SPC Guiding Case No. 68: Shanghai Oubo Biotechnology Co., Ltd. v. Liaoning Telaiwei Real Estate Development Co., Ltd. (Inter-enterprise Lending Dispute)

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

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Keywords

Civil litigation / inter-enterprise lending / fraudulent litigation

Holding

Where the people's court, in trying a civil case, discovers the possible existence of fraudulent litigation, it should, on its own initiative, retrieve relevant evidence, question the parties in detail, and comprehensively and strictly examine whether there are contradictions between the claims and the relevant evidence, and whether the parties' words and deeds in the litigation contravene common sense. Where, after comprehensive examination and judgment, the parties have fabricated facts, maliciously colluded, evaded the law or state policy to seek illegal benefits, and engaged in fraudulent civil litigation, they shall be sanctioned in accordance with the law.

Basic Facts

Shanghai Oubo Biotechnology Co., Ltd. ("Oubo Company") alleged: Oubo Company lent RMB 86.5 million to Liaoning Telaiwei Real Estate Development Co., Ltd. ("Telaiwei Company") for the development of the Telaiwei International Garden real estate project in Donggang City, Liaoning Province. When the loan term expired, Telaiwei Company refused to repay it. It therefore requested the court to order Telaiwei Company to return the loan principal of RMB 86.5 million and interest.

Telaiwei Company argued: It acknowledged the facts alleged by Oubo Company, stating that the entire loan had been invested in the Telaiwei International Garden real estate project, that the housing was unsalable, and that it was temporarily unable to repay the loan principal and interest.

Xie Tao, the applicant in the first instance, stated: Telaiwei Company and Oubo Company, by fabricating debt, maliciously infringed his lawful rights and interests, and he requested the court to ascertain the facts and sanction them in accordance with the law.

The court found upon trial: From July 2007 to March 2009, Oubo Company and Telaiwei Company successively signed nine Loan Contracts, agreeing that Telaiwei Company would borrow a total of RMB 86.5 million from Oubo Company, with interest at four times the loan interest rate of the same period. The agreed purpose of the loan was: limited to use for the Telaiwei International Garden real estate project. After the loan contracts were signed, Oubo Company remitted a total of 10 payments, totaling RMB 86.5 million, but Telaiwei Company, on the same day or within a few days after receiving the remittances, immediately transferred out 6 of them, transferring out a total of more than RMB 70.5 million. Among them, 5 payments were transferred to Shanghai Hanhuang Industrial Development Co., Ltd. ("Hanhuang Company"), totaling more than RMB 64 million. In addition, while Oubo Company was bringing the first-instance lawsuit demanding repayment from Telaiwei Company, it still transferred 3 payments totaling RMB 3.6 million to Telaiwei Company.

The legal representative of Oubo Company was Zong Huiguang. Its shareholder Qu Yeli held 73.75% of the equity, Jiang Wenqi held 2%, and Zong Huiguang held 2%. The original legal representative of Telaiwei

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Company was Wang Zuoxin; Hanhuang Company held 90% of its equity and Wang Yang held 10%. On August 16, 2010, its legal representative was changed to Jiang Wenqi. The industrial and commercial archives recorded that, when the company was registered with the change, Liu Jingjun signed in the column for the person receiving the license, and Liu Jingjun was also the entrusted agent of Oubo Company during the original first-instance litigation of this case, being an employee of Oubo Company. Hanhuang Company was established on March 26, 2002, with Wang Zuoxin as its legal representative, and was formerly Shanghai Telaiwei Cosmetics Co., Ltd.; Wang Zuoxin held 67% of its equity and Qu Yeli held 33%. On October 28 of the same year, Qu Yeli transferred her equity to Wang Yang. On October 10, 2004, the company was renamed Hanhuang Company, with company registration and other formalities entrusted to Zong Huiguang for handling, and the company was deregistered on July 5, 2011. Wang Zuoxin and Qu Yeli were husband and wife.

