

Analysis on the Non-Debt Relief Between the Transferred Shareholders' Liability and the Original One Person Company

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Abstract: The lawsuit of adding or changing the objection of the executed party is unknowable before the parties receiving the court's ruling, so it is very common for the executed party who is changed or added to raise objections to the execution basis in subsequent lawsuits. This paper analyzes a case where the transfer of equity in a one Person company does not exempt the original shareholder from liability for the company's debts, providing a judicial practice reference for the addition or change of objections by the executed party.

Keyword: One Person Company; Equity Transfer and Addition; Litigation with Objections to Changing the Person Being Executed

1. Introduction

Private lending disputes are a type of civil cause of action. Simply put, they refer to related civil disputes arising from borrowing money, which can exist between natural persons, legal persons, and unincorporated organizations; But if it is a dispute arising from the lending of financial institutions, it is not within this scope and belongs to a financial loan contract dispute. Both of the above disputes belong to loan contract disputes.

Some people tend to collectively refer to disputes involving monetary transactions, such as private lending disputes and sales contract disputes, as economic disputes. However, currently, there are no relevant regulations that systematically regulate economic disputes.

In the trial practice of adding or changing lawsuits, it is generally believed that the authenticity and legality of the enforcement basis cannot be examined. However, the shareholders who are added in the litigation of addition or change often have this judicial demand, believing that the previous lawsuit has false litigation or incorrect execution basis. In this case, the judge who hears the appeal of

addition or change usually explains that they should have the right to relief through retrial procedures or the revocation of the appeal by a third party, but in reality, such relief channels are not smooth[1-3].

There are some situations for industry company, After the merger or division of enterprises, the original name of the legal person disappears. If there is a lawsuit against the original legal person, the defendant can be changed to a newly established legal person.

When an enterprise undergoes restructuring, such as a state-owned enterprise being converted into a limited liability company, the original legal entity name disappears, and the defendant can also be changed to a new legal entity.

When an enterprise goes bankrupt and reorganizes, the name of the original legal person disappears and can be changed to a new legal person who inherits its rights and obligations after the reorganization.

When the enterprise is divided, the name of the original legal person may be retained or may disappear, and it can be changed to a new legal person that inherits debts according to the situation.

If the old legal person of the enterprise has been dissolved, but there are still outstanding debts and debts, the defendant can be changed to the liquidation team that undertakes the liquidation affairs.

The court may, on the premise of ensuring that the litigation rights of the parties in the case are not affected, change the legal representative defendant according to the application, but it needs to handle it prudently to ensure fairness and impartiality.

The above are some common legal cases of industrial enterprises that can change legal persons as defendants. The specific operation needs to be determined based on the facts of the case and legal provisions.

2. Facts of the Case

On February 15, 2019, Company A signed a "Parking Space Use Rights Transfer Agreement" with Company B. Company A sold the use rights of a certain residential underground parking space to Company B, with an agreed transfer price of 37.4626 million yuan. Company B paid the parking space payment to Company A in five installments. Since the second installment, Company B failed to pay as agreed, and communication between the two parties began. On September 2, 2019, Company B issued a "Letter on Subsequent Disposal Work" to Company A, The letter states that B is willing to bear a penalty of 1 million yuan. But after the issuance of the above-mentioned letter, B did not pay a penalty of 1 million yuan. On July 5, 2019, Company A sent a "reminder letter" to Company B, requesting B to fulfill the second payment obligation. Company B has not made the payment, but due to B's breach of contract, on July 31, 2019, Company A delivered a "Notice Letter on Termination of Parking Space Use Rights Transfer Agreement" to Company B. After receiving it, Company B still did not respond and did not actively fulfill the contract, Company A has filed a lawsuit against Company B to your court requesting the termination of the Parking Space Use Rights Transfer Agreement and payment of liquidated damages[4].

On May 13, 2020, plaintiff A filed a lawsuit with the court. On January 25, 2021, the 100% equity of Company B held by Person b has been changed to 99% by Person b and 1% by Person c, changing from a one Person limited liability company to a limited liability company. Among them, Person c has more than 100 restricted high consumption information. On September 26, 2021, Person b withdrew from holding 99% of the shares in Company B, changing to Person c holding 99% and Person d holding 1%. The legal representative was changed from Person b to Person e. Among them, Person d has multiple restricted high consumption information.

