

Understanding and Determination of “Inability to Achieve the Purpose of the Contract”

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Abstract: In 2021, China promulgated the Civil Code. There are 11 expressions in 7 articles of contract concerning “Contract purpose”, the first paragraph of article 563 of the civil code stipulates that “The purpose of a contract Cannot be achieved”. On the one hand, because the legal and judicial interpretation does not define the meaning of “The purpose of the contract” clearly, which leads to great differences in the understanding of it in specific cases. On the other hand, the criteria for determining whether the purpose of the contract cannot be achieved are also inconsistent, which makes the judgment result of similar cases may be different between different courts, and affects the unity and authority of law. Based on the current law and judicial practice of our country, this paper discusses the problems related to “The failure to realize the purpose of the contract”, and combines the relevant systems of common law system and civil law system, thus, the standard of “The non-realization of the purpose of the contract” is formed.

Keywords: Purpose of Contract; Rescission of Contract; Performance of Contract; Failure to Achieve Purpose of Contract; Legal Rescission of Contract

1. Introduction

The parties conclude a contract for the purpose of achieving their contracting purposes. “The purpose is the creator of all laws”, the contract is the law between the parties, the purpose of the contract is also the creator of the contract. There are 12 expressions of 8 articles in the contract edition of Civil Code of our country, which involve “The purpose of contract”, including “The purpose of contract Can not be realized”. In the general provisions, Article 142 also deals with the normative function of the purpose of a contract in the interpretation of the expression of intention, part of the

judicial interpretation of the provisions also involves the purpose of the contract. From the point of view of domestic legislation and judicial interpretation concerning the purpose of contract, the purpose of contract runs through the whole linear time process of the validity, performance, interpretation, rescission and termination of contract. In the system of rescission of contract, the expression “Can not achieve the purpose of contract” appears repeatedly in the legislative and judicial interpretation. Then for “Can not achieve the purpose of the contract” how to understand and identify, this article will start from a case.

The background of the case is that on February 7, 2014, Zhang Jianhua signed a “Contract for the sale and purchase of commercial housing” with Qidong Health Home Co. , Ltd. (hereinafter referred to as health home) of Jiangsu province, contract to buy by taking the development of real estate in Qidong City Huilong town a residential commercial housing (under construction) a set, the total housing price of 630,000 yuan. Annex 1 of the contract is the floor plan of the house bought by Zhang Jianhua and Xu Haiying, and the seal of the purchase is affixed to it. On the date of signing the contract, Zhang Jianhua and Xu Haiying paid 630,000 yuan in one-off payment and issued a unified invoice for the sale of real estate. In June 2015, life home issued a notice to Zhang Jianhua and Xu Haiying, the houses purchased by Zhang Jianhua and Xu Haiying are the same as the house-type drawings in the Annex 1 of the purchase contract, but the actual room layout and the house-type drawings are in the axisymmetric direction, the actual layout is opposite to the graphic positions in the brochure and the Annex to the contract. On July 16,2015, Zhang Jianhua and Xu Haiying sent a lawyer's letter to the students' home, arguing that the purpose of the contract could not be achieved and that the students' home

had constituted a fundamental breach of contract and requested to negotiate a settlement with the students' home. After negotiations failed, Zhang Jianhua and Xu Haiying sued the court to request cancellation of the contract. After the trial, the Qidong Municipal People's Court held that the houses actually delivered by the students for home purchase only had a contrast in direction, which did not affect the purposes of the contracts such as investment and schooling, nor did it affect the living purposes of Zhang Jianhua and Xu Haiying, it is also a general convention that the houses on both sides of each floor of a residential building are axisymmetric. Therefore, Zhang Jianhua and Xu Haiying argue that taking life to buy a house constitutes a fundamental breach of contract and lacks factual and legal basis. The court of First Instance decided to reject Zhang Jianhua and Xu Haiying's lawsuit. Zhang Jianhua and Xu Haiying appealed against the original ruling. The Nantong Intermediate People's Court held that the delivery of houses in the opposite direction and unable to exchange them constituted a fundamental breach of contract, and the buyer could not cancel the contract for the purpose of the contract. The judgment of the first instance was rescinded, and the judgment was changed to confirm that Zhang Jianhua, Xu Haiying and the contract for the purchase and sale of commercial housing of the shengsheng real estate were rescinded on August 1, 2015, when a copy of the indictment was served on the shengsheng real estate during the first instance.