During the original first-instance litigation of this case, Oubo Company applied to the Higher People's Court of Liaoning Province ("Liaoning High Court") on June 22, 2010 for property preservation, requesting the sealing, seizure, and freezing of RMB 58.5 million of Telaiwei Company's property. Wang Yang provided two properties located on Aomen Road, Heping District, Shenyang City, Liaoning Province, each with a floor area of 236.4 square meters, as security for Oubo Company. Wang Zuopeng provided a property located on Ningshan Middle Road, Huanggu District, Shenyang City, with a floor area of 671.76 square meters, as security for Oubo Company. Shenyang Shaqi Cosmetics Co., Ltd. ("Shaqi Company," whose shareholders were Wang Zhenyi and Xiu Guifang) provided two factory buildings located in Xiaoyang'an Village, Baita Town, Dongling District, Shenyang City, with floor areas of 212 square meters and 946 square meters respectively, and a piece of land with a usable area of 4,000 square meters, as security for Oubo Company.

The Application for Opening a Unit Bank Settlement Account of Oubo Company and Telaiwei Company both recorded the address as No. 1 Xinxing Road, Donggang City, and the entrusted handler was Cui Xiufang. During the retrial, Xie Tao provided the Liaoning High Court with a civil judgment of the Shanghai No. 1 Intermediate People's Court, (2008) Hu Yi Zhong Min San (Shang) Zhong Zi No. 426, a franchise contract dispute in which Zhang Ezhen and Jia Shike sued Hanhuang Company and Oubo Company. The judgment listed Hanhuang Company's legal representative as Wang Zuoxin, and the entrusted agents of both Oubo Company and Hanhuang Company were Zong Huiguang, an employee of Hanhuang Company.

It was further found in the second-instance trial:

(I) Facts concerning the relationship between Oubo Company and Telaiwei Company

The industrial and commercial archives showed that Shenyang Telaiwei Cosmetics Chain Co., Ltd. ("Shenyang Telaiwei") was established on March 15, 2000, and was controlled by Oubo Company (holding 96.67% of the equity), with Zong Huiguang as the handler at the time of establishment. The company's registered premises were leased from the Shenyang Danfei Professional Skincare Center, whose person in charge was Wang Zhenyi. On December 23, 2005, Wang Zuoxin, the original legal representative of Telaiwei Company, signed a chain franchise (franchise) contract with the non-party Zhang Ezhen on behalf of Oubo Company. On February 28, 2007, Huo Jing signed a Supplementary Agreement on the construction of the Telaiwei International Garden project with Shi'an Construction Group Co., Ltd. ("Shi'an Company") on behalf of Telaiwei Company. In May 2010, Wei Yali opened a bank account with the authorization of Telaiwei Company, and in September 2011 again opened a bank account on behalf of Oubo Company. The contact persons left for the two accounts were both Wei Yali, and the contact telephone numbers were the same number, which was also the same as the telephone number of Telaiwei Company left in the civil complaint submitted by Oubo Company to the Liaoning High Court on June 10, 2010.

On September 3, 2010, Oubo Company issued a Reply Letter to the Liaoning High Court stating that it agreed to provide property located at No. 332 Suhong Road, Qingpu District, Shanghai, with an area of 12,026.91 square meters and a value of RMB 200 million as preservation security. Oubo Company admitted at trial that the aforementioned property belonged to Shanghai Telaiwei Skincare Co., Ltd. ("Shanghai

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Telaiwei"). Shanghai Telaiwei was established on December 9, 2002, with Wang Zuoxin as its legal representative; its shareholders included Wang Zuoxin, Wang Yang and Zou Yan (shareholders of Hanhuang Company), and Zong Huiguang, Jiang Wenqi, and Wang Qi (shareholders of Oubo Company). Wang Yang also served as a director of Shanghai Telaiwei, Zong Huiguang as vice-chairman and deputy general manager, Wang Qi as deputy general manager, and Huo Jing as a director.

