

A Study on the Application of the Right to Termination of Equity Transfer Contracts with Installment Payment

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Abstract: In Guiding Case No. 67 issued by the Supreme People's Court, the Supreme People's Court held that Article 167 of the Contract Law does not apply to the termination of installment payment equity transfer contracts. The verdict has sparked widespread discussion. Many scholars question the reasons for the judgment. The significance and value of guiding cases lies in unifying the standards of legal application, but there are contradictions in the judgments of similar cases in judicial trials, and the rationality needs to be demonstrated. Starting from the judgment reasons of Guiding Case No. 67, this article discusses the understanding and application of the right to terminate installment payments in Article 167 of the Contract Law, and discusses the differences in current laws and mainstream theories. Propose appropriate judicial approaches and theoretical disputes regarding the right to terminate installment payment equity transfer contracts.

1. Introduction

The first chapter analyzes the current judicial situation of the application of the right to terminate installment payment equity transfer by sorting and categorizing existing relevant cases. There are mainly two perspectives on whether to refer to guiding cases. The second chapter discusses the reasons for the judicial application dilemma from the unclear legislative purpose and the vague scope of application. Chapter Three elaborates on the judicial decision-making path and theoretical controversies. Chapter 4 proposes appropriate and efficient judicial suggestions for the termination right of installment payment equity transfer contracts.

2. The Current Situation and Dilemma of Judicial Application of the Right to Termination of Equity Transfer Contracts with Installment Payment

After the release of Supreme Court Guidance Case No. 67 on September 19, 2016, the author sorted out 14 typical disputes related to installment payment equity transfer and found that the wide distribution of such cases indicates that the number of equity transfers using installment payment transactions is increasing. Among them, 9 cases all believe that the provisions of installment purchase and sale contracts can be applied to equity transfer. It can be seen that the mainstream view in the practical field is that the scope of application of installment purchase and sale contracts

is not limited to sales contracts for consumption purposes, and there is still some distance to go in guiding Case 67 to achieve unified application standards. In practice, the legal principles involved in explaining the reasons for the judgment are often not deeply analyzed, and only quoted expressions such as "referring to the provisions of Article 167 of the Contract Law" or "the Contract Law does not specify the liability for breach of contract in equity transfer contracts for installment payments." In practice, judgments that support application can be roughly divided into two categories based on the original application: appeals that support the plaintiff's request to terminate the contract, and appeals that support the plaintiff's request for the defendant to continue paying the remaining equity transfer fee.

There are two issues. Firstly, whether a contract is an installment payment sales contract should not only depend on the number of payment periods, but also on whether it has the characteristics of "delivery in advance" and "installment payment". Many courts, in the part of factual investigation, do not specify the time nodes for payment of the price and equity transfer, nor do they determine whether to pay the price in at least two installments after the equity transfer. For example, in the trial of the equity transfer dispute case, the Jinan Intermediate People's Court did not clearly identify whether the equity purchase and sale contract involved in the case meets the characteristics of installment payment purchase and sale.[1] It only calculated the unpaid price of 500000 yuan, which reached one-fifth of the total price, and did not specify the time point of equity transfer or the number of payment periods after the transfer. The practice of directly determining the right to terminate installment sales contracts under such reasoning is not rigorous enough. Secondly, the application of the right to terminate the installment payment sales contract in equity installment sales contracts is not a simple application, but a reference application that needs to refer to the provisions of Article 646 of the Civil Code when applied.[2] When arguing, it is more necessary to combine the applicable conditions of the right to terminate installment payment sales contracts. In the judgment of the equity transfer dispute case [3], the Second Intermediate People's Court of Hainan Province was more rigorous in reasoning, pointing out that the involved equity has been transferred again to an outsider and the change registration has been completed. Therefore, it is advisable to terminate the contract if there are obstacles to its continued performance. However, the reasoning process of most courts is too brief and does not clearly explain why this case should be "applied by reference". The core reason for opposing the application of the judgment is that the equity installment purchase contract has its particularity. In order to protect the interests of the transferee, the equity seller does not have the right to terminate the installment purchase contract. For example, in the two equity transfer dispute cases ruled by the Zhejiang High Court [4] and the equity transfer dispute case ruled by the Jilin High Court [5], the court held that the equity transferor needs to exercise the right to terminate the installment payment sales contract, and should first satisfy one party's fundamental breach of contract. That is to say, the court regards the right to terminate the installment payment sales contract as a supplementary condition to the statutory right to terminate the contract. However, in fact, "the purpose of the contract cannot be achieved" is not a constituent element of the right to terminate installment payment sales contracts, and it belongs to the content of the statutory right to terminate contracts. This kind of argumentative logic is obviously unreasonable and insufficient. Whether it is supporting the application of Article 634 of the Civil Code or opposing it, there are actually unreasonable reasons. Most cases do not attach importance to the prerequisite of whether the contract in their own cases is an installment sales contract, nor do they emphasize the logic of whether to apply it by reference. Moreover, the cases searched above all occurred after the issuance of Guiding Case No. 67, indicating that the Guiding Case did not play its due guiding role and instead caused more controversy in practice.

