

On the Legitimacy of Applying directly to the People's Court for Realizing Security Interest Cases by Agreement Arbitration

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Abstract—Litigation and arbitration are important ways to resolve civil disputes. Under normal circumstances, a valid arbitration agreement may exclude the supervisor of the case from the People's Court. The procedure of realizing security interest cases belongs to non-litigation procedure, which has many characteristics different from litigation procedure. The arbitration clause shall not exclude the supervisor of the People's Court in realizing security interest cases, and the security interest holder may apply directly to the People's Court for realizing security interest. This is because the feature that there is no substantive dispute in the realization of the security interest case determines that it does not apply the relevant provisions of the ordinary procedure on prosecution and admissibility. The security interest and the independence of its realization determine that it can apply directly to the court to realize the security interest. The separate provisions of jurisdictional court for the realization of security interest cases makes it impossible to settle in accordance with the arbitration agreement, and the arbitration jurisdiction dispute can directly apply to the court to realize the security interest, which does not prejudice the arbitration rights agreed by the parties.

Keywords—Security interest; Arbitration agreement; Realizing security interest cases; Application; legitimacy

I. INTRODUCTION

Litigation and arbitration are the two main ways and means to resolve civil disputes. The parties' prosecution to the court does not require the parties to reach an agreement before the lawsuit, as long as one party sues the court with the jurisdiction of the trial, and the other party must respond after the court has accepted the case. Supported by the National Social Science Fund. The jurisdiction of the arbitration institution to accept the case comes from the agreement between the two parties, and it has no right to accept arbitration without agreement. According to Article 5 of the "Arbitration Law", the stipulation of item 2 of Article 124 of the "Civil Procedure Law", a valid arbitration agreement may exclude the supervisor of the case from the People's Court. However, the procedural stipulations of the "Civil Procedure Law" on the realization of security interest are non-litigation procedures, non-litigation procedures are different from the characteristics of the litigation procedures, in the realization of security interest cases, contract agreement arbitration.

Whether the security interest holder can directly apply to the court to realize the security interest is worth exploring.

II. OVERVIEW OF CASE OF THE DISPUTE BETWEEN APPLICANT AND RESPONDENT IN THE REALIZATION OF SECURITY INTEREST

August 2013, Fujian Quanzhou Ai Wei Wang Sporting Goods Co., Ltd. and Industrial and Commercial Bank of China Co., Ltd. Quanzhou Li Cheng branch signed two "Small Business loan contract", the total amount of loans was 16.8 million yuan, the applicant Quanzhou Hong Qi Sporting Goods Co., Ltd. Quanzhou Hong Qi Light Industry Co., Ltd. provided mortgage guarantee for the money, and signed the "Maximum mortgage contract", which has been registered. Applicant Fujian Quanlian Furniture Industrial Co., Ltd. has been assigned the above mentioned creditor's rights according to law and has become a legal creditor. Because the borrower failed to repay the loan on schedule, the applicant applies to the People's Court of Li Cheng District of Quanzhou city Fujian province. The request for ruling on the two respondents of all mortgage land, real estate change price according to law by auction or sale and other forms, the applicant after the change in the amount of money in principal, interest ,penalty of a total of 18389346.31yuan within the scope of mortgage claims priority to be repaid.

Respondent Quanzhou Hong Qi Sporting Goods Co., Ltd did not reply, Quanzhou Hong Qi Light Industry Co., Ltd raised an objection and settled the dispute by the main contract of this case, the central method was submitted to arbitration and other reasons ,request to the People's Court to reject the applicant's application for the realization of the security interest [1].

III. EXAMINATION AND ADJUDICATION OF THE CASE BY THE PEOPLE'S COURT

The People's Court of Li Cheng District of Quanzhou, after examination, concluded that, according to the stipulation of Article 371 of the "judicial interpretation of the Civil Procedure Law" of the Supreme People's Court, the validity of the main contract and the scope of claims shall be examined. However, the settlement of the dispute in the main contract of this case is submitted to Xiamen Arbitration Commission for arbitration, while the guarantee contract, that is, the maximum

—also Comment on "The Realizing Security Interest cases of Fujian QuanLian Furniture Industrial Co.,Ltd. and Quanzhou Hong Qi Sporting Goods Co., Ltd. Quanzhou Hong Qi Light Industry Co., Ltd."