On April 20, 2011, Oubo Company applied to the Liaoning High Court for enforcement of the civil judgment (2010) Liao Min Er Chu Zi No. 15, and the court docketed the enforcement on the same day. On July 12 of the same year, Oubo Company submitted a written application to the Liaoning High Court stating: "To recover funds as soon as possible and reduce our company's losses, upon negotiation with the person subject to enforcement, our company allows the person subject to enforcement to sell the remaining housing of the project, but the collection of payments must be handled by financial personnel assigned by our company, and the housing payments sold must be deposited into the account designated by our company." On September 6, 2011, the Liaoning High Court issued a Notice of Assistance in Enforcement to the Donggang Municipal Real Estate Administration Office, requiring that the aforementioned sealed housing be directly transferred and registered to the non-party purchasers on the ground that the relevant sealed housing had already been paid to the applicant for enforcement to satisfy the debt.

After Oubo Company applied for enforcement, in addition to Xie Tao, Telaiwei Company's other creditors, Shi'an Company, Jiangxi Linchuan Construction and Installation Engineering Corporation, and Donggang Qianyang Construction and Installation Engineering Corporation, also successively reflected to the Liaoning High Court, through submitting enforcement objections and other forms, that Oubo Company and Telaiwei Company had fabricated claims and engaged in fraudulent litigation.

The members of Hanhuang Company's liquidation group were Wang Zuoxin, Wang Yang, and Jiang Wenqi, with Wang Zuoxin as the person in charge; the liquidation group notified all creditors within 10 days of its establishment and published a deregistration announcement in the Shanghai Commercial Daily on May 14, 2011. On June 25, 2012, Wang Zuoxin transferred RMB 16 million of the equity in Telaiwei Company held by Hanhuang Company to Wang Yang, and RMB 2 million to Zou Yan, and completed the industrial and commercial change registration on July 9, 2012.

The shareholders Wang Zhenyi and Xiu Guifang of Shaqi Company were respectively Wang Zuoxin's father and mother; Oubo Company's shareholder Wang Ge was the daughter of Wang Zuopeng, Wang Zuoxin's elder brother; and Wang Zuoxin and Wang Yang were brother and sister.

(II) Facts concerning the fund flows between Oubo Company and the companies involved

The transaction details of Oubo Company's account ending in 8115 ("Oubo Company Account 8115") from January 4, 2006 to September 29, 2011 showed that, starting from March 8, 2006, Oubo Company began to have mutual fund flows with Telaiwei Company. Among them, on March 8, 2006, Oubo Company's account remitted RMB 3 million to Telaiwei Company's account ending in 4891 ("Telaiwei Company Account 4891"), with the purpose noted as a loan, and on June 12, 2006 transferred RMB 8.01 million to Telaiwei Company. From August 16 to 23, 2007, nearly 70 payments were transferred from Telaiwei Company's account into Oubo Company Account 8115, with the purposes mostly noted as payment for goods. From January 4, 2006 to September 29, 2011, the account had large fund flows with Shaqi Company, Shenyang Telaiwei, Hanhuang Company, and Shanghai Telaiwei, with the purposes mostly noted as payment for goods or loans.

The transaction details of the account opened by Oubo Company at the Donggang Sub-branch of China Construction Bank (ending in 0357) from August 31, 2010 to November 9, 2011 showed that, on September 15 and 17, 2010, Oubo Company deposited RMB 1.68 million and RMB 1 million respectively in cash; on September 30, 2010, it paid RMB 1 million as project payment to Donggang Anbang Real Estate Development Co., Ltd.; on September 30, 2010, RMB 1 million was transferred in from Telaiwei Company's

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account (ending in 0549); on August 22, 30, and September 9, 2011, RMB 716,985, RMB 514,841, and RMB 623,495 were respectively transferred from Telaiwei Company's account into Oubo Company's account; on November 4, 2011, RMB 845,567.87 was transferred into the account in the name of court deduction from Telaiwei Company's account ending in 5555 ("Telaiwei Company Account 5555"); on September 27, 2011, RMB 1.935 million was transferred into Oubo Company Account 8115 in the name of "current account," and on November 9, 2011, RMB 1,579,950 was transferred into Oubo Company's account ending in 4548 ("Oubo Company Account 4548").

Oubo Company's account opened at the Shanghai Qingpu Sub-branch of Industrial and Commercial Bank of China (ending in 5617) showed that, on July 12, 2012, RMB 500,000 was transferred into Telaiwei Company in the name of a "loan."

