SPC Guiding Case No. 72: Tang Long, Liu Xinlong, Ma Zhongtai, and Wang Honggang v. Xinjiang Ordos Yanhai Real Estate Development Co., Ltd. (Commercial Housing Sales 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 December 28, 2016.

Keywords

Civil / commercial housing sale and purchase contract / loan contract / satisfaction of debt / legal effect / review

Holding

Where the parties to a loan contract, upon unanimous negotiation, terminate the loan contract relationship and establish a commercial housing sale and purchase contract relationship, converting the loan principal and interest into the purchase price already paid and settling the accounts, this does not fall within the circumstances prohibited by Article 186 of the Property Law of the People's Republic of China, and the purpose of concluding the commercial housing sale and purchase contract does not constitute "security for a private loan contract" under Article 24 of the Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Private Loan Cases. In the absence of the circumstances provided for in Article 52 of the Contract Law of the People's Republic of China, the commercial housing sale and purchase contract has legal effect. However, with respect to the amounts of loan principal and interest converted into the purchase price already paid, the people's court should conduct review in combination with evidence such as the loan contract, so as to prevent the parties from converting high-interest amounts exceeding the protection limit prescribed by law into the purchase price already paid.

Basic Facts

The plaintiffs, Tang Long, Liu Xinlong, Ma Zhongtai, and Wang Honggang, alleged: According to the parties' contract, Xinjiang Ordos Yanhai Real Estate Development Co., Ltd. ("Yanhai Company") should deliver to the four of them the housing conforming to the contract by September 30, 2014. However, to date, Yanhai Company had refused to perform its housing delivery obligation. They therefore requested the court to order: (1) Yanhai Company to pay Tang Long, Liu Xinlong, Ma Zhongtai, and Wang Honggang liquidated damages of RMB 60 million; (2) Yanhai Company to bear the loss expenses of RMB 416,300 incurred by Tang Long, Liu Xinlong, Ma Zhongtai, and Wang Honggang in the course of asserting their rights; and (3) Yanhai Company to bear all litigation costs of the case.

Yanhai Company argued: Tang Long, Liu Xinlong, Ma Zhongtai, and Wang Honggang should file their lawsuits separately. The four of them and Yanhai Company had no expression of intent to purchase and sell housing, and the housing sale and purchase contract between the parties was in name a sale but in substance a loan; the commercial housing sale and purchase contract served as security for the loan contract, and that agreement violated Article 40 of the Guarantee Law of the People's Republic of China and Article 186 of the Property Law of the People's Republic of China and was invalid. The commercial housing sale and purchase contract signed between the parties was manifestly unfair and took advantage of another's predicament. The liquidated damages and loss expenses claimed by the four of them also had no factual basis.

The court found upon trial: Tang Long, Liu Xinlong, Ma Zhongtai, and Wang Honggang and Yanhai Company had successively signed multiple loan contracts in 2013, and through actual lending and acceptance of assignment of others' claims, acquired claims totaling RMB 260 million against Yanhai Company. To secure the performance of those loan contracts, the four of them and Yanhai Company separately signed multiple commercial housing presale contracts, and completed filing registration with the local housing property rights transaction management center. After those claims successively matured, because Yanhai Company had not repaid the loan principal and interest, the parties, after settling accounts, confirmed that Yanhai Company still owed the four of them loan principal and interest of RMB 361,398,017.78. The parties then re-signed a commercial housing sale and purchase contract, agreeing that Yanhai Company would sell the housing under its name to the four of them, that the above outstanding principal and interest would be converted into the purchase price already paid, and that the remaining purchase price of RMB 38,601,982.22 would be paid to Yanhai Company in one lump sum after completion of the transfer registration of the property rights of all the subject matter. The account settlement table submitted by Tang Long and the other four showed that the loan interest between the parties was calculated at monthly rates of 3% and 4% respectively, with an overdue interest rate of 10%, and with compound interest calculated.