mortgage contract, agrees that the settlement of the dispute is the litigation code. Article 129 of the judicial interpretation of the guarantee law of the Supreme People's Court stipulates that when a dispute between the main contract and the guarantee contract is instituted, the case shall be determined the jurisdiction in accordance with the main contract. If the main contract and the guarantee contract select the court of jurisdiction are inconsistent, the case shall be determined on the basis of the main contract. In this case, it is not appropriate to circumvent the arbitration clause stipulated in the main contract, and in the procedure of applying for the realization of the security interest, the main contract shall be examined and determined by the People's Court trail. Furthermore, the respondent Quanzhou Hong Qi Light Industry Co., Ltd. also disputed the jurisdiction and the amount of the creditor's rights.

To sum up, the People's Court of Quanzhou City Li Cheng District ruled against the application of Fujian Quanlian Furniture Industrial Co., Ltd. to realize the security interest.

IV. THE AGREEMENT ARBITRATION DOES NOT AFFECT THE RIGHT HOLDER TO APPLY DIRECTLY TO THE PEOPLE'S COURT TO REALIZE THE SECURITY INTEREST

In judicial practice, if the realization of the security interest case has an arbitration agreement and the parties apply to the People's Court for the realization of the security interest, the People's Court usually does not accept it and, for the admissibility, also decides to reject the application of the right holder. In this case, the People's Court of Li Cheng District rejected the applicants' application to realize the security interest. However, the relevant stipulations of the arbitration law and the "Civil Procedure law" are not to be sued by the People's Court for the agreed arbitration, and the characteristics of the case of security interest are consistent with the characteristics of non-litigation cases, the realization of the security interest procedure conforms to the nature of the non-litigation procedure. The procedural stipulations on the realization of security interest of the "Civil Procedure Law" are non-litigation procedures and have many characteristics different from those of the proceedings [2]. The author believes that the arbitration clause should not exclude the supervisor from People's Court of the case of realizing the security interest and the security interest holder can apply directly to the People's Court to realize the security interest. The specific reasons are as follows:

A. *The Characteristics of the Absence of Substantive Disputes in the Realization of a Security Interest Case Determine that It does not Apply to the Relevant Stipulations of the Ordinary Procedure on Prosecution and Admissibility*

According to Article 2 of the "Arbitration law", the arbitration procedure is to deal with disputes over property rights and interests between the parties. The stipulations of item 2 of Article 124 of the "Civil Procedure Law" concerning the inadmissibility by the People's Courts of cases in which the parties have entered into a written arbitration agreement to apply for arbitration are in chapter XII of the "Civil Procedure Law" first instance the section on prosecution and admissibility in section I of the general procedure, that is to

say, "the provision of an arbitration agreement shall be arbitrated, the court shall not accept" is for ordinary litigation.

In the realization of a security interest, there is no dispute over the rights and obligations between the security interest holder and the guarantor. The Parties not only have no dispute as to the existence of the claim on the main contract and the existence of the security interest, but also have no dispute as to the purpose for which the security interest holder requires the realization of the security interest, which may simply be a different view of the manner in which the security right is realized. The realization of the "non-litigation" characteristics of a security interest case embodies the characteristics that the non-litigation case "has no dispute between the opposing parties on the relationship of substantive rights and obligations". The security interest holder applies to the People's Court for the realization of the security interest, not to seek the settlement of the dispute between the applicant and the respondent concerning the security interest, and seeks to request the People's Court to intervene, to allow the auction and to sell the secured property in order to realize its rights. It can be seen that, for its purposes, the security interest holder realizes the security interest not because the security interest has been infringed, but because the conditions of realizing the security interest have been achieved, and the relevant parties wish to use the power of the court to realize the security interest. This process has a role of proving and publicity, that is, on the one hand, using the credibility of the court to replace the mistrust of two sides for problems self-solution, on the other hand, can also have public effect on society through the conduct of the court, if there are other rights holders, they can be informed of the relevant information at the first time, to avoid unnecessary disputes in the future [3]. The act of auctioning and selling the secured property made by the People's Court is a kind of transformation of the security interest enjoyed by the holder of security interest, and it is also a manifestation of the direct compensation of the security interest holder.

