SPC Guiding Case No. 73: Tongzhou Construction Group Co., Ltd. v. Anhui Tianyu Chemical Co., Ltd. (Priority Claim Dispute)

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SPC Guiding Case No. 73

Discussed and adopted by the Judicial Committee of the Supreme People's Court; issued on December 28, 2016

Keywords

Civil; right of exclusion; priority of compensation; period for exercise; starting point

Holding

Where a construction project contract is deemed rescinded under the circumstances provided in Article 18 of the Bankruptcy Law of the People's Republic of China, the period for the contractor to exercise its priority of compensation shall be calculated from the date of rescission of the contract.

Basic Facts

In March 2006, Anhui Tianyu Chemical Co., Ltd. (hereinafter "Anhui Tianyu Company") and Tongzhou Construction Group Co., Ltd. (hereinafter "Tongzhou Construction Company") signed a "Construction Project Contract," under which Anhui Tianyu Company contracted out to Tongzhou Construction Company the civil engineering and installation works of the production plant area of the first phase of its factory. The contract agreed that the commencement date was tentatively April 28, 2006 (subject to the actual commencement report), the completion date was March 1, 2007, and the total calendar days of the contract period were 300 days. If the developer failed to pay the project price according to the contract and the parties failed to reach an agreement on deferred payment, the contractor could stop construction, and the developer would bear liability for breach. Subsequently, the parties signed a "Supplementary Agreement to the Contract," making new agreements on the payment of the project price, and agreeing that the plant area period was 113 days and the living area period was 266 days. On May 23, 2006, the supervision company issued the commencement order, and Tongzhou Construction Company organized the construction. In 2007, the main works such as the factory buildings in Anhui Tianyu Company's plant area were completed. Subsequently, because Anhui Tianyu Company failed to pay the project price according to the contract, the works were suspended, and the project has not been completed to date. On July 30, 2011, during arbitration, the parties reached a settlement agreement, agreeing that if Anhui Tianyu Company's land and buildings were disposed of to repay debts, Tongzhou Construction Company's project price could be paid with priority. Later, because Anhui Tianyu Company was unable to pay its due debts, Jiangsu Hongyuan Construction Group Co., Ltd. applied to the Chuzhou Intermediate People's Court of Anhui Province for Anhui Tianyu Company's bankruptcy and debt repayment. On August 26, 2011, the Chuzhou Intermediate People's Court of Anhui Province rendered Civil Ruling No. (2011) Chu Min Er Po Zi No. 00001, ruling to accept the bankruptcy application. On October 10, 2011, Tongzhou Construction Company declared its claims to Anhui Tianyu Company's bankruptcy administrator and asserted its priority of compensation over the project. On July 19, 2013, the Chuzhou Intermediate People's Court of Anhui Province rendered Civil Ruling No. (2011) Chu Min Er Po Zi No. 00001-2, declaring Anhui Tianyu Company bankrupt. Tongzhou Construction Company sued on August 27, 2013, requesting confirmation that its claims enjoyed priority of compensation.

Judgment

On February 28, 2014, the Chuzhou Intermediate People's Court of Anhui Province rendered Civil Judgment No. (2013) Chu Min Yi Chu Zi No. 00122, confirming that the plaintiff Tongzhou Construction Group Co., Ltd. enjoyed priority of compensation over the declared claims in respect of the civil engineering and installation works of the production plant area of the defendant Anhui Tianyu Chemical Co., Ltd. that it had constructed. After the judgment was pronounced, Anhui Tianyu Chemical Co., Ltd. appealed. On July 14, 2014, the Anhui Higher People's Court rendered Civil Judgment No. (2014) Wan Min Yi Zhong Zi No. 00054, rejecting the appeal and affirming the original judgment.

Reasoning

The court in its effective judgment held that although the construction project contract signed by the parties in this case agreed on the completion time of the project, the project in question was suspended because Anhui Tianyu Company failed to pay the project price according to the contract. There was no evidence proving that the construction project contract signed by the parties had been rescinded or its performance terminated after the suspension of the project and before the court accepted the bankruptcy application, and there was also no evidence proving that the bankruptcy administrator decided to continue performing the contract after the court accepted the bankruptcy application. Under Article 18 of the Bankruptcy Law of the People's Republic of China, which provides: "After the people's court accepts a bankruptcy application, the administrator has the right to decide to rescind or continue to perform a contract concluded before the acceptance of the bankruptcy application but not fully performed by either the debtor or the counterparty, and shall notify the counterparty. Where the administrator fails to notify the counterparty within two months from the date of acceptance of the bankruptcy application, or fails to respond within 30 days from the date of receiving the counterparty's reminder, the contract shall be deemed rescinded," the construction project contract in question was actually rescinded after the court accepted the bankruptcy application, and the construction project in this case could not be completed normally. In accordance with the spirit of the Minutes of the Supreme People's Court's National Civil Trial Work Conference, where, due to the developer's reasons, the contract is rescinded or its performance terminated after the completion date agreed in the contract has already passed, the period for the contractor to exercise its priority of compensation shall be calculated from the date of rescission of the contract. Anhui Tianyu Company's assertion that the exercise period of the priority of compensation should be calculated from the completion date agreed in the contract lacked basis and was not accepted. On August 26, 2011, the court ruled to accept the bankruptcy application against Anhui Tianyu Company. On October 10, 2011, Tongzhou Construction Company declared its claims to Anhui Tianyu Company's bankruptcy administrator and asserted its priority of compensation over the project price. Therefore, the time when Tongzhou Construction Company asserted its priority of compensation was October 10, 2011. Anhui Tianyu Company's assertion that Tongzhou Construction Company exercised its priority of compensation more than six months after the bankruptcy administration date was inconsistent with the facts and was not supported.

(Judges of the effective judgment: Hong Ping, Hu Xiaoheng, Tai Wang)

Relevant Legal Provisions

Article 286 of the Contract Law of the People's Republic of China

Article 18 of the Bankruptcy Law of the People's Republic of China

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