SPC Guiding Case No. 9: Shanghai Cunliang Trading Co., Ltd. v. Jiang Zhidong, Wang Weiming, et al. (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 September 18, 2012.

Keywords

Civil / company liquidation obligations / joint and several liability for repayment

Holding

Shareholders of a limited liability company and directors and controlling shareholders of a joint stock limited company shall, in accordance with the law, perform their liquidation obligations after the company's business license has been revoked, and may not be exempted from liquidation obligations on the ground that they are not the actual controller or did not actually participate in the operation and management of the company.

Basic Facts

The plaintiff, Shanghai Cunliang Trading Co., Ltd. ("Cunliang Company"), alleged that it supplied steel to the defendant, Changzhou Tuoheng Machinery Equipment Co., Ltd. ("Tuoheng Company"), which still owed goods payment of RMB 1,395,228.60. The defendants Fang Hengfu, Jiang Zhidong, and Wang Weiming were shareholders of Tuoheng Company. Tuoheng Company had failed to undergo annual inspection and had its business license revoked by the administration for industry and commerce, and had not organized liquidation to date. Because they were negligent in performing their liquidation obligations, resulting in the loss and dissipation of company property, Cunliang Company's claims could not be satisfied. Under the Company Law and relevant judicial interpretations, Fang Hengfu, Jiang Zhidong, and Wang Weiming should bear joint and several liability for Tuoheng Company's debts. Cunliang Company therefore requested an order that Tuoheng Company repay goods payment of RMB 1,395,228.60 plus liquidated damages, and that Fang Hengfu, Jiang Zhidong, and Wang Weiming bear joint and several liability for repayment of Tuoheng Company's debts.

The defendants Jiang Zhidong and Wang Weiming argued that: (1) they had never participated in the operation and management of Tuoheng Company; (2) Tuoheng Company was actually controlled by the majority shareholder Fang Hengfu, and they were unable to liquidate it; (3) due to poor operation, Tuoheng Company had already incurred a large amount of debt before its business license was revoked and was insolvent, and it was not because Jiang Zhidong and Wang Weiming were negligent in performing liquidation obligations that Tuoheng Company's property was lost; and (4) Jiang Zhidong and Wang Weiming had also entrusted lawyers to liquidate Tuoheng Company, but because Tuoheng Company's property had been repeatedly plundered by creditors, liquidation could not be carried out, and therefore Jiang Zhidong and Wang Weiming had not been negligent in performing liquidation obligations. They requested that Cunliang Company's claims against Jiang Zhidong and Wang Weiming be dismissed.

The defendants Tuoheng Company and Fang Hengfu did not appear in court and did not respond.

Upon trial, the court found that on June 28, 2007, Cunliang Company and Tuoheng Company established a steel sale contract relationship. Cunliang Company performed its supply obligations of RMB 7,095,006.60, and Tuoheng Company had paid RMB 5,699,778, leaving goods payment of RMB 1,395,228.60 outstanding. In addition, Fang Hengfu, Jiang Zhidong, and Wang Weiming were shareholders of Tuoheng Company, holding 40%, 30%, and 30% of the shares respectively. Because Tuoheng Company failed to undergo

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annual inspection, its business license was revoked by the administration for industry and commerce on December 25, 2008, and the shareholders had not organized liquidation to date. Tuoheng Company now had no office or business premises, and its books and property were all missing. Tuoheng Company's execution in other cases had been suspended because there was no property available for execution.

Judgment

On December 8, 2009, the Songjiang District People's Court of Shanghai rendered Civil Judgment (2009) Song Min Er (Shang) Chu Zi No. 1052: (1) Tuoheng Company shall pay Cunliang Company goods payment of RMB 1,395,228.60 and the corresponding liquidated damages; and (2) Fang Hengfu, Jiang Zhidong, and Wang Weiming shall bear joint and several liability for repayment of the above debts of Tuoheng Company. After the judgment was pronounced, Jiang Zhidong and Wang Weiming appealed. On September 1, 2010, the Shanghai No. 1 Intermediate People's Court rendered Civil Judgment (2010) Hu Yi Zhong Min Si (Shang) Zhong Zi No. 1302, dismissing the appeal and affirming the original judgment.

Reasoning

The effective judgment of the court held as follows. After Cunliang Company supplied the goods in accordance with the contract, Tuoheng Company failed to pay the goods payment in full in accordance with the contract, and should bear the corresponding payment liability and liability for breach of contract. Fang Hengfu, Jiang Zhidong, and Wang Weiming, as shareholders of Tuoheng Company, should have organized liquidation in a timely manner after Tuoheng Company's business license was revoked. Because Fang Hengfu, Jiang Zhidong, and Wang Weiming were negligent in performing their liquidation obligations, resulting in the loss of Tuoheng Company's main property, books, and other assets so that liquidation could not be carried out, their conduct of negligence in performing liquidation obligations violated the relevant provisions of the Company Law and its judicial interpretations, and they should bear joint and several liability for repayment of Tuoheng Company's debts. Tuoheng Company, as a limited liability company, had all of its shareholders legally and uniformly become the company's liquidation obligors. The Company Law and its relevant judicial interpretations did not provide for the exception asserted by Jiang Zhidong and Wang Weiming; therefore, regardless of the proportion of shares held by Jiang Zhidong and Wang Weiming in Tuoheng Company and whether they actually participated in the operation and management of the company, both had the obligation to liquidate Tuoheng Company within the statutory period in accordance with the law after its business license was revoked.

Regarding the argument of Jiang Zhidong and Wang Weiming that Tuoheng Company had already incurred a large amount of debt before its business license was revoked, so that even if they were negligent in performing liquidation obligations, there was no causal connection with the loss of Tuoheng Company's property: According to the facts found, the circumstance that Tuoheng Company's execution in other cases was suspended because there was no property available for execution only proved that the people's court had not located Tuoheng Company's property during execution, and could not prove that Tuoheng Company's property had all been lost before its business license was revoked. There was a causal connection between the three shareholders' negligence in performing liquidation obligations and the loss of Tuoheng Company's property and books, and the defense of Jiang Zhidong and Wang Weiming on this point could not be established. The entrusted agency contract and lawyer's certificate for liquidation entrusted by Jiang Zhidong and Wang Weiming could only prove that Jiang Zhidong and Wang Weiming intended to liquidate Tuoheng Company, but in fact the liquidation of Tuoheng Company was not carried out. Accordingly, it could not be determined that Jiang Zhidong and Wang Weiming had performed their liquidation obligations in accordance with the law, and their defense on this point was not adopted.

Relevant Legal Provisions

Articles 20 and 184 of the Company Law of the People's Republic of China.

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