

The Realization Dilemma and Solution Path of the Right to Rescission of the Defaulting Party in the Contract Impasse

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Abstract— With the development of economy, more and more situations of contract deadlock appear in practice. Clause 2 of Article 580 of the Civil Code gives the defaulting party the right to rescind the contract from a legal point of view. The establishment of this clause has important practical value to the principle of social transaction, the interests of all parties to the contract and the efficiency of market transaction. However, there are also some realization difficulties in the application process of this clause. In order to better play the value of the defaulting party's right to terminate the contract, the scope of application, the subjective state of the defaulting party and the time of contract termination should be supplemented and improved to solve the corresponding difficulties.

Keywords— A contract impasse; The defaulting party; Termination of contract.

I. INTRODUCTION

In the field of traditional contract law, China has always adhered to the principle of "strictly observing the contract", and only under certain circumstances, the party in compliance has the legal right to rescind the contract. However, contract deadlock often occurs in practice, that is, in the case that the parties have no way to continue to perform the obligations of the contract, or the continued performance cannot achieve the original purpose of the contract, the parties who have the legal right to terminate the contract are still unwilling to exercise the right, resulting in the stagnation of the contract performance. In order to solve such practical problems, Article 580 of the Civil Code stipulates that under three circumstances of non-monetary debt, a party may request the termination of the rights and obligations between the parties. The parties referred to in this article not only include the parties who keep the contract, but also include the parties who break the contract. Therefore, this article is understood as "the right to terminate the contract of the party in breach". This provision has important practical value to break the contract deadlock, but there are many problems to be solved in the judicial application of this provision.

II. THE ACTUAL VALUE OF THE BREACHING PARTY'S RIGHT TO RESCIND THE CONTRACT

Clause 2 of Article 588 of the Civil Code gives a legal response to solve the contract deadlock and provides a legal path to solve the problem in practice. In social transaction, the defaulting party's right to rescind the contract has certain practical value, which mainly involves three aspects: social transaction principle, the interests of all parties to the contract and market transaction efficiency.

A. Conducive to the realization of the principle of good faith

According to the basic principles of civil law, civil activities should follow the principle of good faith. In the process of social transaction, breach of contract is dishonest

behavior. If a party is unable to continue to perform its contractual obligations due to various reasons of its own, it shall bear the corresponding legal liability for the obligations not performed. However, it is not reasonable to simply make the defaulting party assume the contractual obligations if the cost to the defaulting party is very great. This does not meet the basic requirements of the principle of good faith.

Whether the principle of good faith is violated needs to consider whether the interests of the parties are unbalanced. Under the premise of fully protecting the legitimate interests of the parties in breach, attention should be paid to the interest losses of the parties in breach. From the perspective of the parties keeping the contract, when the contract cannot be continued to perform, it is a good solution to obtain the corresponding compensation in time, which is the most effective remedy for the expected benefits of the contract, which is corresponding to the "timely stop loss" of the principle of good faith. From the perspective of the parties to the breach, since the continued performance of the contract needs to pay a huge price, then giving reasonable compensation to the non-breaching party is not only an alternative to the continued performance of the contract, but also a good faith performance of observing the agreement. Therefore, the defaulting party's right to rescind the contract is conducive to the two parties to practice the principle of good faith in social transactions.

B. It is beneficial to maximize the interests of both parties in the contract

The primary purpose of the transaction between civil subjects is to seek economic benefits. When one party breaks the contract and falls into the state of performance suspension, the performance of the contract cannot continue or it needs to pay a huge cost of money to continue the performance. The damage compensation for breach of contract could have made up for the loss of the other party, but the party who keeps the contract has the legal right to rescind it, but deliberately ignores it and allows the deadlock to happen. Contract

transaction is not a zero-sum game but a mutually beneficial and win-win behavior of the parties. As equal civil subjects, the interests of both parties should be effectively protected by law. In this case, the right to rescind the contract of the defaulting party provides an opportunity to resolve the impasse, and can effectively correct the imbalance of the interests of both parties. When it is of no practical significance to continue to perform the contract, it is obviously reasonable to terminate the contract to release its constraint on the parties and encourage the parties to break free from the bondage of the contract, so as to start other trading activities. Therefore, the defaulting party's right to terminate the contract is conducive to correcting the unbalanced interest relationship between the parties, effectively avoiding the expansion of breach damage, and protecting the interests of both parties under the contract deadlock to the greatest extent.

