

Analysis of the system of third parties without independent claims

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Keywords: Third party without independent claim, sense of value, Legal interest

Abstract: Since its establishment, the system of third party without independent claim has always had an important position, and many scholars have also conducted research on it, and the system itself has also been continuously improved. However, the provisions of our laws do not clearly define the various problems of the system of no independent third party, but only make a more macro conceptual provisions. For example, how to determine the litigation status of Wu-Du-San after participating in litigation is a controversial issue in practice and theory. For example, if Wu-Du-San applies to participate in litigation and is notified by the people's court to participate in litigation, the two ways of participating in litigation are still controversial in theory and logic, and so far there is no conclusion. This paper studies the value significance, system characteristics, existing problems and suggestions of the system, in order to clarify the relevant principles of the system and put forward suggestions for its improvement.

1. Introduction

China's third-party system without independent claim is strongly influenced by the third-party system of the Civil Procedure Law of the former Soviet Union, which was first stipulated in China's 1982 Civil Procedure Law (for trial implementation). After two major amendments to the Civil Procedure Law, the current Civil Procedure Law provides for it in article 59, paragraph 2: A third party who has no independent claim to the subject matter of the litigation between the parties but has a legal interest in the outcome of the case may apply to participate in the litigation or be notified by the people's court to participate in the litigation. The people's court judgment of civil liability of the third person, have the litigation rights and obligations of the parties. The legal provisions of China's current law on the no-independent-third-party system are not very clear, and a number of related important issues have not been clearly defined, thus leading to a rather controversial no-independent-third-party system. This paper intends to start from the existing legal norms, relevant judicial interpretations, to explore the value of the system of significance and characteristics, combined with the practice of cases to support the existing no unique three system of problems, and finally put forward their own views, hoping to promote the further improvement of the system.

2. Overview of the regime of third persons without independent claims

2.1 The concept of "Non-independent third parties III" and related norms

2.1.1 The concept of "Non-independent third parties III"

Article 59 of the Civil Procedure Law currently in force in China stipulates that a third person who has no independent right of claim to the subject matter of the litigation between the parties but has a legal interest in the outcome of the case may apply to participate in the litigation or be notified by the people's court to participate in the litigation. A third party who has been adjudicated by the People's Court to be civilly liable has the litigation rights and obligations of the parties. Article 82 of the Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China stipulates that, in first-instance litigation, a third party without an independent claim shall not have the right to file an objection to jurisdiction, a waiver, a change of claim or an application for dismissal, and that a person who has been adjudged to be civilly liable shall have the right to file an appeal.

A third party without an independent right of claim refers to a participant in a lawsuit who cannot assert an independent right of claim to the subject matter of the ongoing litigation of another person, but who has a legal interest in the outcome of the case and participates in the litigation in order to safeguard his or her own interests.^[1]

It can be seen that the third party does not have an independent claim to the subject matter of the ongoing litigation, which is also one of its most essential characteristics. The non-independent third party does not belong to one of the parties in the traditional "triangular" civil litigation structure. Third party without independent claim are granted the right to participate in litigation based on special provisions of the law. According to the provisions of the current law of our country, the third party without independent claim has no right to apply for withdrawal of the lawsuit and has no right to counterclaim. Only after the judgment of the case, when there is a legal interest between the judgment result and the third party without independent claim, the third party without independent claim is qualified to file an appeal to safeguard its own rights and interests, and is regarded as a conditional party.

2.1.2 Relevant norms of the "no Doklam" system

At the legal level, this was clearly stipulated in article 48, paragraph 2, of the 1982 Civil Procedure Law (for trial implementation). This was also the first time that the system related to civil litigation in China embodied the system of no unique third party, marking the fact that the system of no unique third party formally became an integral part of the civil litigation system in China.

Article 59 of the current Code of Civil Procedure, on the other hand, adds a little to the original norms and clarifies when a person without an independent claim can have the rights of a litigant.^[2]

We summarize the provisions of the law can be seen in the system. Several basic features of the system: (1) no independent third party to the parties in the ongoing litigation in the subject matter of the litigation has no independent claim. Based on the existence of an independent claim as a criterion, China will be outside the case related to the case of the third party is divided into a third party with an independent right to claim and no independent right to claim the third party. (2) Legal interest. A legal interest in the final outcome of the case is the basis for participation in the proceedings. (3) According to the provisions of the law, the third party can participate in the lawsuit through application and court notice in two ways. (4) Conditional rights and obligations of the lawsuit. According to the law, only if Doktor has assumed civil liability, he or she shall enjoy the rights and obligations of the parties, which are "rights with responsibilities and rights without

responsibilities".

