

# Study on the Legal Effect of Contract Termination Lawsuit When No Substantive Judgment Is Obtained

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**Abstract:** When a party directly seeks contract termination without prior notice, and the litigation fails to obtain substantive judgment due to withdrawal, dismissal, or amended claims, the divergence in applying Article 565 of the Civil Code and Article 54 of the Supreme People's Court's Interpretation on Several Issues Concerning the Application of the Contract Chapter of the Civil Code leads to legal ambiguities such as inconsistent determination of termination timing and suspended validity status. By analyzing the declaratory nature of contract termination actions, clarifying that service of a copy of the complaint constitutes valid notice for exercising termination rights, and recognizing that termination effects automatically occur under Article 565(1) of the Civil Code without requiring court judgment, this study proposes a "new coexistence theory." The theory maintains that withdrawal or dismissal generally does not affect termination effectiveness achieved at service, while amending claims to demand continued performance may be interpreted as implied withdrawal of termination intent. Ultimately, it introduces the "notification substitution + procedural equity" rule to resolve judicial discrepancies, unify standards for determining termination effects, and balance protection of termination rights with transactional stability.

**Keywords:** Right of Contract Termination; Formative Right; Action of Confirmation; New Coexistence Theory

## 1. Introduction

When a party decides to exercise the right to terminate a contract, it must notify the other party of this decision. The contract becomes legally terminated upon the receipt of such notice. However, in practice, it is common for one party to directly file a lawsuit for contract

termination without prior notification. In such cases, courts typically focus not on whether termination notices were issued or the exact termination date, but rather on whether the plaintiff has the legal right to terminate the contract. Courts generally accept such cases and issue judgments to terminate the contract if the plaintiff's termination rights are confirmed during proceedings[1]. Conversely, they may dismiss the plaintiff's claim for contract termination.

When such litigation fails to obtain substantive judgment (e.g., plaintiff withdrawal, court dismissal, or in-court amendment of claims to continue performance), it creates a dilemma in determining legal effect. The root cause lies in the fact that although Article 565(2) of the Civil Code stipulates parties may "directly terminate contracts through litigation or arbitration," it neither explicitly states whether litigation constitutes a notice of termination nor regulates the impact of procedural changes on termination effects. This has led to increasingly intense disputes over the application of Article 54 of the General Provisions in the Contract Chapter. Therefore, two critical questions urgently need clarification: First, when parties directly petition for contract termination without prior notice, does serving a copy of the complaint constitute valid termination notice and produce termination effect? Second, when litigation fails to obtain substantive judgment due to withdrawal, dismissal, or amendment of claims, how should the validity status of contract termination be determined?

## 2. Action for Termination of Contract: A Suit in Formation or a Suit in Confirmation?

In legal proceedings, the key to effectively exercising the right to terminate a contract through litigation, defense, counterclaim or debate lies in clearly defining the nature of the lawsuit for contract termination. The core issue is whether such litigation falls under the category of a relationship formation suit or a

rights status confirmation suit.

Articles 562 to 566 of the Civil Code establish the right to terminate contracts as a general formative right, which differs from the requirement in the Civil Code that termination rights must be exercised through litigation[2]. This means that the termination effect can be achieved solely by the right holder's unilateral expression of intent. According to Article 565, when exercising this right, relevant parties may either notify the other party through formal notice or choose to pursue litigation or arbitration. Crucially, this right can be exercised without prior court approval for contract termination. Regardless of whether notification, litigation, or arbitration is chosen, the termination right retains its legal attributes as a general formative right.

Chinese academic circles still debate whether lawsuits seeking contract termination constitute a declaratory action or a formative action. The Supreme People's Court's interpretation tends to classify them as formative actions[3]. However, some scholars raise objections based on judicial practice considerations[4], China and Foreign Law, No.5, 2014, arguing that ordinary formative rights (such as the right to terminate contracts) require minimal judicial intervention, thus such lawsuits should be declaratory actions with only relative legal effect[5]. Another perspective contends that recognizing them as formative actions would unnecessarily delay contract termination and increase litigation burdens[6], hence claiming that parties lack standing to initiate such actions and courts should not issue formative judgments. Some scholars further explain that the essence of parties directly suing for contract termination lies in requesting the court to confirm their claim of termination rights (i.e., whether statutory or contractual conditions for termination are met), making such lawsuits declaratory actions.