It can be seen from the case that different courts have different understandings and determinations of the same case "Can not achieve the purpose of the contract", in judicial practice, it is very difficult to rescind a contract on the basis of "Failure to achieve the purpose of the contract". Therefore, how to understand and determine that "Can not achieve the purpose of the contract" is worth studying, which will be discussed in the following article.

2. Civil Law Interpretation of "Purpose of Contract"

2.1 Development of the Concept of "Purpose of Contract"

In the history of civil law, the concept of "Purpose of contract" originates from the concept of "Cause of purpose" introduced by the medieval jurists from Aristotle's philosophy. In the Middle Ages, explanatory jurists and commentaries used the term "Purposive cause" to express the purpose of contract, and "Driving cause" to express the parties' motivation.

In Roman law, the concept of cause has many meanings, one of which is aim. As far as its relation to the end is concerned, the line between cause and end becomes blurred from the beginning of Roman law, and the cause is either the end, or it includes the cause of the past and the end of the future, this blurring continues even to this day. The theory of reason is closely related to the purpose of a contract. In modern French civil law, reason refers to the purpose for which the parties enter into a contract. The reason is divided into near cause and far cause: near cause is also called abstract cause, objective cause, near cause has the objective nature, the near cause of the same type of contract is the same; far cause is also called concrete cause, subjective cause, the same type of contract, but far causes are likely to be different. This distinction provides a theoretical reference for the study of the construction of the purpose of contract: the purpose of contract can also be divided into objective purpose (proximate cause, abstract cause) and subjective purpose (remote cause, concrete cause). Since then, the concept of "Cause" has been abandoned in the reform of French law of debt, replaced by the "Purpose of the contract" with its function of judging legality. This means that the purpose of the contract partially replaces the cause. It is an important way to study and explore the development of the purpose of contract in the civil law theory with the theory of cause as the theoretical background.

Another important way to trace the theoretical source of the purpose of a contract is the relationship between the purpose of a contract and the legal rescission of a contract. The traditional theory thinks that the purpose of rescission of contract is to sanction the debtor's default, but the new theory regards rescission as a kind of system that allows the party who has lost the interest to maintain the contract to break away from the contract. That is, there is no point in continuing to recognize

the binding force of a contract if there is no benefit or value to be derived from it. When the understanding of the purpose of the contract rescission system has changed, the different elements of the contract rescission should be designed accordingly. The central element discussed is the concept of the purpose of the contract. Whether it is civil law, Anglo-American Law or international law, the choice of the normative model of rescission of contract will return to the purpose of contract in principle. The legislative design of the system of legal rescission of contract in Article 563 of the Civil Code of our country, the legal rescission of contract in article 542 of the Japanese civil code, and the fundamental breach of contract in Article 25 of CISG, as well as PICC, PECL, DCFR and other provisions of the fundamental non-performance of the contract Can not be realized as a standard model. Why the purpose of the contract Can not be realized can be used as the basis for the judgment of the legal rescission of the contract, the system of contract rescission is always related to the uselessness of payment, the essential condition of contract rescission is the uselessness of payment, which is related to the concept of contract purpose, because for the creditor, to the creditor, the uselessness of payment means that the purpose of the contract Can not be realized.

Another important way to trace the ethical origin of the purpose of contract is the concept of fundamental breach of contract in common law and international contract law. The concept of fundamental breach of contract was conceived and developed by English common law and finally confirmed by legislation in Article 25 of CISG. The core of fundamental breach of contract is that the purpose of the contract Can not be realized, so fundamental breach of contract is closely related to the purpose of the contract. Since then, PECL, PICC, DCFR and other contract law provisions in the model law of non-performance, the core of the parties Can not achieve the purpose of the contract. The fundamental breach of contract is that the purpose of the contract stipulated in Article 563 of the Civil Code of our country Can not be realized in the rescission of breach of contract, legislation on legal rescission of contracts, including the Bürgerliches

Gesetzbuch, the Japanese civil code and the Swiss Civil Code, has also been affected by fundamental breach of contract. From the legislation of legal rescission of contract in main countries and the stipulation of legal rescission of contract in the uniform document of international contract law, it is a new normative model that the purpose of contract Can not be realized.

In a word, from the angle of the theory of cause, the relationship between the purpose of contract and the legal rescission of contract in civil law, the fundamental breach of contract in common law and international contract law, it can outline the development of the purpose of contract in civil law.

