

Legal Analysis of Civil Fraud and Contract Fraud

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Abstract: With the development of economy and society, the contract has become an important means for the development of market economy. It has binding force on the parties to the contract. Each subject should carry out civil activities within the limits of the content of the contract, but it is inevitable that some contract subjects conceal the truth or false statements in the process of contract performance for personal interests, harm the interests of others, lead to a series of civil and economic disputes, and even bear criminal responsibility. At present, it is difficult to distinguish between civil fraud and contract fraud. Although the behavior of the two is very similar, civil fraud bears civil liability, while contract fraud bears criminal responsibility. The difference between the two in terms of responsibility is great. Therefore, it is necessary to accurately define civil fraud and contract fraud in legal theory to ensure that minor civil breaches are exempt from criminal law.

1. Introduction

The distinction between civil fraud and contract fraud is very important in real life and legal practice. The difficulty of distinguishing between them is a common situation, which has a great impact on economic order and social relations. We will start with the definition of civil fraud and contract fraud, and analyze the differences and connections between them from the legal point of view. Civil fraud and contract fraud are of great significance for the protection of the rights and interests of the parties, the maintenance of social equity and legal order. This paper starts with the concept and characteristics of civil fraud and contract fraud, introduces the relevant cases of civil fraud and contract fraud, takes the case as the breakthrough point, deeply analyzes the difference and connection between civil fraud and contract fraud, and then combines the current mainstream academic point of view to analyze, takes the purpose of illegal possession as the focus of research, discusses the correlation between the processing results of the actor's possession of property and the purpose of illegal possession, and deeply grasps the boundary between civil fraud and contract fraud.

2. Concepts and characteristics of civil fraud and contract fraud

The connotation of civil fraud and contract fraud is very similar. In order to accurately distinguish civil fraud and contract fraud, we must first start with their concepts and characteristics, and whether they have the purpose of illegal possession can more accurately define civil infringement and criminal violations.

2.1 Concept and characteristics of civil fraud

Civil fraud refers to the use of deception to make the relative person in error or the use of the relative person's error to establish an adverse legal act.^[1] Civil fraud has certain characteristics and manifestations, mainly including the following aspects: 1) False statements or concealing the truth. In civil fraud, one party uses false statements or intentionally conceals the truth, so that the other party mistrusts false information, so as to achieve its own purpose; 2) Mislead the other party's subjective intention, the purpose of civil fraud is to lure the other party to make a certain decision or behavior, and the other party in the case of obtaining false information or being concealed from the truth to make the wrong decision; 3) The other party suffered economic losses; 4) Civil fraud is an intentional act, and a party who knows that his statement or behavior is false, but still for the purpose of deception; 5) Civil fraud occurs in the process of contract formation, which is the expression and agreement of the will of both parties, and is closely related to the validity and performance of the contract.

2.2 The concept and characteristics of contract fraud

Contract fraud refers to the fraudulent behavior adopted by the actor in the process of signing and performing the contract. Based on the behavior, the relative person produces or maintains the wrong disposition of property, the actor obtains the property, the relative person suffers property loss and the market transaction order is destroyed.^[2] The characteristics of contract fraud include the following important factors: 1) Deception means. Contract fraud usually achieves the purpose of deception by means of deception. These means can include false statements, concealing facts, misleading the other party, etc. The purpose is to make the other party have a wrong understanding when entering into a contract; 2) The content of fraud. The content of contract fraud can involve important matters of the contract, such as the real situation, price, quantity and other key information of the goods. If there is a major false or misleading behavior in the content of the fraud, and the other party makes a wrong judgment when concluding the contract, it may constitute contract fraud. 3) The core motive of contract fraud is usually to obtain illegal interests and illegally occupy the property of the other party. This kind of illegal possession can be achieved by manipulating the terms of the contract, encroaching on the property of the other party or obtaining future economic benefits. 4) Possession purpose. When distinguishing civil fraud from contract fraud, it is an important issue whether the purpose of possession should be inferred from the result of possession of property. Generally speaking, if the result of contract fraud leads to the defendant's illegal possession of the other party's property afterwards, it can be inferred that the purpose of contract fraud is to possess property.

3. Analysis of the applicability of the results of the possession of property in the distinction between civil fraud and contract fraud

The distinction between civil fraud and contract fraud has always been the core and difficult issue in the cross field of civil and criminal law. As an important external representation of objective behavior, the applicability of the processing results of possession property in judicial determination needs to be carefully studied and judged under the dual framework of normative purpose and practical logic. This paper deeply discusses the normative positioning and applicable boundary of this element through case analysis.