The action for termination of a contract should be regarded as a declaratory action, primarily based on three grounds. First, in cases involving contract termination applications, courts primarily examine whether the substantive legal requirements for termination claims are met. If satisfied, the termination effect automatically takes effect without judicial adjudication. Even after the court confirms the validity of the termination right, the effective date of termination is still retroactively determined

through notice rules—a legislative arrangement reflecting the nature of declaratory litigation. Second, viewing it as a rights formation action might lead to excessively delayed contract termination. In formation actions, contract termination only becomes effective after the judgment takes effect. Third, treating it as a formative rights action could increase litigation burden. If parties merely file a claim for restitution post-termination, courts would need to review both the restitution request and independently adjudicate the validity of the termination right through separate formative actions, requiring consolidated proceedings. Conversely, if considered a declaratory action, courts can focus solely on verifying the fundamental condition of termination right validity during handling of the restitution claim, eliminating the need for case consolidation. This approach significantly reduces litigation burden and enhances procedural efficiency.

### **3. Practical Investigation and Theoretical Controversy of Exercising the Right to Terminate the Contract in Litigation**

#### **3.1 There Are Still Different Approaches in Judicial Practice**

While the litigation for contract termination is classified as a declaratory action, judicial practice reveals that most courts prioritize assessing whether plaintiffs possess termination rights during adjudication, while paying insufficient attention to the timing of contract termination. The determination of termination dates often varies due to complex circumstances in practice. Common scenarios include parties changing their claims from termination to performance after filing a lawsuit, or withdrawing lawsuits immediately following termination motions. This leads to disputes over whether the termination date should be determined by litigation service or by the effective judgment.

When a plaintiff initially seeks contract termination through litigation but later changes the claim to demand continued performance during trial, two distinct legal perspectives emerge. The first view maintains that once the defendant receives a copy of the complaint, the contractual termination becomes legally effective. In such cases, plaintiffs should seek compensation for losses caused by the termination rather than pursuing continued

performance, and courts should therefore dismiss claims for contract continuation. The second perspective argues that while courts must adjudicate the legal consequences of contract termination, plaintiffs retain the right to demand continued performance until the court's judgment takes effect. Terminating the contract immediately upon receiving the complaint would essentially restrict parties' ability to amend their claims. Furthermore, to maintain stable transactional order, contract performance should be maintained.

The key reason for the dispute is that when a participant in the lawsuit changes his claim, there is a conflict of conflicting effects that leads to a contradiction in the actual judgment.

When a plaintiff first seeks to terminate a contract through litigation and subsequently withdraws the claim, courts have shown significant divergence in determining the validity of contracts under such circumstances. Some judicial interpretations uphold the "service effectiveness" principle, arguing that the service of a copy of the complaint constitutes the completion of the expression of intent to exercise termination rights, thereby creating contractual termination effect from the moment of service. Even if the plaintiff later withdraws the lawsuit, this merely signifies their abandonment of pursuing termination confirmation through legal proceedings, without affecting the legally effective termination status previously established. In contrast, another perspective adheres to the "withdrawal retroactivity" theory, asserting that withdrawal of litigation creates a legal effect of nullifying the proceedings. This implies that since the act of revoking the lawsuit has withdrawn the original termination claims, the time of service of the complaint copy should not be considered the termination point. Consequently, the legal validity of the contract should revert to its pre-litigation state.

The root of these conflicting legal interpretations lies in the dual rule conflicts within judicial practice. On one hand, the withdrawal mechanism grants parties the right to "reset litigation procedures"; on the other hand, as a formative right, the contractual termination claim carries unilateral and irreversible enforcement. Allowing arbitrary withdrawal of termination claims could undermine transactional stability and erode the foundation of formative rights. This inherent

conflict has led to divergent adjudication approaches in judicial practice.

