

A Brief Introduction to Third-Party Performance on Behalf of a Third Person

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Abstract: Article 524 of the Civil Code stipulates the system of performance by a third party, the conditions and legal effects of performance by a third party with legitimate interests, and provides a legal basis for dealing with cases of voluntary performance by a third party in practice. However, the nature of the provision itself, as well as the interpretation and application of space for further discussion. Article 30 of the Judicial Interpretation of the Codification of Contracts further typifies the third party with legitimate interests. This paper centers on the third person to perform for the system of the background and composition of the elements, “legal interest of the third party” of the specific types and the legal effect of the system, in order to analyze the system, in order to outline the third person to perform for the system of the basic system.

Keywords: Third Party; Performance on Behalf of the third Party; Legal Interest; Civil Code; Judicial Interpretation of Contract

1. Introduction

The origin of the concept of debt can be traced back to the *Obligatio* of Roman law, as a “legal lock”, in principle, can only bind the creditor and the debtor, the third party does not usually enjoy the right to direct intervention. With the rapid development of the economy and the increasing number of civil and commercial activities, the debt relationship inevitably involves a third party outside the contract. In some specific circumstances, the participation of the third party for the promotion of debt performance, the realization of creditors and debtors in the contract, as well as to protect the rights and interests of the third party, have played a positive role, thus the third party for the performance of the system came into being.

Article 524 of the Civil Code of the People's Republic of China (hereinafter referred to as the “Civil Code”) clearly stipulates the “third-party voluntary performance system”, which provides a clear legal basis for the recovery of compensation after third-party performance. The implementation of this system not only helps to improve the efficiency of transactions and reduce the risk of disputes, but also reflects a positive response to the needs of judicial practice. At the same time, the implementation of the Civil Code also provides practical guidance for dealing with disputes involving third-party performance, which helps to form a clearer and more consistent trial opinion.

In the Interpretation of the General Principles of the Civil Code, Article 30 of the third party for the settlement of the problem has been elaborated, this paper will explore the origin of the third party for the performance of the background of the system and its core constituent elements, and on the specific types of “legitimate interests of the third party” and the third party for the performance of the system of legal effects for a systematic analysis. It also systematically analyzes the specific types of “third party with legitimate interests” and the legal effects of the third party performance system, aiming to comprehensively analyze and construct the basic theoretical framework of the third party performance system, and strive to reveal its overall structure and internal logic.

2. Overview of the Third-Party Performance System

Third-party performance refers to the debt relationship, a third party other than the debtor to perform the debt, so that the creditor's claim can be realized. [1] Also known as the “third party unilateral voluntary performance”, “third-party liquidation subrogation”, “third-party liquidation”. This system is not an emerging concept, but is

deeply rooted in the history of the traditional civil law, with a long legal tradition and rich practical basis.

2.1 The Evolution and Development of the Third Party for the Performance of the System

In Roman law, although the debtor is usually the main body of debt settlement, but not absolutely, any third party with the ability to fulfill and have the intention to make the debtor get rid of the debt settlement, have the right to substitute for the debtor to carry out the settlement. With the evolution of the times, the system of third-party performance on behalf of the debtor has gradually gained the recognition of the legal systems of various countries, and has been increasingly perfected in practice. Article 1236 of the French Civil Code, Articles 267 and 268 of the German Civil Code, and Article 474 of the Japanese Civil Code all provide for the system of third-party performance. In the common law system, this system is also recognized, the United States law is called "Delegation of Duties" (Delegation of Duties), while the English law is called "Vicarious Performance" (Vicarious Performance), and does not affect the performance of the third party. Performance" in American law and 'Vicarious Performance' in English law, and does not impose additional burdens on the debtor [2]. This system is in essence a reasonable break with the relativity of contracts, because creditors are often more concerned with the realization of their claims than with the identity of the liquidator. Therefore, the third party to perform on behalf of the creditor will not only not harm the interests of the creditor, but also help the debt settlement, at the same time, the third party to perform on behalf of the debtor after turning to the debtor to recover, will not bring additional burden to the debtor. Coupled with the strict limitations of the constituent elements, this breakthrough is fully justified. Article 524 of the Civil Code for the first time explicitly provides for the system of third-party performance on behalf of the debtor, thus filling a legal gap. However, as a new provision, it still faces many challenges in its interpretation and application. First, the concept of third-party performance needs to be clearly defined to avoid confusion with