At the level of judicial interpretation, the 1992 Opinion directly stipulates that Non-independent third parties has the rights and obligations of the parties to the lawsuit. This judicial interpretation is at considerable variance with the provisions of the law, which clearly stipulates the conditions that need to be met for Non-independent third parties to be held liable. The judicial interpretation, on the other hand, excludes the preconditions for the enjoyment of the rights and obligations of the parties, and directly and explicitly expresses the enjoyment of the rights and obligations of the parties by the third party in the litigation. ^[3]Judicial interpretation of the law is for the better interpretation of the law, the application of the law, and should not break the maximum intent of the provisions of the law, in addition to the provisions of the law to create another norms, so the judicial interpretation by many scholars questioned, and so that the system in practice in the application of the system can not be harmonized, which also revealed the system was initially set up when the sloppy.

2.2 The value of the "Non-independent third parties 3" system

If in the process of a civil dispute, only the court, the original, the defendant three parties to participate in the proceedings, sometimes can not be the best solution to the problem, especially in the rapid socio-economic development of today, in the complexity of social practice, may be a lawsuit involved in a wide range of aspects. No unique three system exists to protect the legal rights and interests of outsiders, and promote litigation economy.

2.2.1 Litigation economy

The so-called litigation economy means that under the premise of guaranteeing the fairness of litigation, the problems solved by litigation should be proportional to the resources spent on litigation in terms of manpower and energy, so as to achieve the purpose of saving judicial resources.

Our country has a large land area and a large population, in judicial practice, more people than cases has been the urgent reality of the problem faced by our country, so in order to save judicial resources, the litigation economy is China's current litigation process of all kinds of problems have been emphasized. ^[4]In the complex market economy of modern times, a civil case after the verdict, the results will often involve the legal rights and interests of outsiders, so that outsiders once again filed a lawsuit to solve the problems left behind by the previous lawsuit, increasing the judicial organs of a certain amount of pressure to deal with the case. The system of non-independent third parties allows non-independent third parties to participate in the present lawsuit, can effectively resolve multiple issues in a single lawsuit, avoids the need for multiple hearings, and can contribute to the factual hearing of the present lawsuit to ascertain the truth.

2.2.2 Pursuit of justice

The creation of a legal system, often in order to be able to achieve a variety of purposes, no independent third party system is no exception, the pursuit of the overall fairness of a case may be more important than the litigation economy. Civil disputes are often not only involved in the plaintiff and the defendant, if there is no relevant outsiders to participate in the final outcome of the case but the real impact of the legal rights and interests of outsiders, then it is a serious violation of the unity of rights and obligations, and can not protect the legitimate rights and interests of an ordinary private subject, it would be a very scary thing. Therefore, the pursuit of justice has a higher value significance than the value significance of the litigation economy, we must ensure that the pursuit of justice on the basis of the promotion of the litigation economy.

2.2.3 Prevention of conflicting court decisions

Res judicata means an effective civil decision, which is mandatory between the court and the parties. In civil cases, the final decision is made after evidence is adduced and examined, representing the authority of the national public power organs. If there is no participation of relevant outsiders in the original litigation, it may not be able to restore the original appearance of the dispute to the greatest extent possible, resulting in the final decision being inherently incomplete. For the decision made, the outsider did not participate in the trial process of the original lawsuit, and therefore is not bound by the res judicata of the original lawsuit, and turn to the court to bring another lawsuit, another lawsuit due to the fact that the factual findings of the dispute than the original trial is more full, the results of the decision made may conflict with the original decision.^[5]

3. Chapter 2 Problems with the "Non-independent third parties III" system

3.1 Unclear status of proceedings

As mentioned above, the existing legal norms and the Opinion are contradictory with regard to whether Non-independent third parties III has the rights and obligations of a party, and the Civil Procedure Law stipulates that Non-independent third parties III has the rights and obligations of a party to the lawsuit only if the court decides that the third party bears the responsibility of incurring civil liabilities. The provisions of the Opinion, on the other hand, directly disregarded the provisions of the law, and considered that Non-independent third parties was entitled to the litigation rights and obligations of the parties without any conditions, and that the assumption of civil liabilities was only a prerequisite for Non-independent third parties's appeal. The lack of harmonization between the law and the judicial interpretation has directly led to serious differences in the litigation status and enjoyment of the rights and obligations of the undivided third party.^[6]

According to the provisions of the law, the general view is that a person who is not a sole third party to a lawsuit is a conditional party, i.e., he or she can only be recognized as a party to the lawsuit when he or she incurs a civil liability. This viewpoint is also problematic in that a person who is not a party to a lawsuit can only become a party to the lawsuit after a decision has been made, which means that he or she does not enjoy the legal rights of a party to the lawsuit and is unable to defend himself or herself or raise objections effectively, and is therefore suspected of violating procedural fairness.

3.2 Unreasonable participation in the proceedings

There are two avenues available in this country to enable a non-independent third party to participate in this lawsuit.

The first type applies to participate in the proceedings. In judicial practice, there are not many cases in which a third party with no independent claim joins the lawsuit through voluntary application to intervene. People are afraid of being held liable in the mentality of "more is better than less", so most of them will not voluntarily apply for participation in the lawsuit. As a result, the current situation is that the law has provisions, but basically has "name but no reality".

