SPC Guiding Case No. 7: Mudanjiang Hongge Construction and Installation Co., Ltd. v. Mudanjiang Hualong Real Estate Development Co., Ltd. and Zhang Jizeng (construction contract 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 April 9, 2012.

Keywords

Civil procedure / protest / application for withdrawal of suit / termination of review

Holding

Where, after receiving a civil protest, the people's court, upon review, finds that the dispute in the case has already been resolved, that the party concerned has applied to withdraw the suit, and that no damage is caused to the interests of the state, the public interest of society, or the interests of third parties, it shall render a ruling terminating the review of the protest case in accordance with the law; where a ruling for retrial has already been made, it shall render a ruling terminating the retrial proceedings in accordance with the law.

Basic Facts

On June 15, 2009, Mudanjiang Hualong Real Estate Development Co., Ltd. of Heilongjiang Province ("Hualong Company"), in a construction contract dispute with Mudanjiang Hongge Construction and Installation Co., Ltd. ("Hongge Company") and Zhang Jizeng, was dissatisfied with Civil Judgment (2008) Hei Min Yi Zhong Zi No. 173 rendered by the Heilongjiang Provincial High People's Court on February 11 of the same year, and applied to the Supreme People's Court for retrial. On December 8 of the same year, the Supreme People's Court rendered Civil Ruling (2009) Min Shen Zi No. 1164, deciding to retry the case under the trial supervision procedure. During the retrial by the First Civil Division of the Supreme People's Court, Hualong Company, in view of the fact that the parties had reached a settlement and it had been fully performed, submitted an application to withdraw the retrial application. Upon review, on December 15, 2010, the Supreme People's Court rendered Civil Ruling (2010) Min Ti Zi No. 63, permitting the withdrawal of the retrial application.

While applying to the court for retrial, the applicant Hualong Company also applied to the procuratorate for a protest. On November 12, 2010, the Supreme People's Procuratorate, after accepting the matter, decided to lodge a protest against the case under the trial supervision procedure. On March 9, 2011, after receiving Civil Protest Gao Jian Min Kang [2010] No. 58 from the Supreme People's Procuratorate, the First Case Filing Division of the Supreme People's Court registered the case and, on March 11 of the same month, transferred it to the Trial Supervision Division for trial. Upon review, the Trial Supervision Division of the Supreme People's Court found that Hualong Company had applied to this Court for retrial, that its dispute had been resolved, and that the grounds for its application for the procuratorial protest were essentially the same as the grounds for its retrial application. It therefore communicated with the Supreme People's Procuratorate and suggested that it withdraw the protest, but the Supreme People's Procuratorate did not agree to withdraw. After further contact with Hualong Company, Hualong Company stated that the parties had reached a settlement in the protest case and it had been fully performed, that the dispute had been resolved, and on April 13 of the same year it again submitted an application to withdraw the suit to the Supreme People's Court.

Judgment

On July 6, 2011, the Supreme People's Court rendered Civil Ruling (2011) Min Kang Zi No. 29, ruling to terminate the review of the case.

Reasoning

The Supreme People's Court held as follows. With respect to a case retried upon a procuratorial protest, or a case in which the people's court has ruled to retry upon a party's application or ex officio, where during the retrial the parties reach a settlement and fully perform it, or withdraw the appeal, and no damage is caused to the interests of the state or the public interest of society, the people's court shall, in order to respect and safeguard the parties' right to freely dispose of their own lawful rights within the scope prescribed by law, achieve the unity of the legal effect and social effect of litigation, and promote social harmony, render a ruling terminating the retrial proceedings pursuant to Article 34 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the Trial Supervision Procedure of the Civil Procedure Law of the People's Republic of China.

In this case, the applicant Hualong Company was dissatisfied with the civil judgment of the original trial court and, while applying to the Supreme People's Court for retrial, also applied to the procuratorial organ for a protest. During the retrial by this Court, the parties reached a settlement and Hualong Company applied to this Court to withdraw the suit. Because the parties had the right to freely dispose of their own civil rights and interests and litigation rights within the scope prescribed by law, and its application to withdraw the suit represented its true intent, a ruling had been made permitting withdrawal of the retrial application. The dispute between the parties in this case had been resolved, and the case did not involve the interests of the state, the public interest of society, or the interests of third parties. Therefore, the basis for the procuratorial protest no longer existed, there was no longer any necessity to rule that the case enter retrial under the protest procedure, and the case should be ruled terminated in its review in accordance with the law.

Relevant Legal Provisions

Article 140, paragraph 1, item 11 of the Civil Procedure Law of the People's Republic of China.

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