other regimes involving third parties to a contract, such as third-party contracts of payment and assumption of debt. In the past judicial practice, some courts recognized Article 65 of the Contract Law of the People's Republic of China (hereinafter referred to as the Contract Law) as an institutional norm of third-party performance. In some pecuniary debts, some courts considered that the following circumstances constituted a transfer of debt, where the third party expressed to the creditor its willingness to repay the debt for the debtor, and after the creditor expressed its consent, the third party became the new debtor, rather than the third party performing on behalf of the debtor. This is clearly confusing third-party performance with assumption of debt [3]. Therefore, it is particularly important to clarify the concept of third-party performance and its constituent elements.

Secondly, there is ambiguity in the interpretation of Article 524 of the Civil Code, which refers to the performance by a third party "with a legitimate interest". The article stipulates that the third party to perform the constituent elements, the third party needs to have a "legitimate interest" in the constituent elements are not specific, in the macro-level interpretation of the broader and restrictive theory, which doctrine is more in line with the context of the Civil Code to be explored [4]. Macro-level discussion is not enough, in the face of the judicial practice in the legal interest of the third party's changing forms of expression, but also in the micro level of the concept of "legitimate interests" to be specific, and to clarify its coverage of the specific circumstances. In addition, it is also necessary to clarify how the third party can carry out the performance on behalf of the third party, for example, whether it is possible to carry out the performance on behalf of the third party by way of set-off or in rem, etc. There is no clear provision on this. Further clarification is also needed as to the legal effects that the third party enjoys against the debtor after substituted performance. Although article 30 of the Judicial Interpretation of the Contracts Part of the Civil Code responds to the issue of third-party satisfaction by providing specific types of third parties with a legitimate interest, the legal effects of the assignment of the creditor's claim against the debtor to a third

party, and the application of the law after a guarantor has been satisfied on behalf of the debtor, it still needs to be clarified through systemic interpretation.

2.2 Elements of the Third-Party Substitute Performance Regime

2.2.1 The contract does not stipulate that the third person has the obligation to perform

First of all, the third party is not the contractual relationship between the other party; Secondly, there is no provision in the contract to agree to the third person for the performance. It can be seen that the third person for the debt does not belong to their own is knowingly, the third person's performance is in their own name, rather than in the name of the debtor performance.

2.2.2 The debtor does not fulfill the debt

Mainly includes four kinds of cases: First, the clear refusal to perform, the debtor has clearly made a refusal to perform the debt of the meaning of the expression; Second, a reasonable period of time is not fulfilled, the debtor has not explicitly refused to perform, but in the agreed period of time for the performance of the debt or although not agreed to perform the period of time, but in a reasonable period of time without the actual performance of the act; Third, loss of the ability to perform, the debtor is obviously loss of the ability to perform, such as the business situation of a serious (iii) Loss of ability to perform, where the debtor is obviously incapable of performing, such as serious deterioration of business conditions; and (iv) Impossibility of performance, where it is no longer possible for the debtor to perform the debt in person or to entrust the performance to others. If the debtor is willing to fulfill the debt, there will not be a third party to fulfill the situation, so in judicial practice, this element generally adopt the principle of leniency [5].

2.2.3 The third party has a legitimate interest in the fulfillment of the debt.

In the absence of an explicit agreement in the contract, the third party to fulfill the debt is essentially a civil activity. Under the framework of civil law, "freedom without prohibition" means that within the scope of the law is not explicitly prohibited, the individual enjoys the right to act freely. Therefore, as long as the third party's

performance is based on a legitimate purpose and does not violate the prohibitions in laws and administrative regulations, it can be determined that it has a legitimate interest in the performance of the debt. For example, if a third person pays the purchase price to the developer in lieu of the public official in order to pay a bribe, such behavior obviously carries an unlawful purpose and violates the provisions of the Criminal Law of the People's Republic of China that prohibit bribery, and therefore cannot be regarded as a voluntary and lawful fulfillment of the debt by the third person.