3. Reasons for the judicial application dilemma of the right to terminate equity transfer contracts through installment payments

The judgment viewpoint of Guiding Case No. 67 is based on the substantive differences between the equity transfer contract and the physical property purchase and sale contract, thus denying the possibility of referring to the statutory termination clause in Article 167 of the Contract Law. However, the theoretical community has different views on this, and most scholars believe that the application space of the right to terminate clause cannot be excluded solely based on the differences between the two. In this regard, the installment payment equity transfer contract can refer to the statutory termination clause in Article 167 of the Contract Law, but clear provisions need to be made on the exercise conditions. Only when the exercise conditions are met can the statutory termination right of the installment payment equity transfer contract be exercised. In judicial practice, when referring to the application of Article 167 of the Contract Law to resolve disputes over installment payment equity transfer contracts, the court often only focuses on whether the unpaid price of the buyer reaches more than 20% of the total contract price, and whether the equity transfer contract meets the characteristics of installment payment purchase and sale contracts, that is, how many installments of the equity transfer contract price are transferred, how many installments of the price are not transferred after the delivery of the subject matter equity, and whether the obligation to urge is fulfilled. It is not appropriate to focus on the court investigation, or to identify relevant facts and not associate these facts with the characteristics of installment payment sales.

4. Theoretical basis for eliminating the dilemma of judicial application

There are still many controversies in the academic community regarding the legislative purpose of Article 167 of the Contract Law. Regarding the interpretation of Guiding Case No. 67, there are two types of views. The first view is to "protect the interests of the buyer" [6], and the other view is that the purpose of this regulation is to "grant the seller a special right of release" [7]. The purpose of implementing the installment payment sales system in China is to reduce the payment pressure on the buyer and to some extent stimulate consumption. Article 634 of the Civil Code provides more detailed regulations on installment payment transactions. The use of installment payments by buyers can rationalize budgets, reduce cash flow pressures, enhance consumer purchasing power, promote market vitality, and achieve the goal of encouraging transactions. At the same time, from the perspective of the seller, using installment payment as a buying and selling method can not only increase market share, expand business scope, but also reduce inventory backlog, promote market economy circulation, and thus obtain better economic benefits. Fundamentally speaking, installment payment sales contracts are a form of transaction that uses credit as a bridge, incorporating trust interests into the sales contract, and in fact, both parties grant each other a certain credit limit. Due to the nature of installment payment sales contracts, the buyer does not necessarily need to pay all the price of the subject matter in full. After the buyer pays a small portion of the price, the seller is obligated to deliver the subject matter to the other party. As a result, the seller will bear a certain credit risk, ultimately increasing the risk of not being able to recover the full price of the subject matter. If the buyer fails to fulfill the contractual obligations of both parties as agreed, the seller may choose to terminate the contract, which may result in the contract being terminated. The seller may also exercise the right to retrieve the subject matter under property law. According to Article 27 of the Judicial Interpretation of Sales Contracts, the content agreed upon by the parties to an installment payment sales contract shall not violate the provisions of Article 167 of the Contract Law. If the buyer's interests are damaged, they may claim that the agreement is invalid. It can be seen that in the legal regulation of installment purchase contracts, more emphasis is placed on protecting the interests of buyers, which is more inclined towards protecting the interests of

