SPP Guiding Case No. 224: Protest Case — a Construction Company v. Huang Mouping and Zhang Moubiao (Private Lending Dispute)

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SPP Guiding Case No. 224 (Procuratorial Example No. 224)

Keywords

Supervision of effective civil judgments; private lending; guarantee period; extinguishment of guarantee liability; comprehensive review.

Holding

In handling supervision cases over guarantee contract disputes, procuratorial organs shall examine whether the people's court has, in accordance with the law, ascertained basic case facts such as whether the guarantee period has expired. Where the people's court fails to ascertain basic case facts, resulting in a genuinely erroneous judgment, the procuratorial organ shall, after investigating and verifying the relevant facts, exercise supervision in accordance with the law.

Basic Facts

Zhang Moubiao borrowed money from Huang Mouping due to a lack of funds for a contracted project. In November 2013, Huang Mouping lent Zhang Moubiao RMB 10 million by bank transfer and cash delivery. On November 21, 2013, Zhang Moubiao issued an IOU confirming receipt of RMB 13 million, with monthly interest of 3%, to be repaid before September 1, 2014. In March and April 2014, Huang Mouping lent Zhang Moubiao RMB 2 million and RMB 3 million in the same manner. On June 3, 2014, Zhang Moubiao issued an IOU recording a loan of RMB 2 million at 3% monthly interest; on June 20, he issued an IOU recording a loan of RMB 3 million at 3.5% monthly interest, to be repaid within three months.

Because Zhang Moubiao failed to repay on time, in September 2014 the parties settled the November 2013 RMB 10 million loan, and Zhang Moubiao reissued six IOUs totaling RMB 13 million, all at 3% monthly interest. As to repayment terms, five IOUs for RMB 2 million each had repayment dates before March 30, May 30, July 30, September 30 and November 30, 2015, respectively; the sixth IOU for RMB 3 million had a repayment date of January 30, 2016.

On December 27, 2015, a construction company issued a Guarantee Letter to Huang Mouping stating: "Zhang Moubiao borrowed from you RMB (principal) twenty-two million in a certain project. Our company is willing to bear joint and several guarantee liability for that debt (RMB 22 million) and interest."

On July 27, 2016, Huang Mouping sued in the Shangrao Intermediate People's Court (the court of first instance), demanding that Zhang Moubiao repay loan principal of RMB 22 million plus interest of RMB 8.58 million, and that the construction company bear joint and several repayment liability. The court of first instance held that as to the November 21, 2013 IOU for RMB 13 million, because Zhang Moubiao only admitted receiving RMB 10 million and Huang Mouping could not prove payment of the other RMB 3 million, the loan principal could only be determined at RMB 10 million. In September 2014, the parties resettled the RMB 10 million loan, and reissued six IOUs totaling RMB 13 million incorporating the loan interest and other cash later paid by Huang Mouping; thus the court determined that the November 2013 RMB 10 million loan had been converted into the September 2014 RMB 13 million loan, plus the two June 2014 IOUs confirming RMB 5 million, for total loans of RMB 18 million. Meanwhile, Huang Mouping submitted the Guarantee Letter bearing the construction company's seal and demanded joint and several guarantee liability. The company

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argued the letter was forged because the legal representative's name and the guarantor's date of birth were incorrect. After appraisal, the company seal on the letter was found genuine, and the court held the letter valid, so the company should bear joint and several guarantee liability. Accordingly, the first-instance judgment ordered Zhang Moubiao to repay principal of RMB 18 million plus interest, and the construction company to bear joint and several repayment liability.

After the first-instance judgment, the construction company appealed to the Jiangxi Provincial High People's Court (the court of second instance). The court of second instance, applying Article 28 of the Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Private Lending Cases, held that of the six September 2014 IOUs totaling RMB 13 million, the sixth IOU of RMB 3 million was an agreement to capitalize interest, violating the law, and was not supported. Therefore, the November 21, 2013 IOU should be calculated at RMB 10 million principal, with interest from the date of issuance, and Huang Mouping's total loans were RMB 15 million. As to guarantee liability, the court of second instance held that although the construction company raised problems with the Guarantee Letter, this did not negate the authenticity of the seal, and it had not provided counter-evidence, so it should bear the consequences of failing to prove. Accordingly, the second-instance judgment ordered Zhang Moubiao to repay principal of RMB 15 million plus interest, and the construction company to bear joint and several repayment liability. The company's subsequent application for retrial to the Supreme People's Court was rejected.