Therefore, in the case of realizing the security interest, there is no substantive dispute between the applicant and the respondent, and the applicants' application to the People's Court to realize the security interest is not to require the People's Court to settle the civil dispute, not to use the relevant stipulations of the ordinary procedure on prosecution and admissibility. Even if the court does not know whether there is a dispute over property rights and interests between the parties when it accepts the procedure for the realization of the security interest, but once it finds that there is a substantial property rights and interests dispute between the parties in the course of the trial, the court should end the process of realizing the security interest, there is no dispute over property rights and interests, of course, there is no need to force the parties to initiate arbitration, and there is no property rights and interests dispute, only after the acceptance of the trial can make a judgment, therefore, as long as the applicants' application materials of realizing the security interest have the form requirement, the Court should accept the request of realization of the security interest.

B. The Security Interest and the Independence of Its Realization Determine that a Realization of Security Interest may be applied directly to the Court

Although the security interest originates from the main obligation contract and the mortgage guarantee contract, but it is an independent property right, [4] and the security interest holder may exercise the property right according to the “property law”, rather than exercise the right to the contract. According to the provisions of article 170 of the “property law”, the so-called security interest is “the right of priority compensation for the secured property”, and the condition of its application is “the debtor defaults or the conditions for enforcement of the interest, as agreed upon by the parties concerned, arise”. As a security interest holder, as long as the application is in accordance with the provisions of article 196 of the “Civil Procedure law”, the material provided conforms to the provisions of Article 367 of “the judicial interpretation of the civil procedure law”, and the People’s Court shall accept it. The reason why the applicant chooses to realize the security interest procedure is to choose the quickest, most convenient and most appropriate way to realize the security interest in accordance with the rights conferred by law. Of course, the applicant may also choose arbitration in accordance with the main obligation contract and the mortgage guarantee contract, in conjunction with the contract dispute to require the debtor and the guarantor to assume contractual responsibility and recover financial claims. However, compared with the realization of special procedures of security interest, the period is longer and the special procedures of security interests are faster. If it is impossible to file a case for the realization of security interest because the main obligation contract and the mortgage guarantee contract agree on the arbitration clause, requiring the holder of security interest to arbitrate, which requires that the security interest holder must deal with the dispute in accordance with the contract. Thus this kind of security holder is substantially deprived of the legal right to realize the security interest quickly according to the special procedures.

Furthermore, for legislative purposes, the arbitration clause should not exclude the holder of security interest from applying for the realization of the security interest. The purpose of the legal establishment procedure is to achieve security interest. If the parties fail to negotiate the way to realize the security interest, the security interest holder may apply to the court to dispose the secured property in the way of the realization of security interest. This stipulation completes the mechanism of the realization of security interest in our country from the procedural law, and gives the court a greater space of judicial authority on the premise that the rights and obligations are not disputed, so as to shorten the adjudication period and manifests the efficiency value. If the arbitration clause excludes that right of the security interest holder, it is contrary to the legislative purpose of the procedure for establishing the security interest [5].

C. The Realization of the Separate Stipulates of the Court of Jurisdiction in a Security Interest Case that Prevents It from being settled in accordance with the Arbitration Agreement

The realization of the security interest case is the special procedure stipulated by the “Civil Procedure Law”, the “Arbitration law” does not have this procedure, there is no conflict between the arbitration institution and the People’s Court in the jurisdiction, it can only be accepted by the People’s Court. The stipulates of Article 196 of the “Civil Procedure Law” do not require the application for the realization of a security interest under the condition that the contract between the parties does not agree on arbitration jurisdiction, as long as the security interest holder who has the right to request the realization of the security interest has a statutory right to apply for the realization of the security interest.

In the case of the realization of a security interest, its jurisdiction of court is a separate stipulation. According to the stipulation of Article 196 of the “Civil Procedure law”, an application for the realization of a security interest shall be made to the location of the secured property or to the grass-roots People’s Court where the security interest is registered. It can be seen that the territorial jurisdiction for the realization of a security interest cases stipulated in the “Civil procedure law” can only be administered by the courts of the place where the secured property is located or where the security interest is registered, and the other courts have no jurisdiction, and the parties are also not allowed to make changes to the competent court by agreement. [6] The level jurisdiction court is the grass-roots People’s Courts, regardless of the amount of the subject matter of the case, the complexity of the case, the large and small scope of impact of the case and whether there are cross-regional factors, etc., are all under the jurisdiction of the grass-roots People’s Courts, the jurisdiction of the grass-roots People’s Court not only makes the People’s Court understand the real situation of the secured property more clearly, but also makes the applicants realize the security interest more conveniently. Thus depending on the nature of the procedure for the realization of the security interest, there is no agreed jurisdiction and application of the jurisdiction of the respondent to the suit, nor can it be applied to the Arbitration Commission for settlement in accordance with the arbitration agreement.