consumers. However, it is worth mentioning that this does not mean excluding the protection of the interests of other types of buyers. Similarly, in Taiwan, China, the Consumer Protection Law stipulates that the signing of installment sales contracts should be in written form. At the same time, for the purpose of protecting consumers, restrictive provisions have also been made for this part. In addition, compared to the practice of extraterritorial law, in terms of termination conditions, many civil law countries and regions, such as Germany, Japan, and Switzerland, "if the buyer fails to fulfill the installment payment after the first installment, the seller has the right to demand payment of the due payment or to demand full payment in one lump sum, or to terminate the contract. The buyer fails to pay two installments and their total amount reaches at least one tenth of the entire purchase price, or fails to pay a batch of payments in an amount not less than one fourth of the total price, or fails to fulfill the last installment payment. If the seller has a clear right to reserve, they can request payment of the purchase price in full or terminate the contract." Compared to China, it has set more stringent conditions for the termination right of installment payment sales contracts. More emphasis is placed on protecting consumers. In Japan's "Tax Cutting and Selling Law," there is a 20 day grace period for consumers who fail to pay the target price as agreed, during which they can be urged for payment.

When formulating the Civil Code, sellers who are usually in an advantageous position often formulate many favorable provisions for themselves. Therefore, considering Article 634 of the Civil Code as a mandatory guideline is more in line with the original intention of legislators in formulating this article. Moreover, the Supreme Court's Interpretation on the Application of Law in the Trial of Disputes over Sales Contracts also points out that if the agreement between the two parties to enter into a sales contract conflicts with the content of Article 167 of the Contract Law, resulting in infringement of the buyer's rights and interests, the buyer shall claim invalidity. This also indicates to some extent that the Supreme Law classifies this regulation as a mandatory provision. Although Article 634 of the Civil Code has certain characteristics of arbitrary norms, from its legislative purpose, it is still a mandatory norm in essence, and both parties cannot make agreements that exceed this provision. From the perspective of actual value, it can be seen that this clause grants the seller the right to terminate the contract in special circumstances where the conditions for termination are met under certain conditions. The regulation of this clause focuses more on protecting the interests of the seller.

5. Suggestion on Reasonable Judicial Application of the Right to Termination of Equity Transfer Contracts through Installment Payment

5.1. Stage review of equity installment purchase and sale contracts

When reviewing equity installment sales contracts, a phased approach should be followed. Specifically, equity buying and selling can be roughly divided into three representative stages in terms of time: first, the establishment and effectiveness of equity buying and selling contracts; The second is the completion of the change in the shareholder register; The third is the completion of the business registration change. In the judgment, analyzing the above three stages and considering the unique characteristics of different stages is more conducive to the fairness and rationality of the judgment in practice.