With regard to this element, there has been considerable controversy in the academic community. Some scholars advocate a restrictive interpretation of "legitimate interest", while others favor an expansive interpretation. This article will discuss this controversy in depth in the following chapters. 2.2.4 According to the nature of the debt, contractual agreement or legal provisions, not explicitly exclude the third party to perform on behalf of

The rights and obligations carried by a particular contract are usually limited in their effect to the two parties to the particular contract. If third party performance is involved, it may trigger substantial changes in the content of the contract, thereby preventing the creditor from realizing its original intent in entering into the contract. The nature of such a debt is such that it is not suitable for performance by a third party. Cases in which the subject of performance is expressly limited to the parties to the contract or in which performance can only be made in the name of an individual by law do not fall within the scope of recovery from the debtor following performance by a third party on the debtor's behalf. In other words, the recovery from the debtor provided for in article 524 of the Civil Code does not apply in such cases.

It should be mentioned in particular that the scope of debts covered by article 524 of the Civil Code is not limited to monetary debts. However, it can be observed in judicial practice that the vast majority of debts are indeed presented in the form of pecuniary debts. As for the performance of non-pecuniary debts, the relevant jurisprudence is relatively rare.

3. Definition of “Legitimate Interest” and Typology of “Third Party with Legitimate Interest”

The purpose of the third party performance system is to eliminate obstacles to debt fulfillment, clarify the interests of all parties, and promote the timely liquidation of existing credit and debt relationships, thereby avoiding and eliminating “zombie debt” and simplifying the complexity of legal relationships. China's Civil Code, “legitimate interests” is the implementation of this system is a prerequisite.

In the case study, a logistics company and Wu signed a “cargo transportation contract” in 2020, in which Wu is responsible for the company's Zhengzhou transportation business. The contract clearly stipulated that the expenses of the transportation vehicles and drivers were to be settled by Wu, and had nothing to do with the logistics company. However, because Wu failed to pay the freight in time, the carrier driver detained the goods during transportation. In order to ensure timely delivery of the goods, the logistics company paid the freight of 460,000 RMB on behalf of Wu, and notified Wu, who expressed no objection at that time. But then, Wu only paid 60,000 yuan to the logistics company. After recovering the remaining amount to no avail, the logistics company filed a lawsuit with the court.

The effective referee held that a logistics company had a contract of carriage relationship with Wu, and that the goods were detained due to Wu's failure to pay the freight charges in time, and that the logistics company had a legitimate interest in the situation, and therefore had the right to pay the freight charges to the carrier driver on Wu's behalf. After the fulfillment of the logistics company, the carrier driver's claim against Wu was transferred to the logistics company. Therefore, in accordance with Article 524 of the Civil Code, the judgment supported the request of a logistics company to pay the remaining freight charges to Wu.

The above case has positive significance for the people's court to explore the application of the rule of third party performance with legitimate interests. However, what is a legitimate interest, the current understanding is not uniform. Some Japanese scholars are of the view that a third party should have a

direct legal interest or be legally interested in the performance of the debt, and that a mere factual interest between the third party and the debtor is not sufficient [6]. The Supreme People's Court held that the voluntary performance by a third party is a civil legal act, and the validity of the act follows the principle of “there is no prohibition under the law”, and only needs to comply with the general conditions of validity and not violate the prohibitions of laws, administrative regulations and administrative rules. The Legal Affairs Committee of the National People's Congress emphasized that the scope of legitimate interests cannot be generalized, and that its scope needs to be judged according to judicial practice, while focusing on balancing the interests of all parties [7]. In the academic community, although there is no uniform conclusion on the definition of “legitimate interests”, there is general agreement that a typological distinction should be made. Some scholars propose that the legitimate interests should include those who have legal interests as a matter of course as a result of the satisfaction of the contractual debt, such as the debtor's guarantor, the guarantor in rem, the co-owner, the partner and the third party who enjoys a subordinate security right in the secured property of the debt [8]. In practice, recognized as having a legal interest in a variety of circumstances, such as the assignee in the transfer of collateral on behalf of the payoff, sublease in the sublessee on behalf of the lessee to pay rent, the parent company for the subsidiary company on behalf of the repayment of the debt and so on. However, some scholars have suggested that, in interpreting “legitimate interests”, the wisdom of judges and scholars should be fully considered and a more lenient attitude should be adopted.

