

Analysis of the Nature of Reward Contract for Live Broadcast-- Taking the Case of Yu Mouhua as an Example

Liang Xinyu

Law School of Tianjin University of Commerce, Tianjin, 300134, China

Keywords: Reward of webcast, Service contract, Commission contract

Abstract: Since 2016, there have been many disputes on the online live broadcast reward contract, but there are few related researches. In judicial practice, it is a difficult problem to determine the nature of the contract. Because there is no common judgment standard, the results of different courts are not consistent. As far as the nature is concerned, the author thinks that the online live broadcast reward contract should be identified as a sub subject, and the relationship between the user and the live broadcast platform constitutes a service contract and a commission contract; A service contract relationship is formed between the user and the anchor. As far as Yu Mouhua's case is concerned, his service contract and entrustment contract have been completed, and both parties have no fault, and there is no claim basis for property return.

1. Introduction

On March 19, 2017, Yu Mouhua rewarded “slow heat 7” with a large amount of gifts on the same day, becoming the person who rewarded the most gifts on that day, and was set as the VP of the live room by “slow heat 7”. Later, in the live broadcast of the day, “slow heat 7” made a promise that unless Yu Mouhua took off the network himself, the VP card would never go down. On April 7, 2017, “slow heat 7” cancelled Yu Mouhua's VP authority, because “slow heat 7” did not recognize Yu Mouhua's private behavior of transferring money and giving gifts through wechat, and the two sides had different ideas. Later, Yu Mouhua filed a lawsuit with “slow heat 7” as the defendant, and asked “slow heat 7” to return more than 60000 yuan worth of gifts to the court on the ground that “slow heat 7” revoked its VP without its consent.

The focus of dispute in this case is mainly around whether the reward property can be returned, that is, how to define the relationship determined by the live reward contract.

2. Legal Relationship between Live Broadcast Platform and Users

2.1 Service Contract Relationship

A service contract refers to a contract in which all or part of the service is the debt. [1]Some scholars believe that the relationship between live broadcast platform and users is a service contract. This article outlines the service content provided by the live broadcast platform for users, as well as

the obligations of the platform. For example, as a service provider, the platform should audit the qualification of the anchor and the content of the live broadcast to avoid vulgar and illegal content on the platform. This kind of service contract is a special kind of service contract, which is a transaction based on the output of certain ideas, spirits or thoughts. In the process of receiving cultural transmission, users get spiritual and psychological pleasure or satisfaction.

2.2 Sales Contract Relationship

A sales contract is a contract in which both parties agree that one party delivers the subject matter and transfers the ownership of the subject matter to the other party, and the other party receives the subject matter and pays the price. [2]Some scholars believe that the relationship between users and live broadcast platform is a sales contract. First, users need to buy virtual currency from the platform, and then buy virtual gifts according to the price to present to the anchor. Live broadcast is free, and the business relationship is formed when users give gifts to the anchor. According to the provisions of the civil code of China, it is not difficult to find that the subject matter of the sales contract is mainly physical, so it is controversial that virtual currency becomes the subject matter of the sales contract. But scholars who hold this view believe that in the context of property theory, virtual currency as virtual property is in line with the definition of property in civil law. The reasons are as follows: firstly, virtual property has the possibility of exclusive control and management; Secondly, virtual property has independent economic value; In addition, it is similar to the traditional way of existence of things. Therefore, the virtual property can be identified as a special thing to apply the provisions of the sales contract, and the live broadcast reward contract is a sales contract.

2.3 The Author's Point of View

The author thinks that there are two layers of legal relationship between users and live broadcast platform. The first layer is the service contract relationship, that is, users use the platform when they do not reward the anchor, and enjoy the data provision and management services of the live broadcast platform. The second layer is the entrustment contract relationship. Because it is very difficult to realize the real interaction between the anchor and the user, the user must entrust the live broadcast platform to deliver the virtual gift to the favorite anchor. If there is a bank card number or WeChat and Alipay payment code in the live broadcast, it will reduce the user's gift pleasure to a certain extent, and the supervision of the live broadcasting platform will weaken. Considering many factors, using platform virtual currency to buy gifts is more conducive to the green and healthy development of live broadcast industry. Therefore, the relationship between the users and the live broadcasting platform is a paid entrustment contract.

