SPC Guiding Case No. 57: The Ningbo Branch of Wenzhou Bank Co., Ltd. v. Zhejiang Chuangling Electric Appliance Co., Ltd. et al. (Financial Loan Contract Dispute)

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

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Keywords

Civil / financial loan contract / maximum-amount guarantee

Holding

Where there are several maximum-amount guarantee contracts and a specific loan contract selectively lists only some of the maximum-amount guarantee contracts, if the debt arises within the settlement period agreed in the maximum-amount guarantee contract and the creditor has not expressly waived the guarantee right, the guarantor under the unlisted maximum-amount guarantee contract shall also bear guarantee liability within the maximum amount of the claim.

Basic Facts

The plaintiff, the Ningbo Branch of Wenzhou Bank Co., Ltd. of Zhejiang Province ("Wenzhou Bank"), alleged as follows. It signed "maximum-amount guarantee contracts" with the defendants Ningbo Tingwei Electronic Technology Co., Ltd. ("Tingwei Electronics"), Cen Jianfeng, and Ningbo Sanhao Molding Manufacturing Co., Ltd. ("Sanhao Molding"), under which the three defendants agreed to provide joint and several liability guarantees for the loans of Zhejiang Chuangling Electric Appliance Co., Ltd. ("Chuangling Electric") within a certain period and maximum amount. After Chuangling Electric borrowed from Wenzhou Bank, it failed to repay part of the loans on time. Wenzhou Bank therefore sued, requesting the court to order Chuangling Electric to repay the loan principal of RMB 2.5 million and to pay interest, penalty interest and attorney fees; and to order Cen Jianfeng, Sanhao Molding and Tingwei Electronics to bear joint and several guarantee liability for the aforesaid debts.

The defendants Chuangling Electric and Cen Jianfeng did not file a defense.

The defendant Sanhao Molding argued that the attorney fees claimed by the plaintiff should not be supported.

The defendant Tingwei Electronics argued that the maximum-amount guarantee contract it signed with Wenzhou Bank was not included in the scope of the guarantee contracts agreed in the loan contract, and therefore it should not bear guarantee liability.

The court found upon trial as follows. On September 10, 2010, Wenzhou Bank signed maximum-amount guarantee contracts numbered Wen Yin 9022010 Nian Gao Bao Zi No. 01003 and No. 01004 with Tingwei Electronics and Cen Jianfeng respectively, under which Tingwei Electronics and Cen Jianfeng voluntarily provided joint and several liability guarantee for the principal and interest, penalty interest, etc. of debts of Chuangling Electric arising between September 10, 2010 and October 18, 2011 with a balance not exceeding RMB 11 million.

On October 12, 2011, Wenzhou Bank signed maximum-amount guarantee contracts numbered Wen Yin 9022011 Nian Gao Bao Zi No. 00808 and No. 00809 with Cen Jianfeng and Sanhao Molding respectively, under which Cen Jianfeng and Sanhao Molding voluntarily provided joint and several liability guarantee for the principal and interest, penalty interest, etc. of debts of Chuangling Electric arising between September

10, 2010 and October 18, 2011 with a balance not exceeding RMB 5.5 million.

On October 14, 2011, Wenzhou Bank signed a loan contract numbered Wen Yin 9022011 Qi Dai Zi No. 00542 with Chuangling Electric, under which Wenzhou Bank issued a loan of RMB 5 million to Chuangling Electric with a maturity date of October 13, 2012, and listed the guarantee contract numbers as Wen Yin 9022011 Nian Gao Bao Zi No. 00808 and No. 00809. After the loan was issued, Chuangling Electric repaid loan principal of RMB 2.5 million on August 6, 2012, and Tingwei Electronics successively paid loan interest of RMB 31,115.3, RMB 53,693.71 and RMB 21,312.59 on June 29, October 31 and November 30, 2012. As of April 24, 2013, Chuangling Electric still owed loan principal of RMB 2.5 million and interest of RMB 141,509.01. It was further found that Wenzhou Bank incurred attorney fees of RMB 95,200 to realize its claims in this case.

