SPP Guiding Case No. 214: Supervision Case on the Filing of Charges Against Guo Moujia and Lin Moujia for Refusing to Execute Judgments and Rulings

Dan Young Business Consultancy — www.danyoungcpa.com

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

Supreme People's Procuratorate Guiding Case No. 214 (Batch 53, 2024)

Keywords

Filing supervision; prosecutorial integration; investigation and verification; transfer of clues; resolving the difficulty of enforcement.

Holding

With respect to persons subject to enforcement who refuse to execute judgments or rulings under serious circumstances, the people's procuratorates shall fully perform their legal supervision duties, strengthen clue transfer, filing supervision, and arrest approval and prosecution work, and pursue criminal liability in accordance with law in a timely manner. In supervising civil enforcement activities, attention shall be paid to discovering and transferring clues of crimes of refusing to execute judgments or rulings. In cases of refusing to execute judgments or rulings by transferring property, comprehensive means such as inquiry, query, inspection, commissioned appraisal and retrieval of evidence materials shall be used for investigation and verification, so as to ascertain whether the person subject to enforcement has concealed or transferred property, and to carry out filing supervision with high quality and efficiency. Comprehensive use shall be made of means such as procuratorial suggestions, correction of violations and transfer of clues to promote the social governance of the "difficulty of enforcement" problem.

Basic Facts

Defendant Guo Moujia, male, born in August 1964, unemployed.

Defendant Lin Moujia, female, born in February 1966, unemployed, the wife of Guo Moujia.

From 2011 to 2012, creditor Lin Mouyi successively lent Guo Moujia and Lin Moujia a total of RMB 2.14 million. After the debts matured, Guo Moujia and Lin Moujia failed to repay the loans and interest, and were sued by Lin Mouyi in the Fuqing Municipal People's Court of Fujian Province. After mediation by the court, Guo Moujia and Lin Moujia promised to repay the loan principal and interest in installments, but never fulfilled the repayment obligation. On March 14, 2013, Lin Mouyi applied to the Fuqing Municipal People's Court for compulsory enforcement. Later, because the parties reached an enforcement settlement, the Fuqing Municipal People's Court terminated the enforcement procedure on December 18. In March 2014, because Guo Moujia and Lin Moujia failed to perform the enforcement settlement agreement and it was discovered that Lin Moujia had a house pending demolition and relocation, Lin Mouyi applied to the court for resumption of enforcement.

On January 26, 2015, the house of Lin Moujia located on a certain street in Fuqing City was included in the expropriation and demolition scope by the Fuqing Municipal People's Government, and the confirmation of the house area and ownership was subsequently carried out under the organization of the sub-district office. During this period, to conceal and transfer property, Guo Moujia and Lin Moujia had Wu Moujia, who was unaware of the true situation, sign an expropriation and demolition compensation agreement with the sub-district office by presenting a house mortgage note that the two parties had previously signed due to a loan relationship.

Source: https://www.danyoungcpa.com/spp-guiding-case-214-china/

On June 23, 2015, the Fuqing Municipal People's Court issued an Enforcement Ruling to seal the house and withhold the expropriation and demolition compensation, and simultaneously issued a Notice of Assistance in Enforcement to the sub-district office, requiring it to assist in withholding and extracting the above compensation and remitting it to the court's enforcement account. However, the sub-district office failed to perform its obligation of assistance in enforcement, and on July 28 of the same year disbursed RMB 1.46 million of the house expropriation and demolition compensation to Wu Moujia's account. After deducting RMB 250,000 of debt, Wu Moujia remitted the remaining RMB 1.21 million of expropriation and demolition compensation to the bank account designated by Lin Moujia. Subsequently, Guo Moujia and Lin Moujia transferred all the money in that account, rendering the effective ruling impossible to enforce.

Procuratorate Performance of Duties

(1) Discovery of clues. On April 12, 2019, creditor Lin Mouyi applied to the Fuqing Municipal People's Procuratorate for supervision on the grounds that the original civil case had not been enforced after six years and that the Fuqing Municipal People's Court had been negligent in enforcement. After acceptance, the complaints and appeals prosecution department of the Fuqing Municipal People's Procuratorate, upon reviewing the application materials and hearing Lin Mouyi's claims, determined that the application fell within the scope of supervision of civil enforcement activities and transferred it to the civil prosecution department for handling.

(2) Investigation and verification. Because the case might involve the crime of refusing to execute judgments or rulings, and to integrate internal forces and improve supervision quality and efficiency, the civil prosecution department and the prosecution investigation department of the Fuqing Municipal People's Procuratorate selected personnel to jointly establish a special case handling team. After file retrieval and review, on-site investigation and visits to administrative departments, it was found that Guo Moujia and Lin Moujia, in the process of house expropriation and demolition, had, through the third party Wu Moujia, submitted loan notes, mortgage notes and other materials to the sub-district office, requesting the sub-district office to remit the house expropriation and demolition compensation directly to the third party Wu Moujia; meanwhile, the sub-district office had failed to perform the requirement in the Notice of Assistance in Enforcement issued by the Fuqing Municipal People's Court to withhold the expropriation and demolition compensation, and had disbursed the expropriation and demolition compensation directly to Wu Moujia's account.

To further ascertain the facts of the case, the case handling team conducted in-depth investigation of the flow of the relevant funds by retrieving bank statements, querying the public security household registration system and inquiring of relevant persons, and found that after the RMB 1.46 million expropriation and demolition compensation flowed into Wu Moujia's account, RMB 1.21 million was remitted to another person's account actually controlled and used by Guo Moujia and Lin Moujia, and then transferred from that account to the accounts of more than ten relatives and friends of Guo Moujia and Lin Moujia, including Zhou Moumou. The investigation also found that the enforcement personnel of the Fuqing Municipal People's Court, despite learning that Lin Moujia's expropriation and demolition compensation had been transferred to Wu Moujia, had not ordered the relevant responsible persons of the sub-district office to recover the property within a time limit in accordance with law, and had not transferred the clues of Guo Moujia and Lin Moujia's refusal to execute judgments or rulings to the public security organ.