Judgment

Acceptance and review. In December 2019, the construction company applied for supervision to the Jiangxi Provincial People's Procuratorate, arguing that the Guarantee Letter was forged, the loan amount was wrongly determined, and the court had failed to ascertain that the guarantee period had expired. Upon review, the Jiangxi Provincial People's Procuratorate found that of the seven IOUs, six had repayment dates before November 30, 2015; the Guarantee Letter was issued on December 27, 2015; by the time Huang Mouping sued on July 28, 2016, the six-month guarantee period for those six IOUs had expired. Pursuant to the Guarantee Law of the People's Republic of China and relevant judicial interpretations, upon expiry of the guarantee period, the construction company need not bear guarantee liability for those six debts. Although the company had not raised a corresponding defense in the first and second instances, the people's court should have ascertained this in accordance with the law. The Jiangxi Provincial People's Procuratorate considered that the people's court's failure to ascertain on its own whether the guarantee period had expired led to an erroneous judgment, and requested the Supreme People's Procuratorate to lodge a protest.

Supervision opinions. On September 7, 2022, the Supreme People's Procuratorate lodged a protest with the Supreme People's Court. After comprehensive review of the repayment dates and guarantee period, it found that by July 28, 2016, when Huang Mouping sued, six of the seven IOUs (totaling RMB 13 million) had exceeded the six-month guarantee period. The second-instance court's judgment, ordering the construction company to bear joint and several repayment liability for all loans and interest without first examining whether the guarantee period had expired, was an erroneous application of law.

Result of supervision. On December 5, 2023, the Supreme People's Court adopted the protest opinions and rendered a retrial judgment: the original first- and second-instance judgments were revoked; Zhang Moubiao shall repay Huang Mouping loan principal of RMB 15 million plus interest; the construction company need not bear guarantee liability for the six loans exceeding the guarantee period and their interest, and shall bear joint and several repayment liability only for the June 3, 2014 RMB 2 million loan, which had no agreed repayment term, and its interest.

Reasoning

(1) In handling supervision cases over effective civil judgments, procuratorial organs shall comprehensively review whether the court's exercise of adjudicative power was lawful. The scope of a procuratorial organ's

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review of an effective civil judgment is not limited to the litigation and defense grounds raised by the parties and the dispute focus summarized by the court. Where there may be circumstances in which the court failed to ascertain basic case facts in accordance with the law, resulting in a genuinely erroneous judgment, the procuratorial organ shall comprehensively review the case and judge whether the court's exercise of adjudicative power was lawful, even if the parties did not raise a defense on that ground in the original proceedings. For example, in trying a guarantee contract dispute, where the court should have ascertained as basic facts whether the guarantee period had expired and whether the creditor lawfully exercised its rights within the guarantee period, but failed to do so on its own motion and instead determined that the guarantor bore joint and several repayment liability, that is an erroneous application of law, and the procuratorial organ shall exercise supervision in accordance with the law.

(2) Where the court fails to ascertain basic case facts, resulting in a genuinely erroneous judgment, the procuratorial organ shall exercise supervision after investigating and verifying the relevant facts. The procuratorial organ's investigation and verification of basic case facts is necessary for performing its legal supervision duties, aims to ascertain the facts of the case and prompt the court to exercise adjudicative power in accordance with the law, and does not affect the parties' equal exercise of litigation rights. Where the procuratorial organ, after investigating and verifying the relevant facts, finds that the court's judgment is genuinely erroneous, it shall exercise supervision in accordance with the law.

Relevant Legal Provisions

Article 26 of the Guarantee Law of the People's Republic of China (applicable to this case; now Article 692 of the Civil Code of the People's Republic of China).

Article 34 of the Interpretation of the Supreme People's Court on the Application of the Relevant Guarantee System of the Civil Code of the People's Republic of China.

Articles 207, 215 and 216 of the Civil Procedure Law of the People's Republic of China (as amended in 2021, applicable to this case; now Articles 211, 219 and 220 of the 2023 amendment).

Articles 78 and 90 of the Rules for Civil Litigation Supervision by People's Procuratorates.

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