The transaction details of Oubo Company's Account 4548 at the Shenyang Maluwan Sub-branch of China Construction Bank from October 7, 2013 to February 7, 2015 showed that, starting from January 20, 2014, most of the funds transferred by Telaiwei Company into the account in the name of "repayment" were again transferred to Wang Zuopeng's personal account and Shanghai Telaiwei's account in the name of "repayment."

The transaction details of Hanhuang Company's account ending in 4917 at the Shanghai Branch of China Construction Bank ("Hanhuang Company Account 4917") from January 5, 2006 to January 14, 2009 showed that, on July 7, 2008, Telaiwei Company Account 4891 transferred RMB 6.05 million into Hanhuang Company's account, and on the same day Hanhuang Company transferred the same amount from the account into Telaiwei Company Account 5555, but the amount transferred from Hanhuang Company into Telaiwei Company's account was counted into Telaiwei Company's loan amount, while the amount transferred from Telaiwei Company into Hanhuang Company was not counted into the company's repayment amount. During the same period, the account also transferred funds in and out with Oubo Company and Shaqi Company in the names of "loan" and "current account."

The transaction details of Telaiwei Company Account 5555 from June 7, 2006 to September 21, 2015 showed that, on July 2, 2009, RMB 6 million was remitted from the account into Oubo Company's account (ending in 0801) in the name of "transfer withdrawal"; from November 4, 2011 to December 31, 2014, more than 30 payments were transferred from the account into Oubo Company, the largest being a payment of RMB 18 million remitted into Oubo Company Account 4548 on December 20, 2012. In addition, the account had multiple large amounts of funds transferred into Shaqi Company's account in the name of "loan" from November 13, 2009 to July 19, 2010.

The transaction details of Shaqi Company's account at the Shenyang Heping Sub-branch of China Everbright Bank (ending in 6312) from November 13, 2009 to June 27, 2011 showed that some of the funds transferred by Telaiwei Company into Shaqi Company were transferred back to Telaiwei Company's other accounts in the name of "current account" or "loan." For example, on November 13, 2009, RMB 38 million was transferred from Telaiwei Company Account 5555 into Shaqi Company in the name of a "loan," and on December 4, 2009, RMB 38 million was transferred back to Telaiwei Company's separately established account ending in 8361 ("Telaiwei Company Account 8361") in the name of "current account"; on February 3, 2010, RMB 48.27 million was transferred from Telaiwei Company Account 8361 into Shaqi Company's account in the name of "current account," and on the 10th of the same month, RMB 5 million was transferred into Telaiwei Company Account 5555 in the name of a "loan," and RMB 19.3 million was transferred into Telaiwei Company Account 4891 in the name of "exchange"; on March 31, 2010, Shaqi Company transferred RMB 10 million into Telaiwei Company Account 8361 in the name of "current account," and on April 12 of the same year transferred RMB 18.06 million back to Telaiwei Company Account 8361 in the name of an intra-system transfer. Some of the funds transferred by Telaiwei Company into Shaqi Company's account flowed into Shenyang Telaiwei's account. For example, on May 6, 2010, RMB 10 million was transferred into Shenyang Telaiwei in the name of a "loan," and on July 29 of the same year, RMB 22.72

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million was transferred into Shenyang Telaiwei in the name of a “transfer.” In addition, Oubo Company also transferred part of the funds into the account in the name of “current account.”

Oubo Company and Telaiwei Company both admitted that Oubo Company Account 4548 and the account at the Donggang Sub-branch of China Construction Bank (ending in 0357) were controlled by Wang Zuoxin.

