SPC Guiding Case No. 65: The Owners' Assembly of Jiule Building Community, Hongkou District, Shanghai v. Shanghai Huanya Industrial Corporation (Owners' Common Ownership 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 September 19, 2016.

Keywords

Civil / owners' common ownership / special maintenance funds / statutory obligation / limitation of action

Holding

Special maintenance funds are funds specially used for the repair, renewal, and renovation of the common parts of the property and common facilities and equipment after the expiration of their warranty periods, and belong to all owners in common. Paying special maintenance funds is a statutory obligation that owners should bear to maintain the long-term safe use of buildings. Where an owner refuses to pay special maintenance funds and raises a defense based on the limitation of action, the people's court shall not support it.

Basic Facts

In March 2004, the defendant, Shanghai Huanya Industrial Corporation ("Huanya Company"), obtained the property rights to the ground-floor and second-floor units of Jiule Building in Hongkou District, Shanghai, with a ground-floor building area of 691.36 square meters and a second-floor building area of 910.39 square meters. Huanya Company had not paid the special maintenance funds for the above units. In September 2010, the plaintiff, the Owners' Assembly of the Jiule Building Community ("Jiule Owners' Assembly"), upon soliciting the voting opinions of the owners, decided that the Jiule Owners' Assembly would, on behalf of the owners, bring a lawsuit to recover the maintenance funds. The Jiule Owners' Assembly brought a lawsuit before the court, requesting that Huanya Company pay the plaintiff special maintenance funds of RMB 57,566.9 for its ground-floor and second-floor units of Jiule Building. The defendant Huanya Company argued that it had obtained the real estate ownership certificate in 2004, that six years had passed since the lawsuit in this case, that the plaintiff had never claimed the maintenance funds, that the claim had exceeded the limitation of action, and that it did not agree to the plaintiff's claim.

Judgment

On July 21, 2011, the Hongkou District People's Court of Shanghai rendered the civil judgment (2011) Hong Min San (Min) Chu Zi No. 833: The defendant Huanya Company should pay the plaintiff Jiule Owners' Assembly maintenance funds of RMB 57,566.9 for the ground-floor and second-floor units of Jiule Building. After the judgment was pronounced, Huanya Company appealed to the Shanghai Second Intermediate People's Court. On September 21, 2011, the Shanghai Second Intermediate People's Court rendered the civil judgment (2011) Hu Er Zhong Min Er (Min) Zhong Zi No. 1908: The appeal was dismissed and the original judgment was affirmed.

Reasoning

The effective judgment held: Article 79 of the Property Law of the People's Republic of China provides: "The maintenance funds for buildings and their ancillary facilities belong to the owners in common. Upon the

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common decision of the owners, they may be used for the repair of elevators, water tanks, and other common parts." Article 54, paragraph 2 of the Property Management Regulations provides: "Special maintenance funds belong to the owners and are specially used for the repair, renewal, and renovation of the common parts of the property and common facilities and equipment after the expiration of the warranty period of the property, and may not be diverted to other uses." Article 2, paragraph 2 of the Measures for the Administration of Special Maintenance Funds for Residential Properties (Order No. 165 of the Ministry of Construction and the Ministry of Finance) provides: "Special maintenance funds for residential properties as used in these Measures refer to funds specially used for the repair, renewal, and renovation of the common parts of residential properties and common facilities and equipment after the expiration of their warranty periods." According to the above provisions, maintenance funds are special funds in nature, being funds specially established for a specific purpose, namely, the repair, renewal, and renovation of the common parts of residential properties and common facilities and equipment after the expiration of their warranty periods. Apart from the house purchase price, taxes and fees, and property management fees, they are raised separately, stored in special accounts, and accounted for separately. Determined by their special-purpose nature, the payment of special maintenance funds does not originate from a special transaction or legal relationship, but is for the purpose of preparing for emergency repair, renewal, or renovation of the common parts of buildings under divided ownership. Since the maintenance of common parts concerns the common or public interests of all owners, maintenance funds are of a public and public-welfare nature.

Article 7, item 4 of the Property Management Regulations provides that owners shall, in property management activities, perform the obligation of paying special maintenance funds in accordance with the relevant state provisions. Article 54, paragraph 1 provides: "Owners of residential properties, non-residential properties within residential communities, or non-residential properties structurally connected to a single residential building shall pay special maintenance funds in accordance with the relevant state provisions." According to the above provisions, paying special maintenance funds is a statutory obligation specially established for the public interests of a specific scope, namely, the common interests of all owners of the building. The creation and existence of this obligation depends solely on whether the obligor is the owner of residential or non-residential properties within the scope of the building under divided ownership. Therefore, the obligation to pay special maintenance funds is a statutory obligation aimed at maintaining common or public interests, and only the problem of supplementary payment exists, not the problem of being exempt from payment due to the passage of time.

The owners' assembly's right to request supplementary payment of maintenance funds is the management right of the owners' assembly to perform the duty of maintaining the common or public interests of the community on behalf of all owners. If certain owners were allowed not to pay maintenance funds while still enjoying the benefits brought by maintaining the common parts with the maintenance funds of other owners, the other owners might pay money exceeding their own share for the maintenance of the common parts, which would contravene the principle of fairness and would cause damage to the long-term safe use of the building and to the common or public interests of all owners.

Based on the nature of special maintenance funds and the nature of the owners' obligation to pay special maintenance funds, the defendant Huanya Company, as an owner of Jiule Building, did not voluntarily pay special maintenance funds in accordance with the law, and raised the defense that the owners' assembly's lawsuit to recover the special maintenance funds had exceeded the limitation of action; that defense could not be established. The amount that the defendant should pay, calculated by the plaintiff based on the property area owned by the defendant and according to the calculation standard for other owners' payment of special maintenance funds in the same period, was reasonable, and accordingly it was adjudged that the defendant should pay the special maintenance funds according to the plaintiff's claim.

Relevant Legal Provisions

Article 135 of the General Principles of the Civil Law of the People's Republic of China.

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Article 79 and Article 83, paragraph 2 of the Property Law of the People's Republic of China.

Article 7, item 4 and Article 54, paragraphs 1 and 2 of the Property Management Regulations.

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