3. Legal Relationship between Anchor and User

3.1 Gift Contract Relationship

A gift contract is a contract in which the donor gives his property and rights to the donee free of charge and the donee expresses his acceptance of the gift. [3]Scholars who hold the view of donation contract believe that users do not need to pay for watching live broadcast, whether to reward is also based on their willingness rather than compulsion, and the reward behavior does not increase the obligation of the anchor, so it is in line with the characteristics of gratuitous and single service of donation contract. [4]The anchor live broadcast is to send an offer invitation of gift contract to the users who watch the live broadcast on the platform. The user presents a virtual gift to

the anchor, indicating that he accepts the offer invitation of the anchor, sends an offer of signing a gift contract to the anchor, and expresses the intention of transferring the ownership of the donated virtual property. The anchor's acceptance of the gift means acceptance, In this way, a gift contract is established between the two parties. [5]However, the author thinks that the purpose of the user's reward to the anchor is to make certain behavior or expect to get some “return” from the anchor, which is not in line with the characteristics of gratuitous and single service of the gift contract. Therefore, it is biased for the author to define live broadcast reward contract as gift contract.

3.2 Service Contract Relationship

Scholars who hold the view of service contract believe that users watching live broadcasting are accepting the performance service provided by the anchor. In the live broadcast reward, the anchor provides performance service for the public and gets the reward from the users.[6] As the receiving party, after receiving the service and obtaining the spiritual pleasure and satisfaction, the reward voluntarily to the anchor is essentially a payment of consideration. [7]This kind of mutual obligation behavior is obviously different from donation behavior. Some people may doubt that the value of virtual gifts offered by the rewards to the anchor is different, high or low, which does not meet the conditions of paying reasonable consideration. The author thinks that although there is some truth in this doubt, the content of live webcast is uneven, and the tastes and needs of the public are different, and the economic level of each reward person is also different, so it is difficult to use a unified standard to measure its value. Service contracts are heterogeneous in nature. The components of services and their quality levels change frequently, which makes it difficult to define them in a unified way. Moreover, the differences of individual service recipients will also affect the differences of service consideration. What's more, if we set a specific reward standard for live broadcasting service, it will not only reduce the enthusiasm of the rewards, but also deviate from the behavior itself. The author agrees with the view of service contract. The anchor broadcast for the purpose of making profits. Each anchor receives different income according to the quality of live broadcast. Therefore, the live broadcast behavior of anchor can be regarded as labor behavior, and the labor contract belongs to the broad service contract.

4. Behavior Analysis

As mentioned above, Yu Mouhua got spiritual pleasure from the service of “slow hot 7” and wanted to pay a certain consideration as reward. However, there was no direct transaction channel between the anchor and the user, so he entrusted the live broadcast platform to deliver the consideration on his behalf. In this case, the live broadcasting platform has completed the delivery entrusted by Yu Mouhua, so the commission fee charged does not need to be returned. As for the service contract between “slow heat 7” and Yu Mouhua, the service behavior of “slow heat 7” is for an unspecified majority of people. As long as users enter the live broadcasting room, they can enjoy the service of the anchor. There are two kinds of service contracts. One is the contract of service first and then payment of consideration. The user decides the amount of consideration according to the service quality provided by the anchor. Therefore, when the user withdraws from the studio after the reward, the service contract between the anchor and the user has been completed; The other is the contract of paying the consideration first and then the service. After paying the consideration, the user asks the anchor to do or not to do something, so the contract will be completed after the anchor provides the corresponding service according to the instructions. Yu Mouhua's repeated rewards for “slow fever 7” constitute a service contract of service before consideration. Therefore, when Yu Mouhua pays the consideration, the contract will be completed. There is no legal basis for Yu Mouhua's claim of gift return to “slow fever 7”. Firstly, there is no

right to terminate the contract when the service contract is concluded, which is not an agreed termination; Secondly, in the process of signing and performing the contract, there are no legal cancellation reasons such as fraud and coercion. Therefore, the author believes that it is reasonable for the court to reject Yu Mouhua's claim.

References

- [1] Zhou jianghong(2008). *The position and system construction of service contract in china's civil code. Law, no.1*, pp: 76-83.
- [2] li yongjun(2016). *Law of creditor's rights. Beijing, peking university press, first edition*, pp: 185.
- [3] yang lixin(2014). *Debt law. Beijing, china renmin university press,first edition*, pp: 316.
- [4] tan fengyi, zhao guanxu, xu gongping, wang qishan(2018). *Research on the nature of online reward and the legal relationship between the main bodies -- taking the live platform of betta as an example. Collecting, writing and editing, vol.4, no.5*, pp: 172-174.
- [5] deng ying(2020). *Analysis on the legal relationship of reward in webcast. Legal system expo, vol.4, no.3*, pp: 165-166.
- [6] luo min, su min(2020). *On the legal nature of online live broadcast reward. People's justice, no.19*, pp: 44-46.
- [7] ji yuling(2020). *Analysis of legal issues in online live broadcast reward. Journal of mianyang normal university, vol.39, no.4*, pp: 43-47.