2.2 The Conceptual Meaning of the Purpose of the Contract

The concept of the purpose of a contract has multiple meanings, which can refer to both the "Subject matter" of the contract and the "Payment" in the contract. In addition, the "Facts of the parties' intention or expectation" at the time of the conclusion of the contract is also the purpose of the contract. The "Purpose", when the purpose Can not be achieved, is also given this meaning. In this purpose, both the parties have a common purpose (the content of the contract or a common motive), but also a party's purpose (a party's motive). The multiple meanings of the concept of the purpose of contract also reveal that the purpose of contract has normative significance of multiple dimensions.

There are two kinds of views on the connotation of the purpose of the contract in China: one is that the purpose of the contract is the economic purpose of the Contracting Party [1] the other is that the purpose of the contract is the interest that the contracting party wishes to realize, not only economic interests, but also social and spiritual interests [2]. In essence, both views hold that the purpose of a contract is the interests that the contracting party wishes to realize through the conclusion of the contract. It defines the meaning of the purpose of a contract as the benefit that the parties to a contract can obtain after the performance of the contract, but this definition is too general to reflect the normative significance of the purpose of a contract in the contract, in fact, it is of little significance to the study of the normative

value of the purpose of the contract. The most important meaning of the concept of the purpose of contract itself is that it has the double meaning of subjective purpose and objective purpose, or dualistic structure.

2.3 Subjective and Objective Purposes

What is the normative construct of the notion of “Contractual purpose” itself? Going back to the cause theory in French law, the cause is the purpose for which the parties enter into a contract. The proximate cause is the same in all contracts, such as the seller's proximate cause is the acquisition of price, and the buyer's proximate cause is the acquisition of ownership of the subject matter. However, the reasons for the conclusion of the contract vary from party to party. After the seller obtains the price, it can be used for business or other consumption. After the buyer acquires the subject matter, he can use it himself or give it to others. To find out the reasons, it is necessary to explore the contracting party's motivation to conclude the contract. The distinction between proximate and remote causes in the theory of cause provides an important theoretical reference for the purpose of contract. The purpose of contract has the double meanings of subjective aim (remote cause, concrete cause) and objective aim (proximate cause, abstract cause) [3]. The subjective purpose of a contract, that is, the interests that the contracting parties subjectively want to realize through the conclusion of a contract, is the motivation of the contracting parties. The objective purpose of a contract, that is, the typical purpose of a transaction, is to conclude a contract with the intention of giving the desired legal effect. Contracts of the same type have the same objective purpose. The subjective purpose of the contract can be explored from the context of the contract, the transaction customs and the contracting process, while the objective purpose of the contract can be obtained from the interpreter's evaluation of the contract based on fairness, purposiveness and reasonable viewpoints. In the above-mentioned case, the buyer of the house obtained the layout of the house and the sale contract and accessories, floor

plans and so on show the layout is exactly the opposite, the buyer believes that its purpose of the contract has not been achieved, so the buyer applied for dissolution of the contract. The court of first instance held that there was only a difference in direction and that it did not affect the buyer's purpose of residence. The seller did not constitute a fundamental breach of contract. But the court of second instance made the opposite judgment, the court of second instance also discussed the classification of the purpose of the contract in the reasoning of the judgment, which is relatively rare in the judicial practice of our country. The objective purpose is the typical transaction purposes, the parties to purchase the objective purpose is to obtain housing ownership and used for housing, children, investment, etc. The subjective purpose is the motive and intention of the parties in certain specific circumstances. In general... The purpose of a contract does not include a subjective purpose... “The judgment distinguishes the contractual purpose of a contract for the sale of a house from the objective purpose, which is to obtain ownership of the house, and the subjective purpose, which is the motive and intention in certain circumstances. The classification of the types of contract purposes in the judgment is undoubtedly in line with the dual structure of contract purposes, but it does not seem to completely distinguish between subjective and objective purposes. Obtaining ownership is an objective aim, and how to use it after obtaining ownership belongs to the category of subjective aim (motive). According to the judgment, the stipulation of a specific purpose in a contract is the objectification of a subjective purpose, which should be followed by the parties to the contract. This decision is one of the few that clearly discusses the subjective and objective purposes of the contract and has a positive exemplary effect.

