SPC Guiding Case No. 64: Liu Chaojie v. the Xuzhou Branch of China Mobile Communications Group Jiangsu Co., Ltd. (Telecommunications Service Contract Dispute)

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

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Keywords

Civil / telecommunications service contract / obligation of notification / validity period / breach of contract

Holding

1. Where an operator fails to clearly stipulate in a standard-form contract the restrictive conditions on a certain commodity or service, and fails to prove that it has clearly notified the consumer of the restrictive conditions at the time of concluding the contract and obtained the consumer's consent, the restrictive conditions do not take effect against the consumer.

2. Where a telecommunications service enterprise, at the time of concluding the contract, fails to notify the consumer that a validity period restriction has been set for a certain service, and in the course of performance restricts or stops the service to the consumer on the ground that the service has exceeded its validity period, this constitutes a breach of contract, and the enterprise shall bear liability for breach of contract.

Basic Facts

On November 24, 2009, the plaintiff Liu Chaojie applied at the business hall of the defendant, the Xuzhou Branch of China Mobile Communications Group Jiangsu Co., Ltd. ("China Mobile Xuzhou Branch"), for a "Shenzhouxing Standard Card" with mobile phone number 1590520xxxx and a prepaid payment method. The plaintiff prepaid RMB 50 in phone charges on the spot and participated in China Mobile Xuzhou Branch's activity of "recharge RMB 50 and receive RMB 50 free." In the China Mobile Customer Network Access Service Agreement attached to the business acceptance form, the parties agreed on their respective rights and obligations. Among them, item 1 of the handling of special circumstances in the fourth part was: Under the following circumstances, Party B has the right to suspend or restrict Party A's mobile communication services, and Party B shall not bear responsibility for losses caused to Party A thereby: (1) where the settlement deduction is unsuccessful due to reasons not attributable to Party B, such as Party A's bank account being sealed, frozen, or having insufficient balance; (2) where Party A's prepaid charges have been used up and have not been replenished in a timely manner (including where the balance of the prepaid account is insufficient to deduct the next prepaid charge).

On July 5, 2010, the plaintiff recharged RMB 50 online through UnionPay on China Mobile's official website online business hall. On November 7, 2010, the plaintiff discovered, when using the mobile phone number, that it had been suspended. The plaintiff went to the defendant's business hall to inquire and learned that the defendant had suspended the mobile communication service on October 23, 2010 due to the expiration of the validity period of the phone charges, at which time the account balance was RMB 11.70. The plaintiff believed that the defendant's unilateral termination of service constituted a breach of contract, and therefore brought a lawsuit before the court.

Judgment

On June 16, 2011, the Quanshan District People's Court of Xuzhou City rendered the civil judgment (2011) Quan Shang Chu Zi No. 240: The defendant, the Xuzhou Branch of China Mobile Communications Group

Jiangsu Co., Ltd., should, within ten days from the effective date of the judgment, cancel the restriction on the validity period of the phone charges for the plaintiff Liu Chaojie's mobile phone number 1590520xxxx and restore the mobile communication service of that number. After the first-instance judgment was pronounced, the defendant appealed, and during the second instance applied to withdraw the appeal; the first-instance judgment became legally effective.

Reasoning

The effective judgment held: The right to know of telecommunications users is a basic right of telecommunications users when receiving telecommunications services. When a user handles telecommunications business, the operator of the telecommunications business must clearly explain to the user the content of the telecommunications business, including the business functions, the fee collection methods and payment times, and the reporting of obstacles. If a user consumes the telecommunications business without knowing the true circumstances of the business, the user will be deprived of the right of choice over the telecommunications business and will not achieve the true purpose of telecommunications consumption.

According to Article 39 of the Contract Law of the People's Republic of China, where a contract is concluded using standard-form clauses, the party providing the standard-form clauses shall follow the principle of fairness in determining the rights and obligations between the parties, and shall take reasonable measures to draw the other party's attention to the clauses that exempt or limit its liability, and shall explain the clauses upon the other party's request. The operator of a telecommunications business, as the party providing the standard-form clauses of a telecommunications service contract, shall follow the principle of fairness in determining the content of the rights and obligations with the telecommunications user; the content of the rights and obligations must conform to the legislative purpose of safeguarding the lawful rights and interests of telecommunications users and operators of telecommunications businesses and promoting the healthy development of the telecommunications industry, and shall effectively notify the other party to pay attention to the clauses that exempt or limit its liability and explain them. The business acceptance form and the network access service agreement are the main content of the telecommunications service contract, determining the content of the rights and obligations of the plaintiff and the defendant. The fourth part of the network access service agreement agreed on the circumstances under which it had the right to suspend or restrict mobile communication services, and the fifth part agreed on the circumstances under which it had the right to terminate the agreement, recover the number, and terminate the provision of services, neither of which included an agreement to suspend, terminate, or rescind the contract due to the expiration of the validity period. The restriction of the validity period of the phone charges directly affected the normal use of the plaintiff's mobile phone number; once the validity period expired, it would lead to the consequences of suspension of service and recovery of the number. Therefore, the defendant bore the obligation of clearly and truthfully notifying the plaintiff of this, and should truthfully notify the plaintiff before concluding the telecommunications service contract. If it did not notify before concluding the contract, then even if it notified at the payment stage, it would still deprive the party of the right of choice, contrary to the principles of fairness and good faith. The defendant claimed that it had "notified the plaintiff of the validity period through a single-copy invoice, brochures, and text messages," but failed to provide effective evidence to prove it. In sum, in this case, the defendant neither stipulated the validity period content in the telecommunications service contract, nor provided effective evidence to prove that it had clearly notified the plaintiff of the validity period restriction. The defendant's act of suspending service and recovering the number constituted a breach of contract, and it should bear liability for breach of contract such as continued performance. Therefore, the plaintiff's claim to "cancel the defendant's restriction on the validity period of the plaintiff's phone charges and continue to perform the contract" was supported in accordance with the law.

Relevant Legal Provisions

Article 39 of the Contract Law of the People's Republic of China.

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