C. *It is beneficial to control transaction cost and improve transaction efficiency*

Efficiency is an important content pursued by the value of civil law. In some special cases, if the parties are not allowed to terminate the contract, they may face a huge loss of efficiency. At first, the purpose of establishing the principle of strict adherence to contracts is to ensure the performance of contractual obligations, improve the efficiency of transactions, and maintain the order of market transactions. In recent years, the development of market economy has become more complex and changeable, so adhering to the principle of strictly observing contracts without distinguishing actual conditions is obviously not suitable for the changing economic development situation. However, the adaptation of this principle in special circumstances does not violate the original purpose of establishing this principle, which may achieve better social cost control.

In the case of contract deadlock, if the contract performance is in a state of shock for a long time, the resources and market of both parties are restricted in the already "rigid" contract, which on the one hand seriously wastes the effective resources of the society, and on the other hand restricts the parties to re-conduct social and economic transactions. Therefore, the stipulation of the contract cancellation right of the defaulting party promotes the two parties to control the transaction cost and improve the transaction efficiency. From the perspective of the overall social benefit, the right to rescind the contract of the defaulting party is a better solution to realize the efficient utilization of social resources.

III. THE REALIZATION PREDICAMENT OF THE DEFAULTING PARTY'S RIGHT TO TERMINATE THE CONTRACT

In order to solve the problem of contract deadlock in practice, the right to rescind the contract of the defaulting party is clearly stipulated in the Civil Code, and one clause is added after Article 110 of the original Contract Law. Although this provision provides legal guidance for solving the dilemma of contract deadlock in practice, there are still some difficulties in the realization of this provision, which need to be resolved.

A. *Limited scope of application for non-monetary debts only*

The right to rescind the contract of the defaulting party is mainly stipulated in paragraph 2 of Article 580 of the Civil Code. However, according to the expression of "one of the exceptions provided for in the preceding paragraph", paragraph 2 shall be applied in combination with paragraph 1 of the preceding paragraph, that is, the scope of application shall be "non-monetary debts". The stipulation of the breaching party's right to rescind the contract is reasonable on the whole, but the limitation of its scope of application in this article is unreasonable. In view of the important value of the defaulting party's right to terminate the contract in non-pecuniary debt contract deadlock Article 580 (2) of the Civil Code should not ignore pecuniary debt as a type of debt. If pecuniary debt is not included, the contract rescission right enjoyed by the defaulting party cannot fully solve the contract deadlock in practice.

A typical contract involving money debt is a lease contract. In the relationship of lease contract, the lessor's interest in rent generated by the lease item according to the contract is predictable. When the lessee breaches the contract, the lessor can request the lessee to bear the corresponding liability for breach of contract according to the agreement, so as to make up for the loss and protect its own interests. However, in practice, there will be a situation that the lessee refuses to pay the corresponding rent to the lessor because the lessee does not use the lease item in an appropriate way, which makes it unable to get the permission of the administrative organ. The plan envisaged by the lessee in advance can not be realized, the purpose of the contract can not be achieved, and the lessor does not want to terminate the lease contract, this contract stagnation state leads to the lessee facing improper losses. In this case, the lessee's refusal to pay rent is clearly a non-performance of a pecuniary debt. Considering the prerequisite of "non-pecuniary debt" stipulated in Article 580 of the Civil Code, the right to rescind the contract of the defaulting party cannot be applied in this case to terminate the contractual relationship between the parties by means of litigation or arbitration. However, the lessee has been unable to follow the original arrangement to use the lease, but is required to continue to pay rent to fulfill the contractual obligations, which is obviously unreasonable and unfair to the lessee.

Generally speaking, money as a kind does not fail to perform, but the occurrence of contractual deadlock cannot therefore be entirely limited to the scope of non-monetary obligations. The provisions of the Civil Code on the right to rescind the contract of the defaulting party can only be applied to the situation of non-monetary debt, which indicates that when the performance of the monetary debt is deadlocked, the defaulting party cannot legally request to rescind the contract, which is not conducive to the cracking of the contract deadlock in practice.

B. *The subjective status of the defaulting party is unclear*

According to the contents of Article 580 of the Civil Code, this article does not make specific provisions on the subjective state of the defaulting party. As long as the three

circumstances stipulated in Paragraph 1 of this article occur, the court or the arbitration institution may make a judgment or award to terminate the contract according to the request of the breaching party. It is not reasonable to ignore whether the breaching party is subjectively bad faith. On the imputation principle of breach of contract liability, China generally adopts the principle of non-fault liability. However, some provisions of the Civil Code allude to the principle of liability for fault. For example, Article 660 of the Civil Code mentions that the liability for breach of the gift contract adopts the principle of liability for fault.