Judgment

On March 21, 2011, the Liaoning High Court rendered the civil judgment (2010) Liao Min Er Chu Zi No. 15: Telaiwei Company should repay Oubo Company the loan principal of RMB 86.5 million and interest at the same-period loan interest rate of the People’s Bank of China from the date the loan actually occurred to the date of payment determined in the judgment. After the judgment became legally effective, because the non-party Xie Tao filed an appeal, the Liaoning High Court rendered the civil ruling (2012) Liao Li Er Min Jian Zi No. 8 on January 4, 2012 to retry the case. Upon retrial, the Liaoning High Court rendered the civil judgment (2012) Liao Shen Er Min Zai Zi No. 13 on May 20, 2015, dismissing Oubo Company’s claims. Oubo Company appealed, and the Second Circuit Court of the Supreme People’s Court, upon trial, rendered the civil judgment (2015) Min Er Zhong Zi No. 324 on October 27, 2015, finding that the case constituted fraudulent civil litigation, dismissing the appeal and affirming the original judgment. At the same time, a fine decision was made, imposing a fine of RMB 500,000 on each of Oubo Company and Telaiwei Company for participating in the fraudulent litigation.

Reasoning

The effective judgment held: The people’s court protects lawful lending relationships, and at the same time should sanction in accordance with the law acts of malicious collusion to engage in fraudulent litigation with the intent of harming the lawful rights and interests of others. There were two focus issues in the dispute in this case: first, whether an affiliated relationship existed between Oubo Company and Telaiwei Company; and second, whether a genuine loan relationship existed between Oubo Company and Telaiwei Company with respect to the disputed RMB 86.5 million.

I. On whether an affiliated relationship existed between Oubo Company and Telaiwei Company

Article 217 of the Company Law of the People’s Republic of China provides that an affiliated relationship refers to the relationship between a company’s controlling shareholder, actual controller, director, supervisor, or senior management personnel and an enterprise directly or indirectly controlled by them, as well as other relationships that may cause the transfer of company interests. It can be seen that affiliated companies under the Company Law include both the mutual intersection of company shareholders and the direct or indirect control of companies by the same third party, as well as other relationships between shareholders or between companies’ actual controllers involving direct-line blood relatives, relatives by marriage, joint investment, or others that may cause the transfer of interests.

In this case, Qu Yeli was Oubo Company’s controlling shareholder, and Wang Zuoxin was Telaiwei Company’s original legal representative and also the controlling shareholder and legal representative of Hanhuang Company, the controlling shareholder of Telaiwei Company at the time the contracts in question were signed. Wang Zuoxin and Qu Yeli were husband and wife, indicating that Oubo Company and Telaiwei Company were controlled by the couple. Oubo Company claimed that the two had divorced, but did not provide a divorce registration from the civil affairs department or an effective legal instrument of the people’s court. Although Telaiwei Company’s legal representative was changed from Wang Zuoxin to Jiang Wenqi after the Liaoning High Court accepted the litigation in this case, Wang Zuoxin was still Telaiwei Company’s actual controller. At the same time, Oubo Company’s shareholder and legal representative Zong Huiguang, Wang Qi, and others jointly invested in and established Shanghai Telaiwei with Telaiwei Company’s actual controller Wang Zuoxin, legal representative Jiang Wenqi, and current controlling shareholder Wang Yang, indicating that Oubo Company’s shareholders and Telaiwei Company’s controlling shareholder and actual controller had other common interest relationships. In addition, Shenyang Telaiwei was a company

controlled by Oubo Company, and Shaqi Company's shareholders were Wang Zuoxin's father and mother. It can be seen that there were affiliated relationships between Oubo Company and Telaiwei Company, and between the aforementioned two companies and Shaqi Company, Shanghai Telaiwei, and Shenyang Telaiwei.

