SPC Guiding Case No. 54: The Anhui Branch of Agricultural Development Bank of China v. Zhang Dabiao and Anhui Changjiang Financing Guarantee Group Co., Ltd. (Action for Objection to Enforcement Dispute)

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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 November 19, 2015.

Keywords

Civil / action for objection to enforcement / pledge over money / specification / transfer of possession

Holding

Where the parties open a special margin account for the pledged money as agreed, and the pledgee obtains the right of possession and control over the special account, this satisfies the requirements of specification of money and transfer of possession. Even if the fund balance in the account fluctuates, this does not affect the establishment of the pledge over the money.

Basic Facts

The plaintiff, the Anhui Branch of Agricultural Development Bank of China ("ADBC Anhui Branch"), alleged as follows. It and the third party, Anhui Changjiang Financing Guarantee Group Co., Ltd. ("Changjiang Guarantee"), cooperated on credit guarantee business in accordance with the Cooperation Agreement on Credit Guarantee Business signed by them. The funds in the guarantee margin special account opened by Changjiang Guarantee with ADBC Anhui Branch were in fact the pledge guarantee provided by Changjiang Guarantee to it. It requested the court to order that it enjoyed a pledge over the funds in the account.

The defendant, Zhang Dabiao, argued that the Cooperation Agreement on Loan Guarantee Business between ADBC Anhui Branch and the third party Changjiang Guarantee contained no manifestation of intention to pledge; the funds in the account in issue were themselves floating and did not satisfy the requirement of specification of money; and ADBC Anhui Branch did not enjoy a pledge over the funds in the margin account in issue.

The third party, Changjiang Guarantee, recognized ADBC Anhui Branch's opinion that it enjoyed a pledge over the account funds.

The court found upon trial as follows. On April 7, 2009, ADBC Anhui Branch and Changjiang Guarantee signed a Cooperation Agreement on Loan Guarantee Business. Article 3, "Guarantee Method and Guarantee Liability," agreed that the guarantee provided by Party A (Changjiang Guarantee) to Party B (ADBC Anhui Branch) was a joint and several liability guarantee, and that the scope of the guarantee included the principal claim and interest, liquidated damages, and the expenses of realizing the claim. Article 4, "Guarantee Margin (Guarantee Deposit)," agreed that Party A would open a guarantee margin special account with Party B, that the bank handling the guarantee margin special account was the Business Department of ADBC Anhui Branch, with an account number ending in 9511; that Party A should deposit the margin agreed for the specific guarantee business into the guarantee margin special account before the guarantee contract was signed, and the margin to be deposited by Party A should be no less than 10% of the loan amount; and that Party A should not use the funds in the guarantee margin special account without Party B's consent. Article 6, "Collection, Extension of Loans and Undertaking of Guarantee Liability," agreed that if the borrower failed to repay in full on time, Party A should, within five days after receiving written notice

from Party B, undertake guarantee liability to Party B in accordance with Article 3 and transfer the corresponding amount to the account designated by Party B. Article 8, “Liability for Breach of Contract,” agreed that if the balance of the guarantee special account opened by Party A with Party B fell below the agreed amount for whatever reason, Party A should make up the shortfall within three working days after receiving notice from Party B, and that before the shortfall was made up, Party B could suspend the business under this Agreement; and that if Party A violated the agreement in Article 6 and failed to perform its guarantee liability on time, Party B had the right to deduct and transfer the corresponding amount from the guarantee fund special account opened by Party A with it or from any other account. On October 30, 2009 and October 30, 2010, ADBC Anhui Branch and Changjiang Guarantee separately signed two Cooperation Agreements on Credit Guarantee Business with content similar to the aforesaid cooperation agreement.