When exploring the core of the third party for the settlement system, the key is to analyze the third party and debt performance between the interests of the closeness of legislation and justice need to be closely around this point to formulate norms, indicating why the third party even in the case of the parties against the will of the parties still have the right to pay for the settlement.

Article 30 of the Judicial Interpretation of the Book of Contracts makes clear provisions,

listing in detail the third parties who may be considered to have a legitimate interest in the performance of the debt. The author is of the view that Article 524 of the Civil Code is a new article, which is still an emerging system in China, although there are precedents in the international arena. Its scope of application and interpretation should be combined with the specific situation of China's judicial practice and the innovation and development of theory and doctrine to consider. But in the current civil code implementation is not yet mature, the application of the law is not sufficient, from the point of view of systematic interpretation and purpose of interpretation, should not take too loose interpretation. This is because the subrogation right given by the third party performance system has a strong protective effect, can break through the contract relativity, so that the third party completely replace the creditor status as a party to the debt. But the legal interest on the interpretation of the text on the understanding of the very broad, all in line with the concept of fairness and justice, honesty and credit and other interests, seem to be attributable to "legal", if too loose interpretation, whether or not the law so expressed, legislators and judges are afraid that will not be unrelated to the substitution of the behavior of the third party to give the effect of strong Subrogation rights, because it is not in line with the principle of private law autonomy. If so, the existence of this element seems unnecessary. Therefore, the academic view of a specific typology of third-party subrogation systems seems more reasonable in the current environment. This typology not only helps to clarify the scope of application, but also ensures the rationality and effectiveness of the system. At the same time, Article 30 of the Judicial Interpretation of the Contract Part further clarifies the type of third party in the development of theory and practice, providing clearer guidance for judicial practice, which is worthy of wide recognition and reference.

4. Legal Effects of Third-Party Performance

After the third person performs for the creditor, according to Article 524, paragraph 2 of the Civil Code, after the creditor accepts the performance of the third person, the

creditor's claim on the debtor is transferred to the third person, which will produce the effect of legal transfer of claims, and the relative extinction of the debt relationship, i.e., the debtor's debt to the creditor is extinguished between the two parties, and the debt relationship is directly transferred to the debtor and the third party in accordance with the provisions of the law, and the debtor has an original debt to the third party, and the third party has a claim on the debtor. The debtor owes the original debt to the third party, and the third party has a claim against the debtor [9]. If a third party claims rights against the debtor on the basis of the creditor's acquisition of the creditor's rights against the debtor since the creditor's acceptance of its performance, the debtor may be able to introduce defenses arising from the underlying relationship against the third party [10].

4.1 Whether the Creditor's Accessory Rights are Transferred Together

Article 547 of the Civil Code regulates the assignment of claims: If a creditor assigns a claim, the assignee acquires a subordinate right in relation to the claim, unless the subordinate right belongs exclusively to the creditor itself. The transferee's acquisition of a subordinate right is not affected by the fact that the subordinate right has not been registered for transfer or by the transfer of possession." As can be seen, in the case of an assignment of a contractual claim, ancillary rights attached to the claim (e.g. a security right) are usually transferred at the same time. In the case of a statutory assignment of a claim by a third party, the creditor's ancillary rights are also transferred. This is due to the fact that our Civil Code does not have a special part on general rules of debt law, and in order for the general rules of contract to play the role of general rules of debt law, it is necessary to supplement the general rules of debt law. The provisions of Article 547 of the Civil Code should also serve as a rule on the effect of assignment of statutory claims, which is consistent with the position of comparative law.

Similarly, since a third party is subrogated to the original creditor's claim, the debtor's defense against the creditor can be asserted against the third party.