3. Analysis

According to Article 62 of the Company Law of the People's Republic of China, which stipulates that a one Person limited liability company shall prepare financial and accounting reports at the end of each fiscal year and have them audited by an accounting

firm. If a one Person limited liability company fails to conduct annual financial and accounting audits in accordance with the law, it violates its mandatory obligations under the law, It is sufficient to raise reasonable doubts about whether the Personal property of its shareholders is independent of the company's property.

From the above chronological order, it can be seen that at the time of the dispute, Person b held 100% of the shares of Company B and Person b was also the original shareholder of Company B. Since the lawsuit filed by Company A, a series of changes by Company B and Company B are sufficient to reveal the purpose of maliciously evading debts, clearly belonging to malicious changes[5-8].

When an outsider files an objection to execution, they must make a clear request to exclude the execution of the subject matter, or they can also make a request to confirm their rights or make payment to the subject matter at the same time. Mr. Yan's lawsuit request is not to add him as the subject of execution in this case, and there is no substantive request for the confirmation of the subject matter of execution. Of course, an outsider may not make a lawsuit to exclude the execution of the subject matter, but only sue for the confirmation or payment of the execution subject matter. This situation belongs to a new ordinary lawsuit filed by the outsider, rather than an objection to execution. If the outsider directly sues for the confirmation of the execution subject matter with the defendant as the defendant during the execution process, If the litigation request is supported by the court, the effective legal documents in the case can be used as evidence to file an objection to execution with the original enforcement court or apply for a reversal of execution. If an outsider raises a lawsuit to exclude the execution of the subject matter while also making a lawsuit to confirm the rights of the execution subject matter, after the people's court makes a judgment, the outsider cannot bring a separate lawsuit against the confirmation of the rights of the execution subject matter, otherwise it violates the principle of no longer being held accountable. If an outsider files a lawsuit for confirmation of the same subject matter before making a judgment in the first instance after filing an objection to execution, the people's court may merge the two cases for trial. If an

outsider files a lawsuit for objection to execution and also files a lawsuit for confirmation of the subject matter of execution, and then files a lawsuit for confirmation of the same subject matter of execution with another court, the court that accepts the lawsuit for confirmation of the right shall transfer the case to the execution court for trial. If a judgment has been made on the objection to execution, the court that accepts the lawsuit for confirmation of the right will rule to dismiss the lawsuit.

4. Conclusion

Although Company B is currently a non one Person limited liability company, when a contract dispute arises between Company B and Company A or a lawsuit is filed, Company B is a one Person limited liability company, and Person b is the original and only shareholder of Company B. In the absence of evidence proving that Person b's property and personal property were independent during his tenure as the sole shareholder of Company B. As the sole shareholder of Company B, Person b shall be added as the executor.

The situation of changing defendants in industrial enterprise legal cases can be summarized as follows: 1 The main reason for the change in organizational form of enterprises is the merger, division, restructuring, bankruptcy reorganization, etc., which may lead to changes in name and organizational form. The disappearance of the original legal entity is one of the prerequisites for change. If the original legal entity still exists, it should not be easily changed. 3. The new legal entity after the change should have the qualification to undertake the rights and obligations of the original legal entity, which is the legal basis for the change. 4. On the premise of safeguarding the litigation rights of the parties, the court may approve the change of the defendant upon application. But judgment requires prudence and adherence to the principles of fairness and impartiality. 5. The specific operation also requires comprehensive consideration of the facts of the case and relevant legal provisions, and a fair treatment of the rights and obligations of the parties involved. 6. In terms of industrial and commercial registration, financial inheritance, and debt treatment, the new legal entity after the change needs to do a good job

in succession work. In short, the change of defendant is a complex task in industrial enterprise legal cases, which requires a comprehensive examination of the case situation and proper handling of the legitimate rights and interests of the parties in accordance with the law and regulations.

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