

Study on legal issues of entertainer agent contract Rescission

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Abstract: The contract of performing arts agent is the link that connects the employees and the entertainment industry in the entertainment law. The "legal lock" of an entertainment agency contract is tied to both the artist and the agency. It has theoretical and practical significance to study the termination of the contract of performing arts agent. From the perspective of theory, I can sort out the existing theoretical viewpoints and analyze the advantages and disadvantages of various viewpoints. From the perspective of judicial practice, it can clarify all kinds of misunderstandings in judicial practice, so that the parties seeking legal relief really get effective and reasonable legal relief, and promote the benign development of the performing arts industry.

1. Introduction

There are three kinds of rescission of contract: rescission by agreement, rescission by agreement and legal rescission right (including arbitrary rescission right). The termination of the agreement is based on the autonomy of the parties, and the parties of the contract negotiate freely to terminate the contractual rights and obligations. The agreed termination refers to the condition that one party agrees to terminate the contract in the contract. When the condition occurs, the parties can terminate the contract. There are few disputes about the termination of the agreement and the way of the agreed termination in the performance agency contract, so I will not repeat them here. Is it the right of termination in legal termination that can easily cause disputes.

When the court determines that the performance brokerage contract has the nature of entrustment and confirms that it is an entrustment contract, according to Article 993 of The Civil Code of China, the entrustment contract can be rescinded at any time by the client or the trustee. If the court considers the performance management contract to be a mixed contract, the court does not support the parties to the contract to enjoy the right to rescind at will because it is not a simple commission contract. [1] However, the existing views only deny the right to terminate the contract arbitrarily according to the complexity of the contract content, but do not elaborate the reasons. The following will elaborate on the reasons why the contract of performing arts agency does not apply to the right of termination at will.

2. Performance management of apply the right to terminate a contract ruled out reasonable analysis

2.1 Violation of the fiduciary interest rule

The term "trustee's interest" refers to "the interests of the trustee arising from the completion of the entrusted affairs, and must be the existence of a relationship obliges the principal to acknowledge the benefit of the trustee". Professor Cui Jianyuan believes that when the trustee's interest exists in the contract, the client cannot terminate the contract by arbitrary termination. An entertainer should not be allowed to exercise the right to rescind at will.[2]

Because of the particularity of the performing arts industry, there is a close relationship between performers and performing arts agencies. In the beginning, as entertainers of stars, the agent companies need to pay a huge price and cost to train and promote the signers. Moreover, because the popularity of entertainers is related to their own characteristics and personal opportunities, it is unknown whether the agent companies can generate economic benefits in the later period of contract performance. Performance agencies also take unpredictable risks with high investment. If the purpose is only to achieve the trust interest, without any restriction on the artist as the principal of the arbitrary termination of the right, this situation is to abandon the interests of the trustee (performance agency) at the expense of maintaining the trust of the principal (performance), favoring one side over another, contrary to the legal requirements of fairness and justice.

2.2 Entrustment contract elements and other elements of the contract together constitute a contract as a whole

There are many contents of performance management contract, including many typical contract elements, and the relevant content of commission contract is only a small part of them. The right to rescind part of an entrustment contract cannot be applied to the whole contract. Professor Cui Jianyuan holds that: when a contract is not only an entrustment contract, but also incorporates elements of other types of contracts, constituting an anonymous contract, the parties shall not exercise the right to rescind at will in order to protect the interests of other types of contracts. [2]When the agency appointment contract with other types of contracts, the elements of the elements of the agency appointment contract and other contracts together constitute the elements of the unknown contract, at this point, the other types of contract involves the interests shall be protected, and entrust part and other parts of the contract together constitute a contract as a whole, the parts are not separate, The arbitrary right to rescind an agency contract shall be limited.

3. Performance management of the contract "discretionary lifted"

Since the right of termination cannot be applied arbitrarily to terminate the contract of performing arts agency, Professor Liu Chengwei thinks that Chinese courts have created a new way of termination of the contract of performing arts agency "discretionary termination" in judicial practice. [3]Its connotation mainly refers to the performance management of the contract the parties although there is no any termination right, also cannot meet the contract or legal termination conditions, but the court will think performance management is based on trust relationship of the parties of the contract, have a certain person dependent, therefore, when artists filed to cancel the contract by a party the trust relationship between the parties has burst, the court will usually be lifted.

3.1 The elements at the time of discretionary discharge apply

In practice, the court generally considers the following factors in deciding termination power: (1) there is no agreement, agreement or legal termination power; (2) one party to the contract (usually the artist) through litigation to terminate the contract, clearly stated that it will not continue to perform the contract (3) broken or lost the trust relationship of the performance brokerage contract.

As for the third element, there are precedents in practice that although the trust relationship between the parties is the basis and premise of contract performance, the lack of trust is not the legal reason to enjoy the right to terminate the contract, that is, the lack of trust cannot reach the fundamental breach of contract. This view ignores the basis of contract performance and blindly emphasizes the spirit of strictly abiding by the contract, which cannot achieve the effect of promoting the development of the performing arts industry. Only on the basis of voluntary performance of the contract can the two parties achieve a win-win situation, the unsustainable personal contractual relationship cannot achieve the contract objectives due to compulsory performance. The performance management contract has the characteristics of continuity, non-lossability and taking the trust relationship as the contract element. Therefore, the performance agency contract belongs to the category of continuing contract.[4] Performing arts agencies have a great influence on performing arts workers, and the relationship between them is very close. Performing arts brokerage business is built on the basis of trust between the two parties. If the relationship between the two parties deteriorates and there is no mutual trust, performing arts brokerage business will be difficult to operate normally. Therefore, I believe that due to the special personality of the performance agency contract, it is not suitable for compulsory execution due to the loss of the trust basis of the contract. Therefore, when the trust relationship between the two parties is lost, the parties should support the claim of requesting termination of the contract.

3.2 The court determines the nature of the discharge

The court supports the artist's request for termination of the contract, which in essence supports the "defaulting party" 's request for termination of the contract, and its fundamental purpose is to solve the contract impasse.[5] Contract deadlock usually refers to that the non-breaching party itself has the right to terminate the contract according to the provisions of the contract law, but the non-breaching party insists that the breaching party continues to perform the contract, but the breaching party is unwilling to perform the contract and claims to terminate the contract. Clause 2 of Article 580 of the Civil Code does not stipulate the legal right to terminate the contract, but only stipulates that both parties can apply for judicial termination when they cannot request continued performance and the purpose of the contract cannot be realized. The parties only have the right to apply for judicial termination of the contract, but not the right to terminate the contract. After the parties apply for termination of the contract, the people's court or the arbitration institution shall have the power to decide whether to terminate the contract in accordance with the principles of good faith and fairness in light of the actual circumstances of the case. Similarly, in performance management and the dispute when the brokerage firm claims to continue to perform the contract, artists are not willing to continue to perform the (acting contract is not suitable for specific performance of mark) and claim to cancel the contract requires the court to admit that the breaching party discretionary remove performance brokerage contract termination right way, thus breaking performance brokerage contract trade impasse.

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