After the aforesaid agreements were signed, ADBC Anhui Branch and Changjiang Guarantee cooperated on loan guarantee business, and Changjiang Guarantee opened a guarantee margin account with ADBC Anhui Branch, with an account number ending in 9511. Changjiang Guarantee deposited the guarantee margin at the prescribed proportion in accordance with the agreements, and on that basis provided joint and several liability guarantee for the corresponding loans. From April 3, 2009 to December 31, 2012, 107 transactions occurred in the account, of which the credit transactions were the margin deposited by Changjiang Guarantee; and the debit transactions mainly involved two categories, one being the margin returned by ADBC Anhui Branch upon application by Changjiang Guarantee after the loan was repaid, with part returned to the debtor’s account, and the other being the margin deducted by ADBC Anhui Branch from the account after the loan became overdue.

On December 19, 2011, in the course of trying the case of Zhang Dabiao against Anhui Liuben Food Co., Ltd. and Changjiang Guarantee et al., a private lending dispute, the Intermediate People’s Court of Hefei City, Anhui Province, upon application by Zhang Dabiao, preserved funds of RMB 14,957,852 in the aforesaid margin account of Changjiang Guarantee. After the judgment in that case became effective, the Intermediate People’s Court of Hefei City transferred funds of RMB 13,383,132.57 from the aforesaid margin account to its own account. ADBC Anhui Branch, as an outsider, raised an objection to enforcement, which was dismissed by the Intermediate People’s Court of Hefei City by ruling on November 2, 2012. Subsequently, ADBC Anhui Branch brought the present lawsuit arising from the enforcement objection dispute with the defendant Zhang Dabiao and the third party Changjiang Guarantee.

Judgment

On March 28, 2013, the Intermediate People’s Court of Hefei City, Anhui Province rendered Civil Judgment (2012) He Min Yi Chu Zi No. 00505, dismissing ADBC Anhui Branch’s claims. After the judgment was pronounced, ADBC Anhui Branch appealed. On November 19, 2013, the Higher People’s Court of Anhui Province rendered Civil Judgment (2013) Wan Min Er Zhong Zi No. 00261: (1) the Civil Judgment (2012) He Min Yi Chu Zi No. 00505 rendered by the Intermediate People’s Court of Hefei City, Anhui Province was revoked; and (2) ADBC Anhui Branch enjoyed a pledge over the funds of RMB 13,383,132.57 in the account of Changjiang Guarantee (account number ending in 9511).

Reasoning

The effective judgment held as follows. The focal point of dispute at second instance in this case was whether ADBC Anhui Branch enjoyed a pledge over the funds in the account in issue. This should be examined from two aspects: whether a pledge relationship existed between ADBC Anhui Branch and Changjiang Guarantee, and whether the pledge was established.

I. Whether a pledge relationship existed between ADBC Anhui Branch and Changjiang Guarantee

Article 210 of the Property Law of the People’s Republic of China (the “Property Law”) provides: “To establish a pledge, the parties shall conclude a pledge contract in written form. A pledge contract shall generally include the following clauses: (1) the type and amount of the secured claim; (2) the time limit for the

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debtor to perform the debt; (3) the name, quantity, quality and condition of the pledged property; (4) the scope of the guarantee; and (5) the time of delivery of the pledged property." In this case, although ADBC Anhui Branch and Changjiang Guarantee did not separately conclude a contract bearing the words "pledge," based on the content of the clauses agreed in Articles 4, 6 and 8 of the Agreement, ADBC Anhui Branch and Changjiang Guarantee reached consensus through consultation on the following matters: Changjiang Guarantee would set up a guarantee margin special account for the margin deposited for guarantee business, and would deposit the margin at a certain proportion of the loan amount; ADBC Anhui Branch, as the account-opening bank, would obtain control over the margin deposited by Changjiang Guarantee into the account, and Changjiang Guarantee could not freely use the funds in the account without consent; and if Changjiang Guarantee failed to perform its guarantee liability, ADBC Anhui Branch had the right to deduct and transfer the corresponding amount from the account. This consensus expressly agreed on the type and amount of the secured claim, the time limit for performance of the debt, the quantity of the pledged property and the time of transfer, the scope of the guarantee, and the conditions for exercising the pledge, and possessed the general clauses of a pledge contract under Article 210 of the Property Law. It should therefore be found that ADBC Anhui Branch and Changjiang Guarantee concluded a written pledge contract.