### 3.2 Theoretical Disputes

The reason why there are two completely different views on the above situation is that the academic circles have formed the following main theoretical positions on the regulation and evaluation of the exercise of ordinary formative rights in litigation procedures.

#### 3.2.1 Coexistence theory

According to this perspective, exercising formative rights in litigation is considered a composite act: it involves both the substantive exercise of formative rights under private law and the procedural steps to assert the exercise's outcomes. The legal consequences arising from these two aspects—private law effects (such as contract termination[7], or revocation of expressions of intent[8], and procedural conclusions (e.g., confirmation of valid exercise of rights)—arise independently without interference. Therefore, as long as the substantive requirements stipulated by statutory law are met, the effects of private law take effect. Even if the litigation process fails to make a final judgment on substantive rights (e.g., plaintiff withdrawal of claims or court dismissal of lawsuits), the exercise of formative rights under private law and its effects remain valid and unaffected, with only the procedural assertion being terminated.

#### 3.2.2 The theory of litigation behavior

This doctrine maintains that the fundamental purpose of exercising formative rights in litigation is solely to secure favorable court rulings, thereby constituting a purely procedural act. Its establishment conditions and legal effect must strictly comply with relevant provisions of the procedural law. Crucially, the ultimate outcomes of exercising formative rights (such as contract termination or revocation of legal acts) do not directly originate from the parties' expressions of intent, but require judicial approval through court-ordered judgments. Moreover, these effects are highly dependent on the progress of litigation procedures: if the proceedings are terminated without substantive adjudication due to factors like plaintiff withdrawal or court dismissal, the effects of exercising formative rights would never have materialized in the first place.

#### 3.2.3 Gender Theory

This theory posits that the exercise of rights in

litigation constitutes an independent act, which simultaneously embodies dual characteristics of private law conduct (exercising substantive rights) and procedural conduct (initiating claims). Its establishment requires compliance with both substantive law (regarding the exercise of formative rights) and procedural law (concerning litigation claims). Therefore, achieving effects in private law (such as contract termination) must satisfy requirements from both substantive and procedural law. If litigation procedures are not concluded through substantive judgment due to withdrawal or dismissal, the formative effect in private law will not occur – a conclusion consistent with the "procedural conduct theory". However, the core distinction lies in: the origin of formative effects stems from the parties' own expressions of intent, rather than court-recognized judgments.

#### 3.2.4 New coexistence theory

This theory essentially preserves the core tenet of the coexistence doctrine, which posits that exercising formative rights in litigation constitutes a synthesis of private law conduct and procedural law conduct, with their conditions and consequences governed by private law and procedural law respectively. However, compared to traditional coexistence theories[9], the new coexistence theory adopts a more flexible stance when addressing situations where such conduct has not been adjudicated (e.g., withdrawal of a lawsuit or dismissal of a complaint): whether it generates effects under private law should be determined through comprehensive consideration of the parties' intentions and interests. If a party exercises formative rights to protect substantive legal interests such as time-bar benefits or statutory limitation periods, the formative effect should be recognized in private law even if the procedural act is not considered by the court. Conversely, if a party uses formative rights solely for strategic purposes like resisting opposing claims without seeking judicial adjudication, they should be permitted to independently decide whether to activate this legal effect.

Regarding the exercise of contractual termination rights in litigation: According to the coexistence theory, when exercising termination rights during proceedings, regardless of the litigation method employed, whether the act of terminating the contract has legal effect should

be determined according to substantive law norms. Therefore, even if the plaintiff withdraws the lawsuit or their claims are dismissed by the court, such litigation actions themselves do not affect the independent judgment of whether the termination effect occurs based on substantive law.

According to the doctrine of litigation conduct, exercising the right to rescind during legal proceedings constitutes a purely procedural act. This action must be confirmed by a final court judgment to achieve the legal effect of contract termination; no such effect occurs until an effective judgment is rendered. Therefore [10], if the plaintiff withdraws the lawsuit or their claims are dismissed by the court, it means that the procedural act of exercising this rescission right becomes invalid and naturally fails to produce the contractual termination effect.