2. The Specific Finding that the Purpose of the Contract Can not be Fulfilled

3.1 “Failure to Achieve the Purpose of a Contract” in the Civil Code

A contract is the law between the parties

and must be strictly observed. But when the purpose of the contract is not fulfilled, the binding force of the contract is challenged. The problem of unfulfilled contract purpose has become a challenging problem in the study of contract law. The Civil Code deals with the non-realization of the purpose of a contract mainly in the following forms, that is, "Civil Code" Article 563, paragraph 1, Item 1, item 4 of the provisions of force majeure, breach of contract resulting in the failure to achieve the purpose of the contract. Previously, Article 26 of the Supreme People's Court's interpretation (2) on several issues concerning the application of the contract law of the People's Republic of China (2) (has lapsed) stipulated that the purpose of a contract could not be realized because of the change of circumstances. However, Article 533 of the Civil Code did not provide that the purpose of a contract could not be realized because of the change of circumstances. Therefore, the element of "The purpose of a contract Can not be realized" has been deleted in the change of circumstances in our country's law.

Article 580 of the Civil Code provides for a system of application for judicial relief by the parties in the event that performance Can not wait and the purpose of the contract Can not be achieved, in this case, the failure to realize the purpose of the contract appears for the first time in our country's legislation. In the civil code, articles 587,610,633,729 and so on, which are related to the deposit contract, the contract of sale and the contract of lease, also appear the provisions of breach of contract, causing the failure to realize the purpose of the contract, that is, the failure to achieve the purpose of the contract also plays an important regulatory function in the classification of contracts. In short, failure to achieve the purpose of the contract appears in the "Civil Code" of breach of contract, force majeure to lift the contract, contract deadlock in the judicial relief of three legislative forms.

3.2 The Normative Meaning of "the Purpose of a Contract that Can not be Bought Out"

According to the different legislative provisions, different legal provisions "Can

not achieve the purpose of the contract," the normative meaning of the differences. For legislative purposes, see the chief editor of the leading group for the implementation of the Civil Code of the supreme people's court: "The interpretation and application of contracts in the Civil Code of the People's Republic of China" (Vol. 1) , in breach of contract caused by the failure to achieve the purpose of the contract, the failure to achieve the purpose of the contract is essentially a fundamental breach of contract. In the context of our country's law, it is the most common situation to interpret the failure to achieve the purpose of a contract as a fundamental breach of contract. However, Article 563 of the Civil Code provides that force majeure may also render the purpose of the contract unattainable, and Article 580 of the Civil Code also provides for circumstances that render the purpose of the contract unattainable, including impossibility of performance. Therefore, the impossibility of realizing the purpose of the contract in our law covers not only the fundamental breach of contract, but also the impossibility of performance, force majeure and other circumstances that lead to the rescission of the contract.

3.3 What is the Purpose of the Unattainable Contract

In the provisions of our law concerning "Failure to achieve the purpose of the contract", is it the termination of the contract caused by the failure to achieve the basic purpose or the termination of the contract caused by the failure to achieve the further purpose? The distinction between the basic purpose and the further purpose of a contract is a theoretical one. According to the second chapter, the purpose of the contract in our country is generally limited to the objective purpose, that is, the typical purpose of the transaction, the same purpose of the same type of contract. Therefore, in our country's law, the judgment of "Can not realize the purpose of the contract" generally points to that the objective purpose Can not be realized, and if the parties' contracting motive or further purpose Can not be realized, does not have the legal normative significance. "The

'purpose of contract' in our law is the subjective purpose of the parties, but judicial practice is often judged through a stereotyped method, usually limited to economic purposes, so it has a strong objective color [4].” In a particular case, the purpose of the contract Can not be realized after it becomes the basis of the transaction of the contract, which may include the subjective purpose. Our legislation does not define whether the purpose of a contract is subjective or objective. But our country judicial judgment entrusts the contract goal the strong objective color, the incoherence is the breach of contract causes the contract to rescind, or the force majeure, the situation change causes the contract goal to be unable to realize, the judicial judgment mainly grasps the connotation of the purpose of the contract in the sense of objective purpose.

In short, “Can not achieve the purpose of the contract” in the context of our country's law, the “Purpose” is mainly used in the sense of objective purpose, but it can also include subjective purpose in a particular case, and what kind of purpose to express needs to be identified in the case.

3.4 The Judicial Judgment that the Purpose of the Contract Can not be Achieved by Breach of Contract

In judicial practice, most of the disputes concerning the non-realization of the purpose of the contract result in the non-realization of the purpose of the contract. To what extent is a delay in performance or other breach of contract “Such that the purpose of the contract Can not be achieved”? How to judge “Failure to achieve the purpose of the contract” in judicial practice? These questions are the long-term difficult questions that contract cases face in judicial judgment.