Professor Jianyuan Cui once said, "One of the reasons why the principle of liability for fault will not be completely replaced by the principle of liability for no fault in contract law is that the concept of risk allocation does not fully occupy the realm of moral and ethical governance. It still has rationality and legitimacy to distinguish good and evil to determine whether there is liability for breach of contract." Opportunism is a kind of abuse of legal rights in order to achieve their own goals, and the interests of the other party regardless of the behavior, this behavior is extremely selfish. Whether the defaulting party breaches the contract for malicious purposes is an important reference condition to determine whether there is opportunism. If the subjective state of the breaching party is completely ignored in the application process of the contract termination right of the breaching party, and the breaching party agrees to terminate the contract even though it intentionally breaches the contract out of malice, it will lead to more and more breaching parties requesting termination of the contract for private interests in practice. However, this is not in line with the purpose of the establishment of the contract termination right of the breaching party, and cannot protect the interests of the party in compliance with the agreement. Therefore, the subjective state of the breaching party when it breaches the contract should be considered as one of the conditions to determine whether it can enjoy the breaching party's right to terminate the contract.

C. *The determination of the termination time of the contract is not clear*

The determination of the termination time of contract plays an important role in determining the liability for breach of contract after the termination of contract. The rescission time of the contract is mainly related to the retroactivity of the contract. In a retroactive contract, the time of termination of the contract usually has no significant impact on the interests of the parties. For example, in a sales contract, both parties have completed the delivery, when the contract is terminated, the obligation of both parties is to restore the original state. Compared with the retroactive contract, the termination time is very important for the non-retroactive contract. Non-retroactivity simply means that the contractual relationship no longer exists for the future, while the contractual relationship prior to termination is still legally effective. In other words, both parties are still obligated during the period from the effective of the contract to the termination of the contract. In China, the termination of a continuing contract is usually not retroactive. For example, in a lease contract, the later it is

determined to terminate the contract, the longer the time from the effective of the contract to the termination of the contract, and the longer the term of rent the lessee needs to pay to the lessor. Therefore, the determination of the termination time of the contract has an important impact on the interests of both parties.

Article 580 (2) of the Civil Code only clearly stipulates that the court or arbitration institution may terminate the contract upon request of the parties, but there is no specific stipulation on the termination time. From the perspective of judicial practice, courts have adopted different standards for the termination time of contract, which are quite different. Therefore, considering the liability of the defaulting party for breach of contract, there should be a unified standard for determining the termination time of the contract.

IV. THE SOLUTION PATH TO REALIZE THE PROBLEM OF THE DEFAULTING PARTY'S RIGHT TO TERMINATE THE CONTRACT

A. *Extended application of money debts*

From the perspective of the textual interpretation of Article 580, paragraph 2 also needs to meet the precondition of "non-monetary debt". However, from the perspective of the purpose interpretation, the original intention of confirming the defaulting party's right to terminate the contract is to solve the situation of contract deadlock, and monetary debt will also face the situation of contract deadlock in practice. In addition, Professor Suhua Zhang proposed an interpretive approach to solve the dilemma that only applies to non-monetary debts. That is, paragraph 1 of Article 580 stipulates that the non-defaulting party has the right to request the other party to perform the contract in three excluding circumstances of non-monetary debts, while the provisions of paragraph 2 on the right to terminate the contract of the defaulting party only applies to these three excluding circumstances within the scope of non-monetary debts. Therefore, it can be interpreted that the contract termination right of the defaulting party can be applied to the monetary debt. In other words, the non-monetary obligations of Article 580 (1) can only limit the type of debt for which performance is sought in paragraph 1, but not the type of debt for which the defaulting party in paragraph 2 seeks termination.

In terms of norms, Article 48 of the Ninth Conference Minutes of Civil and Commercial Trials of National Courts has already provided for the expansion of the scope of application of the contract termination right of the defaulting party. Article 48 stipulates the types of the parties in breach suing for rescission of the contract, among which "if the party in breach continues to perform the contract, it is obviously unfair to it" can be applied in the case of monetary debt. Therefore, in the legislative process, we should confirm the application of the contract cancellation right of the defaulting party within the scope of money debt, so as to avoid the obvious injustice to the defaulting party under money debt.