There was also the problem of personnel commingling between Oubo Company and Telaiwei Company and other affiliated companies. First, there was commingling among senior management personnel. Jiang Wenqi was both Oubo Company's shareholder and director and Telaiwei Company's legal representative, and also participated in Hanhuang Company's liquidation. Zong Huiguang was both Oubo Company's legal representative and a staff member of Hanhuang Company; although Oubo Company claimed that Zong Huiguang had resigned from Hanhuang Company in May 2008, the facts recorded in the civil judgment (2008) Hu Yi Zhong Min San (Shang) Zhong Zi No. 426 of the Shanghai No. 1 Intermediate People's Court showed that, during the trial of that case from August to December 2008, Zong Huiguang still participated in the litigation in the capacity of a staff member of Hanhuang Company. Wang Qi was both Oubo Company's supervisor and a director of Shanghai Telaiwei, and also acted as an agent in relevant administrative litigation in the capacity of a staff member of that company. Wang Yang was both Telaiwei Company's supervisor and a director of Shanghai Telaiwei. Wang Zuoxin was Telaiwei Company's original legal representative and actual controller, and had also successively signed chain franchise (franchise) contracts with non-party third parties on behalf of Oubo Company and Hanhuang Company. Second, there was also commingling among ordinary employees. Huo Jing was a staff member of Oubo Company and, in this case, acted as the agent in Oubo Company's original first-instance litigation, and on February 23, 2007 signed a construction contract with Shi'an Company on behalf of Telaiwei Company, and also concurrently served as a director of Shanghai Telaiwei. Cui Xiufang was Telaiwei Company's accountant, opened a bank account for Telaiwei Company on January 7, 2010, and again opened a bank account for Oubo Company on August 20, 2010, after the litigation in this case. Oubo Company admitted at trial that Wei Yali was a staff member of Telaiwei Company; in May 2010, Wei Yali opened a bank account with Telaiwei Company's authorization, and in September 2011, after the litigation, again opened an account for Oubo Company at the Shenyang Maluwan Sub-branch of China Construction Bank with Oubo Company's authorization, and the contact person for that bank account was Wei Yali. Liu Jingjun was a staff member of Oubo Company, acted as Oubo Company's agent in the original first-instance and enforcement procedures of this case, and on March 17, 2009 again handled matters such as enterprise registration on behalf of Telaiwei Company. Liu Yang acted as an agent in the litigation of this case in the name of a Telaiwei Company employee, and was also assigned by Wang Zuoxin to act as an agent in Shanghai Telaiwei's relevant litigation.

The above facts fully showed that the personnel of Oubo Company, Telaiwei Company, and other affiliated companies were not strictly distinguished, and that the above personnel actually obeyed the command of Wang Zuoxin alone, converting to staff members of different affiliated companies at any time according to different work tasks. Oubo Company claimed in its appeal that, at the beginning of the loan in 2007, it had dispatched relevant personnel to Telaiwei Company to supervise the company's use of the investment and assist in the work, but as early as five months before the first loan that Oubo Company claimed to have transferred to Telaiwei Company, Huo Jing had already participated in the company's contract signing business. Moreover, from the role played by these so-called "dispatched personnel" in Telaiwei Company, the above personnel participated in the full range of work from contract signing and financial management to litigation agency, not merely supervision; Oubo Company's explanation was not credible. The Liaoning High Court's finding that Oubo Company and Telaiwei Company were affiliated companies controlled by the couple Wang Zuoxin and Qu Yeli was well-founded.

II. On whether a genuine loan relationship existed between Oubo Company and Telaiwei Company with respect to the disputed RMB 86.5 million

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According to Article 90 of the Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China, a party shall provide evidence to prove the facts on which its claims are based or the facts on which it relies to rebut the opposing party's claims; where a party fails to provide evidence or the evidence is insufficient to prove its factual assertions, the party bearing the burden of proof shall bear the adverse consequences. Article 108 provides: "Where the evidence provided by a party bearing the burden of proof, upon examination by the people's court combined with relevant facts, convinces the court that the existence of the fact to be proved is highly probable, the court shall find that the fact exists. Where the evidence provided by one party to rebut the facts asserted by the party bearing the burden of proof, upon examination by the people's court combined with relevant facts, leaves the truth of the fact to be proved unclear, the court shall find that the fact does not exist." Where an affiliated relationship exists between the parties, in order to prevent malicious collusion to bring fraudulent litigation and harm the lawful rights and interests of others, the people's court must strictly examine whether a genuine loan legal relationship exists between them.