II. Whether the pledge in issue was established

Article 212 of the Property Law provides: "A pledge is established upon delivery of the pledged property by the pledgor." Article 85 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the Guarantee Law of the People's Republic of China provides that where the debtor or a third party specifies its money in the form of a special account, sealed money, or margin, and then transfers it to the creditor's possession as security for a claim, the creditor may, when the debtor fails to perform its debt, be paid in priority from such money. Pursuant to the aforesaid law and judicial interpretation, money, as a special kind of movable property, may be pledged. As a special kind of pledge over movable property, a pledge over money differs from mortgage over immovable property and pledge over rights, and should also satisfy the two requirements of specification of money and transfer to the creditor's possession, so that the money is neither commingled with the pledgor's other property nor independent of the pledgee's property.

In this case, first, the money was specified in the form of margin. Changjiang Guarantee opened the account with ADBC Anhui Branch on April 3, 2009, and it was consistent with the account number agreed in the Cooperation Agreement on Loan Guarantee Business, that is, the parties had already, in accordance with the agreement, opened a guarantee margin special account for the pledged money. After the margin special account was opened, the funds transferred into the account were the margin deposited by Changjiang Guarantee into the account at a certain proportion of each guaranteed loan amount; the funds transferred out of the account were the return and deduction of the margin by ADBC Anhui Branch; and the account was not used for routine settlement. This satisfied the requirement of specification of money in the form of a special account under Article 85 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the Guarantee Law. Second, the specified money had been transferred to the creditor's possession. Possession means the factual state of controlling and managing a thing. The margin account in issue was opened with ADBC Anhui Branch. As the owner of the funds in the guarantee margin special account, Changjiang Guarantee should have enjoyed the right to freely withdraw them, but the Cooperation Agreement on Loan Guarantee Business agreed that Changjiang Guarantee could not use the funds in the guarantee margin special account without ADBC Anhui Branch's consent. At the same time, the Cooperation Agreement agreed that when the guaranteed loan matured and was not repaid, ADBC Anhui Branch had the right to directly deduct the funds in the guarantee margin special account, and that ADBC Anhui Branch, as the creditor, had obtained control over the margin account in issue and actually controlled and managed the account. This transfer of control satisfied the requirement of transfer of the pledged money to the creditor's possession. Accordingly, it should be found that the parties had established a pledge over the funds in the margin account in issue.

On the question of whether fluctuation of the account funds affected the specification of money. The specification of margin in the form of a special account does not equate to fixation. In the course of use of the account in issue, as guarantee business was conducted, the fund balance of the margin account was floating. When the guarantee company conducted new loan guarantee business, it needed to deposit a certain proportion of margin as agreed, which necessarily led to an increase in the account funds; when the loan guaranteed by the guarantee company matured and was not repaid, the deduction of the funds in the margin account necessarily led to a decrease in the account funds. Although the funds in the account were in a floating state according to the occurrence of business, they all corresponded to the margin business, and apart from the deposited margin, the funds paid out were all used for the return and deduction of the margin, and were not used for routine settlement of non-margin business. That is, ADBC Anhui Branch could control the account, and Changjiang Guarantee's use of the funds in the account was restricted. Therefore, the fluctuation of the account funds still satisfied the requirements of specification and transfer of possession of money as a pledge, and did not affect the establishment of the pledge over the money.

(Judges of the effective judgment: Huo Nan, Xu Xuhong, Lu Yuhe)

Relevant Legal Provisions

Article 212 of the Property Law of the People's Republic of China.

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