(3) Supervision opinions. During the investigation, the case handling team of the Fuqing Municipal People's Procuratorate communicated with the criminal prosecution department on multiple occasions about the case, and jointly analyzed and assessed whether the case was suspected of the crime of refusing to execute judgments or rulings. On June 3, 2019, the civil prosecution department of the Fuqing Municipal People's Procuratorate transferred the criminal clues in writing to the criminal prosecution department. After review, the criminal prosecution department reported the clues to the public security organ, transferred the evidence materials, and continuously followed up and urged the public security organ to open an investigation in a

timely manner.

On June 26, 2019, the Fuqing Municipal People's Procuratorate issued a procuratorial suggestion to the Fuqing Municipal People's Court, recommending timely recovery of the enforcement funds; on July 19, it issued a procuratorial suggestion to the sub-district office, recommending self-inspection and self-correction of dereliction of duty in expropriation and demolition work, improvement of rules and regulations, strengthening of legal awareness and lawful and standardized administration.

(4) Supervision results. Through lawful supervision by the Fuqing Municipal People's Procuratorate, the Fuqing Municipal Public Security Bureau opened an investigation into the case against Guo Moujia and Lin Moujia on suspicion of the crime of refusing to execute judgments or rulings. In January 2020, the Fuqing Municipal People's Court sentenced both Guo Moujia and Lin Moujia to one year and six months of fixed-term imprisonment for the crime of refusing to execute judgments or rulings, and neither appealed. At the same time, the Fuqing Municipal People's Court recovered RMB 1.46 million of expropriation and demolition compensation and returned it to Lin Mouyi, and replaced the enforcement officer to continue following up on subsequent enforcement. The sub-district office conscientiously carried out self-inspection and self-correction and improved its relevant management systems.

Guiding Significance

(1) Give full play to the advantages of integrated prosecutorial supervision and strengthen filing supervision over the crime of refusing to execute judgments or rulings. In supervising civil enforcement activities, the civil prosecution department shall pay attention to discovering and transferring clues of crimes of refusing to execute judgments or rulings. For clues of cases of refusing to execute judgments or rulings by transferring property, the criminal prosecution and civil prosecution departments shall cooperate to strengthen investigation and verification of the supervision clues, and, around the source and specific flow of the concealed or transferred property, comprehensively use means such as inquiry, query, inspection, commissioned appraisal and retrieval of evidence materials to comprehensively ascertain whether there are circumstances of "having the ability to execute but refusing to execute, under serious circumstances," and carry out filing supervision of the crime of refusing to execute judgments or rulings with high quality and efficiency.

(2) Fully perform legal supervision duties and help resolve the problem of "difficulty of enforcement" in courts. Performing in accordance with law the judgments and rulings made and already effective by people's courts is the statutory obligation of persons subject to enforcement. Ensuring the correct and unified implementation of national laws through supervision in case handling is an important duty conferred on procuratorial organs by the Constitution and laws. In response to the prominent "difficulty of enforcement" problem in judicial practice, procuratorial organs shall strengthen legal supervision over civil enforcement activities, and while urging people's courts to carry out enforcement work in accordance with law, for persons subject to enforcement who violate legal provisions, evade enforcement obligations and involve serious circumstances, pursue their criminal liability for refusing to execute judgments or rulings in accordance with law and in a timely manner through strengthening clue transfer, filing supervision, arrest approval and prosecution and other case handling work, so as to give full play to the punishing, warning and educational functions of criminal punishment, help promote the resolution of the "difficulty of enforcement" problem, and uphold judicial authority.

(3) Perform prosecutorial functions proactively and comprehensively to promote the social governance of the "difficulty of enforcement" problem. In handling cases of refusing to execute judgments or rulings, where procuratorial organs find that courts have been negligent in performing enforcement duties, they may supervise and correct passive enforcement through means such as correction of violations and procuratorial suggestions, and urge courts to promptly recover enforcement funds; where administrative organs are found to have performed their duties improperly, they may urge lawful administration through social governance procuratorial suggestions, so as to promote plugging loopholes and improving institutions.

Relevant Legal Provisions

Article 313 of the Criminal Law of the People's Republic of China; Article 113 of the Criminal Procedure Law of the People's Republic of China (2018 Amendment); Articles 210 and 235 of the Civil Procedure Law of the People's Republic of China (2017 Amendment); Articles 553, 555 and 558 of the Rules of Criminal Procedure for People's Procuratorates (for Trial Implementation); Articles 65, 66 and 102 of the Rules for the Supervision of Civil Litigation by People's Procuratorates (for Trial Implementation); Articles 4, 5, 7, 8 and 9 of the Provisions of the Supreme People's Procuratorate and the Ministry of Public Security on Issues Concerning Criminal Filing Supervision (for Trial Implementation); Articles 9 and 11 of the Provisions on the Work of Procuratorial Suggestions by People's Procuratorates (Gao Jian Fa Shi Zi [2019] No. 1).

Disclaimer: This translation is provided for general informational and reference purposes only by Dan Young Business Consultancy. It is an unofficial English rendering of the original Chinese text, which remains the sole authoritative version. While every effort has been made to ensure accuracy, no warranty is given as to the completeness, accuracy or currency of the translation, and it should not be relied upon as legal advice.