Oubo Company brought the lawsuit demanding that Telaiwei Company repay the loan of RMB 86.5 million and interest. Although it provided the loan contracts and transfer vouchers, there were unresolvable contradictions between its own statements and the evidence it submitted and the other evidence in the case, and many of the parties' words and deeds before and after the litigation contravened common sense, mainly manifested in the following seven aspects:

First, from the perspective of the formation of the loan agreement, the loan contracts had the possibility of being false. Oubo Company and Telaiwei Company made unclear statements about the details of the offer and acceptance of the loan legal relationship, especially Zong Huiguang, the legal representative of the creditor Oubo Company who claimed to be the contract handler, who was vague about the signing time and place of all the loan contracts, and the handlers of each contract on both sides. Each loan in the case was a large-amount loan, and the parties' unclear statements about the signing details or even the general circumstances of all the contracts were unreasonable.

Second, from the perspective of the time of the loans, the evidence submitted by the parties was contradictory. Oubo Company's own statements and the loan contracts it submitted showed that Oubo Company began to have a loan relationship with Telaiwei Company in July 2007. After appealing to this court, the audit report formed by its own commission recorded that it began lending to Telaiwei Company in December 2006, but the bank account transaction details of Telaiwei Company and Oubo Company showed that, before December 2006, Oubo Company Account 8115 alone had two transfers totaling RMB 11 million, of which RMB 3 million was transferred into Telaiwei Company's account in the name of a "loan" on March 8, 2006, and RMB 8.01 million was transferred on June 12 of the same year.

Third, from the perspective of the amount of the loans, the parties' assertions were contradictory. After filing the lawsuit, Oubo Company first asserted that the cumulative loan amount from July 2007 was RMB 58.5 million, then changed it to RMB 86.5 million in the litigation, and again claimed a total loan amount of RMB 108.5 million on appeal; the loan amount asserted changed multiple times, but it could only provide loan contracts for RMB 86.5 million. The bank transfer vouchers submitted by Xie Tao at trial proved that, in addition to the RMB 108.5 million loan claimed by Oubo Company, more than RMB 44 million was transferred into Telaiwei Company's account in the name of "loan." In this regard, Oubo Company admitted that these additional amounts were transferred at Wang Zuoxin's request to help, and were not genuine loans. That admission showed that Oubo Company filled in the purposes of the amounts on the relevant bank vouchers extremely arbitrarily. Judging from the amounts recorded in the bank account transaction details retrieved by this court, the amounts transferred by Oubo Company into Telaiwei Company's account in the name of loans far exceeded the amounts successively asserted by Oubo Company. In addition, there were multiple other large amounts of funds transferred into Telaiwei Company's account in the name of "loans" that were not included in the loan amount asserted by Oubo Company.

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Fourth, from the perspective of the fund flows, Oubo Company had the problem of unilaterally counting the funds flowing out of its account without counting the funds flowing in. Both during the loan period recorded in the loan contracts in question, and before that, and even after the litigation began, the fund flows between Oubo Company's and Telaiwei Company's accounts included both transfers from Oubo Company into Telaiwei Company's account and transfers from Telaiwei Company into Oubo Company's account, but Oubo Company only calculated the debit amounts transferred out of its own account, and did not mention the credit amounts transferred in from Telaiwei Company.

Fifth, from the perspective of the transfers among all affiliated companies, there was the problem of circular transfers among the accounts of two or more parties. As described above, a comparison of the accounts of Oubo Company, Telaiwei Company, Hanhuang Company, Shaqi Company, and other companies showed the phenomenon that Telaiwei Company transferred its own funds into Hanhuang Company's account as a bridge to Oubo Company's account, and then transferred them back to Telaiwei Company's account, creating inflated loans. The fund flows between Telaiwei Company and other affiliated companies also had such circumstances.

Sixth, from the perspective of the purpose of the loans, they were contrary to the contract agreement. Article 2 of the loan contracts agreed that the loans were limited to use for the Telaiwei International Garden real estate project, but after the amounts in question were transferred into Telaiwei Company's account, the company immediately transferred most of the amounts to Hanhuang Company and Shaqi Company in the names of "loan" and "repayment," and ultimately flowed back to Oubo Company and Shenyang Telaiwei, which was controlled by Oubo Company. As for Oubo Company's explanation that Telaiwei Company's transfer of amounts into Hanhuang Company was to repay its loan to Hanhuang Company, since the loan amounts between Hanhuang Company and Telaiwei Company provided by it contradicted the actual amounts of the bank account transactions of the two companies, and since most of the funds flowed back to Oubo Company or its controlled company, its explanation was insufficient.

