property that the former Jintong Urban Credit Cooperative (later merged into Hainan Development Bank) had purchased from Zhongbiao Company and for which most of the price had already been paid, treating it as Zhongbiao Company's property; this harmed the interests of the Haifazhan Liquidation Group and was indeed improper; the Haifazhan Liquidation Group's objection grounds were established, while Chuangren Company's objection claim should be resolved through litigation. On that basis, the Hainan Higher Court rendered the 9-16 Ruling on July 31, 2003, revoking the 9-11, 9-12, and 9-13 Rulings and reversing the transfer of the offset property to its pre-execution state.

On December 18, 2004, the Haikou Intermediate People's Court (hereinafter the "Haikou Intermediate Court") rendered civil judgment (2003) Hai Zhong Fa Min Zai Zi No. 37 in a property ownership confirmation dispute in which the Haifazhan Liquidation Group was the plaintiff, Zhongbiao Company the defendant, and Chuangren Company a third party, confirming that the original offset property belonged respectively to Chuangren Company and the Haifazhan Liquidation Group. That judgment became legally effective. In June 2005, the Guotai Haikou Business Department applied to the Haikou Local Taxation Bureau for a tax refund, and the Haikou Local Taxation Bureau refunded the deed tax to the Guotai Haikou Business Department. On August 4, 2006, the Hainan Higher Court rendered civil ruling 9-18, holding that, since Hainan Leasing Company had been adjudicated bankrupt for repayment of debts and the grounds for the Hainan Leasing Company Liquidation Group's request to terminate execution were established, the execution of civil judgment (1998) Qiong Jing Chu Zi No. 8 was terminated.

The creditor's rights involved in civil judgment (1998) Qiong Jing Chu Zi No. 8 were transferred by agreement to Guotai Junan Investment Management Co., Ltd. (hereinafter "Guotai Investment Company") in July 2004. On November 29, 2005, Hainan Leasing Company applied to the Haikou Intermediate Court for bankruptcy

liquidation. During the bankruptcy proceedings, Guotai Investment Company declared its relevant creditor's rights, including those determined by civil judgment (1998) Qiong Jing Chu Zi No. 8, to the administrator of Hainan Leasing Company. On March 31, 2009, the Haikou Intermediate Court rendered civil ruling (2005) Hai Zhong Fa Po Zi No. 4-350, ruling to terminate the bankruptcy liquidation proceedings; Guotai Investment Company's creditor's rights were not satisfied.

On December 27, 2010, the Guotai Haikou Business Department applied to the Hainan Higher Court for state compensation, on the ground that the Hainan Higher Court's 9-16 Ruling and its conduct were unlawful and that the offset property under the 9-11 Ruling should be returned or the relevant losses compensated. On July 4, 2011, the Hainan Higher Court rendered compensation decision (2011) Qiong Fa Pei Zi No. 1, deciding not to compensate the Guotai Haikou Business Department's compensation application. The Guotai Haikou Business Department refused to accept that decision and applied to the Compensation Committee of the Supreme People's Court for a compensation decision.

Judgment

On March 23, 2012, the Compensation Committee of the Supreme People's Court rendered state compensation decision (2011) Fa Wei Pei Zi No. 3: upholding the compensation decision (2011) Qiong Fa Pei Zi No. 1 of the Hainan Provincial Higher People's Court.

Reasoning

The Supreme People's Court held that: the judgment debtor Hainan Leasing Company had no ability to repay its debts. Because it had a matured creditor's right against the third party Zhongbiao Company, and Zhongbiao Company did not object and acknowledged performing the debt, Zhongbiao Company concealed the fact that it had already signed a housing sale contract with a person not involved in the case and had received most of the purchase price, and reached an Execution Settlement Agreement with the Guotai Haikou Business Department and Hainan Leasing Company. The Hainan Higher Court rendered the 9-11 Ruling on that basis. However, that execution settlement agreement infringed the lawful rights and interests of a person not involved in the case, and the ownership of the disputed property acquired by the Guotai Haikou Business Department on that basis should not be protected by law. The Hainan Higher Court's 9-16 Ruling was rendered in the execution procedure on the basis of a finding that the execution objection raised by the person not involved in the case was established, revoking the original 9-11 Ruling and restoring the executed disputed property to its pre-execution state. That ruling and its execution reversal did not violate the law, were corroborated by the facts determined in the effective judgment (2003) Hai Zhong Fa Min Zai Zi No. 37 of the Haikou Intermediate Court, and their substantive handling was not improper. The essential reason the Guotai Haikou Business Department's creditor's rights were not realized was that Hainan Leasing Company had no ability to repay its debts; although the Guotai Haikou Business Department and its creditor's right assignee declared their bankruptcy creditor's rights, they still could not obtain satisfaction, and the non-realization of those creditor's rights had no legal causal connection with the Hainan Higher Court's 9-16 Ruling and its execution acts. Therefore, the Hainan Higher Court's 9-16 Ruling and its execution reversal did not constitute wrongful execution as provided in the State Compensation Law and relevant judicial interpretations.

Relevant Legal Provisions

Article 38 of the State Compensation Law of the People's Republic of China.

Disclaimer: This translation is provided for reference and informational purposes only. In the event of any discrepancy, the official Chinese text issued by the Supreme People's Court shall prevail. This translation does not constitute legal advice.