According to the theory of gender, exercising the right to terminate in litigation possesses dual attributes of both substantive legal intent and procedural conduct. The termination effect of a contract must simultaneously meet the requirements stipulated by substantive law and procedural law (i.e., obtaining an effective court judgment). The termination effect does not take effect until the court issues a ruling. Therefore, if the plaintiff withdraws the lawsuit or their claims are dismissed by the court, the termination effect cannot occur due to the lack of an effective court judgment confirmation.

According to the New Coexistence Doctrine, when exercising the right of termination in litigation, if the termination claim ultimately fails to receive substantive adjudication from the court (e.g., due to the plaintiff's withdrawal of the lawsuit or procedural dismissal of the case), whether such action produces the legal effect of contract termination cannot be generalized but must be determined based on the specific circumstances of the case. The New Coexistence Doctrine adopts a more flexible approach to purpose interpretation, and whether a private law effect is formed should be comprehensively assessed by considering the parties' genuine intent in exercising their formative rights and the substantive legal interests they seek to achieve.

#### **4. Under the New Coexistence Theory, the Rules for Handling the Lawsuit of Contract Termination Right When No Substantive Judgment Is Obtained**

#### **4.1 Article 54 of the Contract Compilation Is a Supplement and Improvement to Article 565 of the Civil Code**

Article 565 of the Civil Code stipulates that the right to terminate a contract can be exercised either outside litigation or through legal proceedings. When exercising this right outside litigation, a unilateral notice to the other party suffices, while in litigation, it may be exercised through a complaint, defense statement, counterclaim, or oral argument. Whether exercised outside litigation or through litigation, the termination effect does not arise from court judgment but is determined solely by assessing whether the conditions for termination are met and whether the intention to terminate the contract has reached the other party. However, Article 54 of the General Provisions of the Contract Chapter adopts an interpretation path where withdrawal of a lawsuit does not result in contract termination. According to the logic of Article 565 of the Civil Code, if a termination claim is effectively expressed through a complaint during litigation—provided the complaint is served to the other party and the court subsequently recognizes the validity of the termination right—the termination effect should take effect upon service of the complaint. Yet Article 54 of the Contract Chapter's General Provisions stipulates that withdrawal of a lawsuit renders previous termination claims "invalid." This appears to imply that the termination effect in litigation depends on winning the case rather than merely the reaching of an intention or the establishment of substantive rights, creating tension with Article 565's emphasis on the independence of termination effects.

From the perspective of the coexistence theory, Article 54 of the "Interpretation of the General Provisions of the Contract Chapter" improves rather than negates Article 565. Specifically addressing the scenario where parties voluntarily withdraw their termination claims (withdrawal of litigation), Article 54 resolves the critical issue: when a party with termination rights voluntarily withdraws its claim during litigation, what legal consequences apply to the termination intent previously expressed through service of the complaint? Considering the unique nature of litigation procedures and to prevent parties from creating unstable contract validity through the "filing-service (deemed

termination) -withdrawal" process, Article 54 establishes an exception rule: if a party explicitly waives its termination request by withdrawing the lawsuit, the original termination intent is legally presumed to have lost effect, meaning no contractual termination occurs. This essentially grants the act of withdrawal the retroactive power to revoke prior termination intentions. The withdrawal itself constitutes a clear abandonment of litigation claims, which is deemed as the party's withdrawal of its previously expressed intention to terminate the contract.

Therefore, Article 54 of the General Provisions of the Contract Chapter does not negate the core principle in Article 565 of the Civil Code that the exercise of termination rights during litigation generates substantive effects. Within the framework of the "New Coexistence Theory," this provision addresses the specific and significant procedural act of parties voluntarily withdrawing their termination claims (withdrawal of claims) by establishing a special legal consequence. It fills the gap left by Article 565's lack of explicit provisions regarding withdrawal consequences, refining and improving the system of litigation termination rules. This measure aims to maintain the stability of legal relationships and prevent abuse of rights. The theoretical foundation remains the recognition that claims for termination during litigation inherently possess substantive legal formation effect.

However, neither the application of Article 565 of the Civil Code nor the application of Article 54 of the General Principles of the Contract Code can cover all the cases in practice, so we can only take into account the existing legal provisions and the view of the new coexistence theory comprehensively.