Judgment

On December 12, 2013, the People's Court of Jiangdong District, Ningbo City, Zhejiang Province rendered Civil Judgment (2013) Yong Dong Shang Chu Zi No. 1261: (1) Chuangling Electric shall, within ten days from the effective date of this judgment, repay Wenzhou Bank the loan principal of RMB 2.5 million, pay interest of RMB 141,509.01, and pay interest and penalty interest calculated in accordance with the loan contract from April 25, 2013 until the date of performance determined by this judgment; (2) Chuangling Electric shall, within ten days from the effective date of this judgment, compensate Wenzhou Bank for attorney fees of RMB 95,200 incurred to realize the claims; and (3) Cen Jianfeng, Sanhao Molding and Tingwei Electronics shall bear joint and several liability for the amounts under items (1) and (2), and after bearing guarantee liability, shall have the right to seek recourse against Chuangling Electric. After the judgment was pronounced, Tingwei Electronics appealed on the ground that it was not listed in the loan contract and therefore should not bear guarantee liability. On May 14, 2014, the Intermediate People's Court of Ningbo City, Zhejiang Province rendered Civil Judgment (2014) Zhe Yong Shang Zhong Zi No. 369, dismissing the appeal and affirming the original judgment.

Reasoning

The effective judgment held as follows. The loan contract numbered Wen Yin 9022011 Qi Dai Zi No. 00542 signed between Wenzhou Bank and Chuangling Electric was lawful and valid. After Wenzhou Bank issued the loan, Chuangling Electric failed to repay principal and interest as agreed, which already constituted a breach of contract. The plaintiff's request that Chuangling Electric repay the loan principal of RMB 2.5 million, pay interest and penalty interest calculated in the manner agreed in the contract, and pay the attorney fees of RMB 95,200 incurred by the plaintiff to realize the claims, should be supported. Cen Jianfeng and Sanhao Molding voluntarily provided maximum-amount guarantee for the aforesaid debts and should bear joint and several liability, and after bearing guarantee liability, shall have the right to seek recourse against Chuangling Electric.

The focal point of dispute in this case was whether Tingwei Electronics should bear guarantee liability for the debts under the loan contract Wen Yin 9022011 Qi Dai Zi No. 00542, given that the maximum-amount guarantee contract Wen Yin 9022010 Nian Gao Bao Zi No. 01003 signed by Tingwei Electronics was not selected and listed in the scope of the guarantee contracts agreed in that loan contract. On this issue, the court held upon trial that Tingwei Electronics should bear guarantee liability, for the following reasons. First, the waiver of a civil right must be made by express manifestation of intention in order to take legal effect; an implied manifestation of intention can take legal effect only where the law expressly provides or the parties have specially agreed. It is not appropriate to presume that a party has waived a right where there is no express agreement or special provision of law. In this case, although the loan contract Wen Yin 9022011 Qi Dai Zi No. 00542 signed between Wenzhou Bank and Chuangling Electric did not list the maximum-amount guarantee contract signed by Tingwei Electronics, the plaintiff did not expressly waive the maximum-amount guarantee provided by Tingwei Electronics, so Tingwei Electronics remained the maximum-amount guarantor under the disputed loan contract. Second, both the signing date of the disputed loan contract and

the date of loan issuance fell within the settlement period (September 10, 2010 to October 18, 2011) agreed in the maximum-amount guarantee contract Wen Yin 9022010 Nian Gao Bao Zi No. 01003 signed by Tingwei Electronics, and Wenzhou Bank's claim against Tingwei Electronics did not exceed the guarantee period agreed in the contract. Therefore, Tingwei Electronics should, as agreed, bear joint and several guarantee liability for Chuangling Electric's debts to Wenzhou Bank within the maximum amount of the claim it promised. Third, a maximum-amount guarantee contract is the direct contractual basis for the guarantee legal relationship and related rights and obligations between the creditor and the guarantor, and the content of the principal contract cannot replace the content of the accessory contract. In this case, Wenzhou Bank and Tingwei Electronics signed a maximum-amount guarantee contract, and the guarantee rights and obligations of both parties should be governed by that contract, and not be bound or modified by the non-natural-person loan contract signed between Wenzhou Bank and Chuangling Electric. Fourth, Tingwei Electronics repaid the interest on the loans in this case on three occasions, in June, October and November 2012, and these acts were also manifestations of Tingwei Electronics' performance of guarantee liability for the loans in this case. In conclusion, Tingwei Electronics should bear joint and several liability for Chuangling Electric's aforesaid debts, and after bearing guarantee liability, shall have the right to seek recourse against Chuangling Electric.

(Judges of the effective judgment: Zhao Wenjun, Xu Mengmeng, Mao Jiao)

Relevant Legal Provisions

Article 14 of the Guarantee Law of the People's Republic of China.

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