Judgment

On April 27, 2015, the Higher People's Court of Xinjiang Uygur Autonomous Region rendered the civil judgment (2015) Xin Min Yi Chu Zi No. 2, ordering: (1) Yanhai Company to pay Tang Long, Ma Zhongtai, Liu Xinlong, and Wang Honggang liquidated damages of RMB 9,275,057.23; (2) Yanhai Company to pay Tang Long, Ma Zhongtai, Liu Xinlong, and Wang Honggang attorney fees of RMB 416,300; and (3) the other claims of Tang Long, Ma Zhongtai, Liu Xinlong, and Wang Honggang were dismissed. The above amounts should be paid in one lump sum within ten days after the judgment took effect. After the judgment was pronounced, Yanhai Company appealed on the ground that the sale and purchase contract between the parties was security for the loan contract, was not the true expression of intent of both parties, and that the outstanding amount included usurious interest. On October 8, 2015, the Supreme People's Court rendered the civil judgment (2015) Min Yi Zhong Zi No. 180: (1) The civil judgment (2015) Xin Min Yi Chu Zi No. 2 of the Higher People's Court of Xinjiang Uygur Autonomous Region was revoked; (2) The claims of Tang Long, Liu Xinlong, Ma Zhongtai, and Wang Honggang were dismissed.

Reasoning

The effective judgment held: Before the signing of the commercial housing sale and purchase contract in dispute in this case, a loan contract relationship indeed existed between Yanhai Company and Tang Long and the other four, and for the performance of the loan contract, the parties signed corresponding commercial housing presale contracts and completed pre-registration of the presold commercial housing. However, the commercial housing sale and purchase contract in dispute between the parties was formed when Yanhai Company had not repaid the loan principal and interest, through renegotiation and account settlement, converting the loan contract relationship into a commercial housing sale and purchase contract relationship, converting the loan principal and interest into the purchase price already paid, and stipulating the rights and obligations such as housing delivery, payment of the balance, and liability for breach of contract. The creation, modification, and termination of civil legal relationships, except where otherwise specially provided by law, are formed through the unanimous expression of intent of the participants in the legal relationship. In civil transactions, it is not uncommon for the parties' expression of intent to change, and such change in expression of intent should be permitted except where prohibited by special provisions of law. In this case, the parties terminated the loan contract relationship and established a commercial housing sale and purchase contract relationship upon unanimous negotiation, not to provide security for the performance of the loan contract between them, but rather, when the loan contract matured and Yanhai Company found it difficult to repay the debt, a transaction arrangement to achieve a balance of the parties'

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rights and obligations by selling the commercial housing owned by Yanhai Company to Tang Long and the other four creditors. That transaction arrangement did not violate the mandatory provisions of laws or administrative regulations, did not fall within the circumstances prohibited by Article 186 of the Property Law of the People's Republic of China, and the provisions of Article 24 of the Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Private Loan Cases did not apply. Respecting the parties' unanimous expression of intent to change the nature of the legal relationship formed subsequently is inherent in the implementation of the principle of freedom of contract. Yanhai Company's assertion that the commercial housing sale and purchase contract in this case was invalid was not accepted.

However, while confirming the legality and validity of the commercial housing sale and purchase contract, since both parties acknowledged that the purchase price already paid under the contract was converted from the original loan principal and interest, and Yanhai Company raised that the outstanding amount included high-interest amounts, when the parties request judicial confirmation and protection of the purchaser's contractual rights, the people's court should review the amounts of loan principal and interest formed based on the actual performance of the loan contract, so as to prevent the parties from legitimizing illegal usurious interest through methods such as signing a commercial housing sale and purchase contract. Upon review, the method of calculating the loan interest between the parties had already exceeded the upper limit of private loan interest protection prescribed by law. The outstanding amount of the parties containing high-interest amounts could not be confirmed in accordance with the law. Since the loan interest protected by law was clearly lower than the loan interest confirmed by the parties in their account settlement, it should be deemed that Tang Long and the other four, as purchasers, had not yet fully paid the purchase price stipulated in the contract, and Yanhai Company's failure to deliver the housing at the agreed time should not be regarded as a breach of contract. Tang Long and the other four's request, based on the fact that Yanhai Company's delayed delivery of housing constituted a breach of contract, that Yanhai Company pay liquidated damages and attorney fees lacked factual and legal basis. The first-instance judgment's order that Yanhai Company bear the liability for breach of contract of paying liquidated damages and attorney fees was erroneous, and this court corrected it.

Relevant Legal Provisions

Article 186 of the Property Law of the People's Republic of China.

Article 52 of the Contract Law of the People's Republic of China.

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