4.2 Whether the Debtor Completely Withdraws from the Creditor

In the scenario where a third person performs a debt on behalf of a creditor, although the debtor-creditor relationship may appear to be relatively extinguished, this is in fact based on the fact that the third person has fully, completely, and flawlessly fulfilled the debt it was required to perform. If there is an incomplete or defective performance by the third party, the creditor still has the right to make a demand on the debtor to ensure that the debt is fully performed.

In practice, when a debtor fails to perform a monetary obligation on time, there is often a time gap between the agreed time of performance of the debt and the actual time of performance by the third party, if the third party performs on its behalf. If additional losses (e.g., interest on a monetary obligation) are incurred during this time gap, and the third party does not bear them, the creditor still has the right to demand compensation from the debtor. This approach not only ensures the integrity of the performance of the debt, but also reflects the law's balanced protection of the rights and interests of all parties.

4.3 Whether a Third Person May Partially Perform

Article 524 of the Civil Code does not explicitly state whether a third person may perform in part, nor does this article directly state it in a positive way. The author is of the opinion that a third party who performs on behalf of a third party enjoys the "right of performance", and it is up to the third party to decide how to exercise this right. If the third party partially performs, there is nothing wrong with it. For example, the debtor B has 6.5 million yuan of resources to pay the debt, it owes 6.5 million yuan to the creditor A debt. Normally, B to A direct settlement can end the debt relationship. However, B invites C to settle part of B's debt of \$6 million on behalf of A, and A receives the \$6 million settlement. C is subrogated to B's \$6 million claim. At this time, A continue to B for the remaining 500, 000 yuan, C also obtained 6 million yuan subrogation claim to B. In this case, assuming that B only 500,000 yuan of remaining resources for debt servicing, can only be in

accordance with the ratio of A, C claims to liquidate A and C. It can be seen that the third party for the performance of the ultimate damage to the interests of the creditor A. The law should not authorize it. This principle in the Civil Code, Article 519, paragraph 2, "actually bear the debt more than their share of the joint and several debtors, the right to recover from the other joint and several debtors in excess of their share of the share of the other joint and several debtors have not fulfilled, and accordingly enjoy the creditor's rights, but shall not be detrimental to the interests of the creditor "The content of "The guarantor may be paid in lieu of the creditor in the bankruptcy proceedings after the guarantor has satisfied the creditor's claim in full; the guarantor may not be paid in lieu of the creditor in the bankruptcy proceedings before the creditor's claim has been satisfied in full" are fully reflected. That is why paragraph 2 of this article specifically provides that the claims of third parties shall not be prejudicial to the interests of creditors. The provision also counters that a third party may perform on behalf of a partial performance.

According to this provision, if the third party C in the above example only performs on behalf of 6 million yuan, then its right to the debtor B in respect of the 6 million yuan should be inferior to the creditor A's right to the remaining 500,000 yuan. A can claim further payment of 500,000 Yuan from B. C cannot exercise its right in this respect.

4.4 Application of the Notice Rule

Article 546 of the Civil Code provides for the notification of assignment of claims. In view of the fact that claims, as property rights, can be freely transferred, the creditor must clearly notify the debtor of the assignment in order to ensure that the debtor will not suffer any loss due to wrongful performance of the debt to a non-creditor after the assignment of the claim. Although the Civil Code does not explicitly stipulate that the third party should notify the debtor after performing on behalf of the debtor, based on the same normative purpose, if the debtor does not receive the notice of the assignment of the claim, it is not effective against the debtor, and if the debtor performs to the original creditor, it can still be effective for the satisfaction of the debtor, and the third

party has no right to claim the debtor's claim again. With regard to the subject of notification, it has been argued that both the third party and the creditor have an obligation to notify the debtor.

5. Conclusion

Where a debt can be performed by a third party, Article 524 of the Civil Code grants a third party with a legitimate interest the right to intervene in the relationship of the debt and break the relativity of the debt, regardless of the will of the creditor or debtor, and is accompanied by measures to transfer the legal claim to ensure the realization of the third party's right to claim compensation. From the perspective of balancing interests, in order to avoid over-protection of third parties, Article 30 of the Judicial Interpretation of the Codification of Contracts strictly limits third parties with legitimate interests. This is more conducive to the realization of creditors' claims and to a certain extent reduces the burden on other debtors.

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