D. An agreement that an Arbitration Jurisdiction Dispute may apply directly to the Court for the Realization of a Security Interest does not Prejudice the Right of Arbitration Agreed upon by the Parties

The hearing of a case under a special procedure does not resolve the dispute over the relationship between civil rights and obligations, but merely confirms the existence or not of a certain legal fact and confirms the actual status of a right. [7] According to ordinary procedures and other normal proceedings to hear cases, it is to resolve civil rights and interests disputes in accordance with the law, confirm the relationship between civil rights and obligations, sanction civil offences. Therefore, the procedures of the two are completely different, so when ordinary procedures should be applied to

hear cases, the process should be transformed. Item3 of Article 372 of the “Judicial Interpretation of the Civil Prosecution law” provides that “if the parties have a material dispute over the realization of the security interest, they rule against the application and inform the applicant to file a lawsuit with the People’s Court.” “A separate lawsuit” and “a lawsuit brought to the People’s Court” here refer to proceedings in accordance with ordinary procedures. Article 2 of the “Arbitration law” stipulates that “disputes over contracts and other property rights and interests occurring between citizens of equal subjects, legal persons and other organizations may submit for arbitration”. Therefore, a guarantee contract stipulating an arbitration clause, the court found that the parties are in dispute over the property rights and interests in the process of trial, the procedure to realize the security interest should be transformed into the arbitration procedure, so as to ensure the realization of the arbitration rights agreed on by the parties.

V. CONCLUSION

Through the above analysis, we know that in this case, the main contract loan contract agreed to resolve the dispute is to submit for arbitration, and the applicant Fujian Quanlian Furniture Industrial Co., Ltd. applied to the People’s Court of Quanzhou Li Cheng District is to realize the security interest, The parties’ agreement on the award by the arbitral institution after the dispute has not excluded the jurisdiction of the People’s Court over the case, and the case still belongs to the scope of the People’s Court case. After accepting, the People’s Court shall examine and determine the main contract and the guarantee contract, after examination, in accordance with the stipulation of the law, the auction and sale of the secured property shall be ruled, and the parties may apply to the People’s Court for execution on the basis of that ruling; if it does not comply with the stipulation of the law, ruling against application. The parties may apply to the arbitral institution for arbitration in accordance with the agreement, instead of directly rejecting the applicant’s application for the realization of the security interest because of the arbitration agreement.

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REFERENCES

- [1] “Fujian Quanlian Furniture Industrial Co., Ltd. and Quanzhou Hong Qi Sporting Goods Co., Ltd., Quanzhou Hong Qi Light Industry Co., Ltd. to realize the dispute over security rights disputes”, Fujian province Quanzhou Li Cheng District People’s Court (2015) Li min te zi 4th Civil Award.
- [2] Li Lin qi: “The Procedural Nature of Realizing Security Right in China,” Journal of Hunan University of Science & Technology (Social Science Edition), 3rd ed,2015.(In Chinese)
- [3] Ren Zhong, “The Subject Matter of the Procedure for the Realization of Security Right: Practice, Identification and Institutionalization,” Legal Research,2nd ed, 2016. (In Chinese)
- [4] Wang Liming, “New Thoughts on Several Issues of Real Right Legislation” ,Legal Science, No. 7, 2004. (In Chinese)
- [5] Li Lin qi, “An Empirical Study on the Realization of Security Rights” , edition of China University of Political Science and Law Press. 2018, pp. 65. (In Chinese)
- [6] Li Xiangbo: “Relevant legal issues in the application of the security interest procedures - centered on Articles 196 and 197 of the new <Civil Procedure Law>”, Journal of Law Application, No. 8, 2014. (In Chinese)
- [7] Chen Guiming, Zhao Lei: “The Outline of China’s Special Procedures”, The Jurist, No. 6, 2010. (In Chinese)