#### **4.2 Handling Rules under Specific Circumstances**

Based on the above discussion, the processing rules for specific situations are as follows:

4.2.1 Where a party withdraws the lawsuit after requesting to terminate the contract, the court shall follow the following rules:

First, if the termination request has been explicitly stated and served to the defendant in a copy of the complaint, and meets the substantive requirements for termination rights under applicable law, the contract has been legally terminated. The plaintiff's withdrawal of

the lawsuit will not alter this outcome. If the defendant submits a defense or counterclaim containing intent to terminate the contract, or if either party expresses such intention during oral arguments, the handling principles remain consistent regardless of whether either party withdraws the litigation.

Second, when a plaintiff without termination rights initiates litigation to terminate the contract, if the defendant with termination rights agrees through written defense or oral argument, it can be considered that both parties have reached a consensus on contract termination, thereby terminating the contract. Subsequently, the plaintiff's withdrawal of the lawsuit does not alter the fact that the contract has been terminated through mutual consent between both parties.

Third, Neither party holds the right to unilaterally terminate the contract. However, after the plaintiff initiated legal proceedings seeking termination, the defendant submitted a defense statement and participated in oral arguments, thereby indicating their consent to the contract's dissolution. This constitutes an agreement between both parties that led to the termination of the contract. Subsequently, the plaintiff's withdrawal of the lawsuit does not negate the fact that the contract was terminated through mutual consent.

Fourth, When neither party possesses the right to terminate the contract but both seek termination through litigation or counterclaim, such mutual consent shall be deemed effective. The formation of this consensual termination shall commence upon the service of copies of the pleadings containing termination claims to the opposing party[11]. Any subsequent withdrawal of either or both parties' original claims or counterclaims shall not affect the legal validity of this consensual termination.

4.2.2 Where the plaintiff changes the claim to continue performance after filing the claim for termination of the contract, the court shall follow the following rules:

First, when the plaintiff has the right to terminate and makes a request for termination of the contract in the lawsuit, the contract is deemed to have been terminated when the defendant receives a copy of the complaint containing the termination request. Therefore, the court usually does not support the plaintiff's subsequent change of the claim.

Second, if a notice of contract termination has

been given before or at the same time as the defendant's notice of claim modification, it shall be deemed that the Plaintiff (i.e. the party with the right to terminate) has abandoned the intention to terminate the contract. The court shall review the request for modification and make a corresponding ruling.

Third, If the defendant accepts the plaintiff's (the party with termination rights) intention to withdraw the contract termination, this shall be deemed as the plaintiff having successfully withdrawn the termination intention. The court shall adjudicate and rule on the amended claims. Once the termination intention is served with the copy of the complaint to the defendant, the contract shall be terminated from that date until the defendant agrees to the plaintiff's decision to abandon the termination. If a third party suffers losses due to the plaintiff's withdrawal of the termination intention and files a lawsuit, the court shall investigate and determine the time of contract termination in the previous case, then base the adjudication and judgment accordingly.

Fourth, In the fourth scenario, if the plaintiff, despite lacking contractual termination rights, still chooses to pursue legal action for contract dissolution and subsequently modifies their claims, while the defendant had already expressed consent to terminate the contract prior to such modification, the contract shall be deemed terminated upon mutual agreement. The amended claims should therefore not be upheld.

## 5. Conclusion

The nature of a contract termination action should be defined as a declaratory action. The role of court judgments lies in confirming whether the unilateral exercise of termination rights by the parties meets substantive requirements and effects, rather than creating termination outcomes. A valid termination notice is constituted when the expression of intent to terminate reaches the counterparty. Based on the coexistence of new doctrines and considering the legislative purpose of Article 54 of the General Principles of the Contract Chapter Interpretation, the "notice substitution + procedural balance" rule is adopted to resolve the applicability tension between Article 565 of the Civil Code and Article 54 of the Contract Chapter General Principles Interpretation. This approach clarifies disputes over the

determination of contract termination timing and the suspension of legal effect status in judicial practice, providing theoretical support for unified adjudication standards.

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