3.4.1 Grounds for judgement that delay in performance renders the purpose of the contract unattainable

This is the cause of legal rescission of the contract stipulated in Article 563, paragraph 1, item 4 of the Civil Code of our country, it follows the provisions of Article 94(4) of the original contract law. In practice, the delay in the performance of debts is an important reason leading to the

failure to achieve the purpose of the contract. “The equity transfer contract clearly stipulated that Fang Xing should complete 5,000 mu of land tenure within a year. Fang Xing has not been able to complete the land tenure certificate. Daming refused to accept payment, and the contract Can not be continued. The two parties Can not achieve their transaction objectives, and the contract can be terminated.”. “The first instance ruling of the Supreme People's court... .. failure to complete the investment obligation within a reasonable time and thus to achieve the purpose of the contract constitutes a fundamental breach of contract, and therefore the judgment to rescind the 11.19 agreement is not improper.” From the above judgment, in determining whether a delay in performance results in a failure to achieve the purpose of the contract, the first thing to do is to follow the agreement of the parties However, in the absence of a clear agreement on the time limit for performance, how to determine the extent of delay is a result of “Can not achieve the purpose of the contract” Delay of four years or nine months would constitute a fundamental. The judgment comprehensively considered such factors as the duration of the delay and the consequences of the delay. Of course, many decisions do not give much reason for finding that the purpose of the contract Can not be achieved because of the delay in performance, but only describe the failure to perform in general terms In addition, some decisions have shown that mere delay in performance is not sufficient to conclude that the purpose of the contract Can not be achieved and that delay in performance must be of a serious nature .

In conclusion, judging from the above-mentioned judicial decisions, which support that the delay in performance leads to the unrealized of the contract purpose, the judicial decisions consider the duration of the delay in performance, the degree of the connection between the duration benefit and the realization of the creditor's contract purpose, and the severity of the consequences of the delay.

3.4.2 Reasons for other breach of contract that renders the purpose of the contract

unattainable

There are some views that other breach of contract, including the main Can not pay, defective payment, from the payment of obligations and collateral obligations breach of circumstances [5]. Judging from the judicial practice, the scope of other acts of breach of contract is very broad, non-performance, refusal to perform and other acts constituting fundamental breach of contract, both parties are in breach of contract, failure to perform, breach of collateral obligations and other circumstances may be considered as other violations.

3.4.3 Reasons for a judgment that a breach of contract does not render the purpose of the contract unattainable

There are many judicial decisions that delay in performance, breach of contract is not enough to cause the purpose of the contract Can not be achieved. It is also necessary to sort out, in order to extract in the comparison of the People's court in the judgment of whether the purpose of the contract can be achieved in the factors considered. The first is the extent to which a breach of contract fails to achieve the purpose of the contract. This is the main reason why most decisions do not rescind contracts. Most of the reasons for the judgment held that the delay in performance, or other general breach of contract, was not of such a degree as to render the purpose of the contract unattainable. Or that the corresponding breach of contract will not materially affect the realization of the purpose of the contract, not to the extent of fundamental breach of contract, thus ruling that the contract Can not be rescinded; or that a party has already performed its main obligations, if the other party claims to cancel the contract, it is generally not allowed to do so. If the loss can be made up by supplementary formalities, or by reselling the subject matter, or by delaying the time limit for the performance of the contract, it is not considered that the purpose of the contract Can not be realized. As in the case presented at the beginning, the first court held that the purpose of the contract was limited to objective and direct purposes, not to subjective and indirect purposes.

4. Conclusion

Due to the diversity of contract types and different contract transaction modes, there are differences in the judgment of the unrealized of the purpose of the contract. "Whether a default fundamentally deprives creditors of the benefits they can expect is a matter of fact that depends on the circumstances of each case." The facts of discharge are closely related to the purpose of the discharge system. However, the essential fact of release is not obtained from the broad framework of the circumstances under which the parties should be freed from the constraints of the contract, it needs to be discussed through the object of the contract, the content of the contract, the pattern of non-performance of the debt to some extent. On this basis, the elements of the evaluation need to be discussed in more detail. Looking at the case law, we can see that the element of "The purpose of the contract Can not be achieved" is not unique and clear, but because the type and content of the contract, as well as the intention of the parties, the existence of special agreements vary.

In short, the breach of contract causes the purpose of the contract Can not be achieved without an absolute standard of invariance, need to combine

The same type, the content of the obligation to pay, the pattern of performance and other factors to judge.

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