There are also cases where a party applies for the participation of a third party. The Judicial Interpretation stipulates that the parties may apply for the participation of Non-independent third parties in the lawsuit, but only after the court's examination can it finally decide whether to add. The interpretation makes it clear that the parties can only apply for the participation of Non-independent third parties, while the decision is still in the hands of the court, and we can regard it as the essence of the court's notice of the additional participation of Non-independent third parties in the litigation.

The second type of court notifies the third party without independent claim. This kind of no independent third party to participate in the lawsuit by scholars criticized, the main reason is that the way has against the court's "do not sue do not care" principle, due to the power of the judicial power we in the exercise of judicial power must ensure that the judicial passivity, neutrality. And no independent third party in the case of the application of the parties, the court took the initiative to add it as a participant, against the principle of disposition. This kind of participation therefore opens up the limits of the court's power in disguise, and can easily lead to abuse of power. Of course, it does not include cases where the parties apply and the court adds to the list.^[7]

3.3 Incomplete basis for finding third parties liable

It is clear from the current legal provisions in China that the court may adjudicate the civil liability of Non-independent third parties. As pointed out above, in the no-independent-third-party system, the no-independent-third party does not enjoy the rights and obligations of the parties without the court's judgment, and is unable to adequately defend itself in the course of the litigation, in violation of the principle of argument. In judicial practice, the court often ruled that the third party without independent right to claim responsibility, some scholars once pointed out that China's civil litigation in the third party without independent almost no judgment to bear civil liability.

In the civil judgment of the appeal case of the dispute between Li Guiol and Luo Ping, the third party Panzhihua Kangrui Trading Co. In its final judgment, the Court of Final Appeal held that according to Article 59 of the Civil Procedure Law, it was not illegal for the appellant Li Guiquan to list the appellant Kangrui Company as a third party with no independent claim when suing. The People's Court ruled that the appellant Kangrui Company should bear civil liability as a "third party with no independent claim right". It can be seen that in practice, the court's judgment also considers that it is not improper for the appellant to bear liability. In the case of the third party with independent claim right, the judgment of the appellant to bear civil liability is not rare in our judicial practice.

4. Proposals to improve the "Non-independent third parties III" system

4.1 Clarifying the procedural status of "Non-independent third parties III" at the legislative level

On this issue, Prof. Zhang Weiping has pointed out that there are two categories of non-independent third parties, one is the defendant-type non-independent third party and the other is the auxiliary non-independent third party, and that this categorization is not based on whether there is a claim or not. The so-called defendant-type third party is a third party who will be judged to be civilly liable, and in practice, it is often the defendant who wishes to have such a third party involved in the litigation in order to identify the person who will be truly liable. The third party with no independent claim will not be judged to bear civil liability, that is, the third party who has a legal interest in the outcome of the lawsuit and applies to participate in the lawsuit, plays the role of auxiliary plaintiff or defendant in the process of the lawsuit, and participates in the lawsuit to assist the third party with no independent claim to better solve the dispute.^[8]

Through the above categorization, we can clearly feel the difference between these two types of no-do-well third party, in which the defendant type no-do-well third party may need to bear civil liability, so we can treat the defendant type no-do-well third party as the defendant in the litigation, in order to safeguard their legitimate rights and interests such as the right to defense. As for the auxiliary type of non-dependent third party, because it will not bear civil liability, the law can specify this part of the non-dependent third party as an auxiliary participant, in order to better

enable the litigation to proceed.

4.2 Adjustment of the "Non-independent third parties III" approach to participation in the proceedings

Of the two types of participation in litigation provided for in the current law, the voluntary application for participation should be actively guided in judicial practice, with a view to explaining to them what is at stake and advocating that they take the initiative to participate in the litigation to help it proceed.

With regard to the manner in which the court notifies participation in the proceedings, limited to the fact that there are various difficulties in practice and that there are clear provisions in the law, we have to be strict and clear in applying that manner in order to prevent abuse of power.^[9] For example, in 1994, the Supreme Court issued "a number of provisions" has stipulated that the court shall not be classified as no unique three circumstances, although its provisions are more general. In the future legislation or judicial interpretation can be summarized in the relevant issues, through the law to regulate, in order to the near future can be changed in this way, to build a more reasonable, legitimate system of participation in the prosecution.

5. Conclusion

The importance of the third party system without independent claim is self-evident, we should make the third party system without independent claim in civil litigation system to get due attention, effectively to maintain the legitimate interests of the third party for the sake of, taking into account the litigation economy and other values. At the same time, the system in our country's legal provisions and judicial practice are some of the problems can not be ignored, no independent third party system may still have a lot of shortcomings, but which system is inherently perfect? We have to overcome all difficulties, combined with the socialist rule of law practice, and strive to do as soon as possible to improve the legislative level, so that it regulates the judicial practice of the third party system to form a unified understanding of the rights and interests of the third party to better protect, promote the litigation economy.

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