B. *Restrict the subjective non-malice of the breaching party*

Taking the subjective psychological state of the defaulting party as the evaluation criterion, the breach of contract can be divided into intentional breach and unintentional breach.

Intentional breach of contract mainly refers to the breach of contract in order to seek greater interests, that is, "premeditated for a long time"; Unintentional breach of contract mainly refers to the fact that the party in breach is forced to breach the agreement in order to reduce the loss to the greatest extent because of changes in objective factors, namely, "forced". If the parties want to seek greater interests through the way of breach, then this opportunistic behavior seriously violates the principle of good faith in civil law. If the defaulting party who intentionally breaches the contract can still request the defaulting party to terminate the contract, it will be against the legislative spirit and principle of the defaulting party's right to terminate the contract in the Civil Code.

In judicial practice, some court's judgment opinions do not support the contract claim right of the defaulting party in the case of bad faith breach. For example, in the leasing contract dispute between Beijing Suning Yunshang Sales Co., Ltd. and Beijing Rende Parking Management Co., LTD., the court made it clear in its judgment that if the parties intentionally broke the contract and tried to terminate the contract in this way by assuming compensation liability instead of continuing performance, then the request for termination of the contract under such circumstances would not be supported. According to this case, it is obviously not allowed by law for the breaching party to breach the contract for bad faith to exercise the right to terminate the contract. Therefore, in order to maintain the order of the trading market and avoid the abuse of legal rights by the defaulting party, the subjective state of the defaulting party should be limited to non-malice.

C. The identification of the termination time of the contract shall be made clear

Considering the different situation of contract deadlock, the determination of contract termination time should be different. For the breach requesting the court to terminate the contract, some scholars claim that the contract termination time should be completely decided by the judge when the judgment is made, and some scholars believe that the contract termination time should be within the time interval between the breach party's notice of termination and the arrival of the notice of action to the non-breaching party, rather than a certain time point after the prosecution. Contract deadlock can be divided into two types according to the standard of monetary debt or not, and the termination time of the two types of contract should be discussed separately, rather than one standard.

In case of contract deadlock for non-monetary debts, the date of termination of the contract shall be deemed as the effective date of the judgment. There are two main reasons for this claim. First, the main purpose of the breaching party's request for rescission of the contract is to retrieve the subject matter. Identifying the rescission time as any time between the notice of rescission and the receipt of the complaint to the non-breaching party is of no great significance to the solution of the actual problem, because the non-breaching party can still legally possess the subject matter before the effective date of the judgment. Secondly, according to Article 565 of the Civil Code, the party entitled to rescind the contract can

rescind the contract by notice, and the date of rescind the contract is the date when the other party receives the notice of rescind the contract. In order to distinguish the breaching party from the non-breaching party and make them in different positions, the date of termination of the breaching party's right to terminate the contract shall be identified as the effective date of the judgment.

In case of a pecuniary debt contract deadlock, the time of termination of the contract shall be determined to be before the date when the non-breaching party receives a copy of the complaint and the judgment takes effect. Pecuniary debts occur mainly in long-term contracts. As mentioned in the above article, there is no retroactivity in the principle of continuation contract in China. Take the lease contract as an example, it takes a long period of time from the case brought by the defaulting party to the effective judgment made by the court. During this period, although the defaulting party does not use the lease item, it still needs to pay the corresponding rent, which will lead to the unbalanced state of interests of both parties. Therefore, the contract shall be terminated before the date when the non-breaching party receives the copy of the complaint and the judgment takes effect, and the specific time shall be determined by the judge according to the principle of fairness.

V. CONCLUSION

Clause 2 of Article 580 of the Civil Code gives the defaulting party the right to rescind the contract, which is a beneficial exploration for the purpose of maintaining normal trading order. The default party's right to rescind the contract reflects the principle of good faith, and is beneficial to the interests of all parties and market transactions. As a new regulation, the application of the contract termination right of the breaching party also exposes individual difficulties, including the scope of application, the determination of the termination time and other aspects, which need to be continuously optimized and solved in the future practice. Because the research on the contract termination right of the defaulting party is relatively shallow, the discussion on the dilemma is not comprehensive and in-depth, which needs to be improved by subsequent research. Only by improving the application of the defaulting party's right of rescission can the value of its existence be better played and the law be better guided to practice.

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