5.2. Complete the relevant provisions on equity transfer in the Company Law

China adopts a legislative system that combines civil and commercial law. On the one hand, the author agrees with the differences in civil and commercial transactions, and currently, many provisions of the Contract Law are also widely applicable in the commercial field. On the other

hand, one of the objects that China focused on studying and paying attention to when formulating the Contract Law is commercial transactions. Therefore, according to the original intention of legislation, the Contract Law not only applies to the types of transactions in civil contracts, but can also apply to installment payment equity transfer contracts. The installment payment equity transfer contract essentially has the nature of a commercial contract, but the equity of the transaction subject matter has special characteristics, and the relevant conditions for exercising the right to terminate the contract are not universal, and the relevant provisions in the Contract Law also do not apply to equity transfer contracts. [8] In addition, regulations should be made on the "equal conditions" mentioned in the article. Except for the same quantity, price, and term, other requirements should be basically the same. It is not necessary to achieve consistency in all requirements, otherwise it will greatly hinder shareholders from exercising their right of first refusal. In the process of equity transfer, this can balance the interests of all parties without causing harm to the legitimate rights and interests of shareholders. Therefore, the author believes that it is necessary to improve the relevant provisions on equity transfer in the Company Law, especially to make more detailed provisions on the termination clause of installment payment transfer. In judicial practice, the relevant provisions of the Company Law have certain restrictions on equity transfer behavior. The author believes that the provisions of the Company Law should be given priority, and in the absence of clear provisions, reference should be made to the provisions of the Contract Law.

5.3. Judicial adjudication should involve interest measurement

In the process of commercial transactions, utilizing the company's existing capital to fully maximize capital benefits [9], and the higher the commercial efficiency, the closer it can approach the goals achieved through commercial exchanges. Maintaining transaction security and improving business efficiency are complementary and not contradictory. Some scholars believe that the two are a natural contradiction, and they point out that the prerequisite for improving efficiency is to reduce constraints and restrictions, so that the trading subjects can fully exercise their free will, and maintaining transaction security inevitably cannot avoid increasing constraints. The author believes that protecting security and improving efficiency are dialectically unified relationships. When the court hears the installment payment equity transfer contract, on the one hand, it should fully consider the special provisions in the Company Law, and when exercising the right to terminate the installment payment equity transfer contract, it should review the relevant provisions in the Company Law, such as the equity transfer procedure and the shareholder's right of first refusal. On the other hand, attention should also be paid to finding a balance between maintaining transaction security and improving transaction efficiency. While ensuring the smooth progress of equity transfer, it is also necessary to greatly improve its work efficiency and maintain the stability of the company's development.

6. Conclusions

The judgment basis proposed by the Supreme Court is insufficient to convince the exclusion of the application of Article 167 of the Contract Law to installment payment equity transfer contracts. In the practical field, there have also been cases of different judgments for the same case, which seriously affects the authority of guiding cases to play a guiding and exemplary role. Firstly, the essential characteristics of installment buying and selling are the delivery of goods first and the installment payment of price, which are essentially the credit buying and selling attributes of installment payments. The legislative purpose of Article 167 of the Contract Law is to protect the buyer. Compared to Article 167 of the Contract Law, the newly promulgated Article 634 of the Civil Code adds the procedural requirements for advance notice, emphasizing the legislative

purpose of protecting the buyer. However, in terms of the normative effect of actual value, the right to terminate installment payments also puts the seller in a superior position. Secondly, the special nature of equity as the subject matter of the transaction, the compatibility of limited liability companies, and the protection of the trust interests of third parties based on maintaining transaction security will not hinder its reference to the application of this regulation. Finally, based on the discussion of the relationship between Article 167 and Article 94 of the Contract Law, the provisions on the general statutory right of termination in Article 94 of the Contract Law provide a certain legal application channel for the right of contract termination. At the same time, based on the premise of not harming the substantive interests of the seller and taking into account the buyer's interest in the time limit, the addition of a notice procedure as an exercise requirement also restricts the exercise of the seller's right to terminate. Due to the particularity of installment payment equity transfer contracts and the fact that equity transfer is essentially a commercial act, special consideration must be given to the dispute over the right to terminate the installment payment equity transfer contract. Under the current legal framework, to improve the relevant provisions on equity transfer in the Company Law, and to seek a balance of legal interests among various parties, suggestions have been put forward for the adjudication of such disputes from the perspectives of academic theory and practical operation.

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