Seventh, from the perspective of the conduct of Oubo Company and Telaiwei Company and their affiliated companies in the litigation and enforcement, it was contrary to ordinary experience. After Oubo Company brought the lawsuit, it still transferred funds to and from Telaiwei Company; Telaiwei Company continuously transferred large amounts into Oubo Company's account, but did not raise any defense on the repayment amount against Oubo Company's claims in the litigation and enforcement procedures; Oubo Company applied to the Liaoning High Court for property preservation, and Telaiwei Company's shareholder Wang Yang provided his own property as security for Oubo Company, which should have been the opposing party in interest; the ownership of the property in Qingpu District, Shanghai that Oubo Company provided as additional security in the original first-instance litigation actually belonged to Shanghai Telaiwei, whose legal representative was Wang Zuoxin; and Oubo Company and Telaiwei Company admitted at trial that Oubo Company's bank accounts opened at the Donggang Sub-branch of China Construction Bank and the Shenyang Maluwan Sub-branch of China Construction Bank were both controlled by Wang Zuoxin.

Oubo Company and Telaiwei Company did not provide reasonable explanations for the above contradictions and matters contrary to common sense. It can be seen that Oubo Company did not provide sufficient evidence to prove that a genuine lending relationship existed between it and Telaiwei Company with respect to the disputed amounts. Moreover, from the transaction details of the accounts of Oubo Company, Telaiwei Company, and their affiliated companies retrieved, Oubo Company, Telaiwei Company, and other affiliated companies, as well as different accounts of the same company, transferred funds arbitrarily, and the purposes of the amounts were filled in arbitrarily. Combined with the other evidence in the case, the court was convinced that the claim sued upon by Oubo Company was fabricated by intercepting the current account funds between it and Telaiwei Company, and its request, based on the fabricated claim, that Telaiwei Company return the RMB 86.5 million loan and interest should not be supported. Accordingly, the Liaoning High Court's retrial judgment dismissing its claims was not improper.

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As to whether Oubo Company and Telaiwei Company's bringing of the lawsuit in this case involved malicious collusion to harm the lawful rights and interests of others. First, whether Oubo Company or Telaiwei Company, both were clearly aware of the creditor-debtor relationships between Telaiwei Company and the first-instance applicant Xie Tao and other creditors. From the enforcement process of the judgment in the case, after Oubo Company applied for enforcement, it did not agree to the court's auction of the sealed housing, but continued to allow the company to sell it, and each time Telaiwei Company sold one unit, Oubo Company applied to the court to release one unit from sealing. When questioned by the court at trial, Oubo Company made unclear statements about how many sealed housing units Telaiwei Company had sold and how much debt it had repaid, indicating that its bringing of the lawsuit in this case was not to realize its claim, but to carry out protective sealing through judicial procedures to prevent other creditors from receiving satisfaction from Telaiwei Company's property. The purpose of fabricating claims, malicious collusion, and harming the lawful rights and interests of others was obvious. Second, from the facts that Oubo Company and Telaiwei Company had commingled personnel and that their bank accounts were both controlled by Wang Zuoxin, it can be seen that the two companies belonged to the same person and had both lost the independent personality that a company legal person should have. Article 112 of the Civil Procedure Law of the People's Republic of China provides: "Where the parties maliciously collude, attempting to infringe upon the lawful rights and interests of others through litigation, mediation, or other means, the people's court shall dismiss their claims and, according to the seriousness of the circumstances, impose fines or detention; where it constitutes a crime, criminal liability shall be pursued in accordance with the law." The first-instance applicant Xie Tao's opinion that Oubo Company and Telaiwei Company maliciously colluded to bring fraudulent litigation and harm his lawful rights and interests, and his request to sanction the relevant parties and responsible persons, were well-founded in law and should be supported.

Relevant Legal Provisions

Article 112 of the Civil Procedure 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.