3.1 Case analysis

Li Gang acquired all shares of Deyong Company and 60 % shares of Zong Mining Company. After Li Gang negotiated with Zhang and Ye of Hong, he proposed to buy coal in the name of supplying coal to steel plants and power plants. Zhang and Ye agreed. Deyong company and Hong company signed a number of coal sales contracts. After the contract was signed, Hong's company shipped coal to Deyong Company according to the contract. Hong's company and Deyong's company signed a settlement bill for the coal transaction between the two parties. Deyong confirmed that it received a total of 50,000 tons of coal from Hong's company and 50 million yuan in payment. After receiving the goods, Li Gang sent some of the coal to Han, Lei, He and others to be transported away to compensate for Li Gang's arrears to the above-mentioned personnel. In addition, some of the coal was resold to a company in Yunnan at a lower than the actual purchase price, and some of the money received was paid to Zhu and others to compensate for the arrears, and some of the money was used for the company's daily operations. After being urged by a company, Li Gang paid only a small amount of money.

From the above cases, it can be seen that Li Gang, for the purpose of illegal possession, signed a coal sales contract with Hong's company in the name of Deyong Company, which is in charge of its operation, and defrauded Hong's coal. Li Gang only paid a small amount of money, which caused serious economic losses to Hong's company. The criminal responsibility of Li Gang, the direct responsible person of Deyong Company, shall be investigated according to law. Li Gang, as the legal representative of Deyong Company, directly committed fraud against Hong's company. His behavior constitutes the crime of contract fraud, and the amount of fraudulent property is particularly huge. The criminal responsibility of Li Gang, the direct responsible person of Deyong Company, is investigated according to law. Starting from the subjective aspect, the purpose of illegal possession is used to judge the decriminalization and conviction of fraud, and the purpose of illegal possession is judged by 'no consideration'.^[3] In order to repay the arrears, Li Gang signed a coal purchase contract with a Hong company, handed over some coal to Han, Lei, He and others to pay off the debt, and resold the remaining coal at a price lower than the actual purchase price. For the purchase of coal, only a small amount of payment was paid, and the goods worth 50 million yuan were obtained. Li Gang committed fraud and had the purpose of illegal possession.

The objective behavior of civil fraud and contract fraud is similar. How to accurately determine whether the actor has the purpose of illegal possession needs to be distinguished from the result of the actor's handling of the possession of property. It is too one-sided to conclude whether the actor has the purpose of illegal possession only from the subjective mentality, which should be judged in combination with the objective situation. The different disposal of the subject matter can distinguish whether it is for the purpose of illegal possession. The difference in the disposition of the subject matter can distinguish whether it is for the purpose of illegal possession. The disposition of the other person's property by the party in his possession largely reflects his subjective psychological attitude at that time.^[4] If the perpetrator uses the property in possession for the performance of the contract, it can be identified as a civil breach of contract. If the perpetrator uses the property in possession to repay the debt or engage in illegal and criminal activities, it should be determined that the perpetrator has the purpose of illegal possession of property, and its behavior should be criminally responsible. The purpose of illegal possession of property or seeking property interests should be taken as the criminal purpose of contract fraud.^[5]

3.2 Analysis and comparison of academic views

There are many different theories on the identification of contract fraud in China's criminal law theory, including 'strict constitution theory', 'comprehensive analysis theory', 'no difference

theory ' and so on. The " strict constitution theory " takes whether the behavior conforms to the constitutive requirements of the crime of fraud as the standard to divide the crime of contract fraud and the civil fraud of contract.^[6] The " comprehensive analysis theory " advocates a comprehensive and comprehensive analysis of the differences between the two from the aspects of the behavior, content, performance attitude, property disposition and subjective purpose of fraud.^[7] The " indifference theory " holds that there is no essential difference between the crime of contract fraud and the civil fraud of contract in terms of objective behavior and subjective purpose. The distinction is based on the size of the amount involved and the division of responsibility.^[8]

In the distinction between civil fraud and contract fraud, the result of possession of property is an important criterion. If the perpetrator subjectively has the purpose of illegal possession, he or she usually uses the property obtained for personal consumption, profligacy or investment, and will not return it to the victim. On the contrary, if the actor subjectively has no purpose of illegal possession, then he usually uses the property obtained for the purpose of the contract, such as production and operation. However, it should be noted that the result of the possession of property is not the only criterion for judging the purpose of possession, but also needs to be combined with other factors to make a comprehensive judgment. For example, the subjective mentality of the actor, the objective behavior, the loss caused to the victim, etc., are all important basis for judging the purpose of possession. In addition, when judging the purpose of illegal possession, it is necessary to focus on the subjective intention and objective behavior of the perpetrator. If the actor does not objectively commit the act of encroaching on the property of others, then it cannot be determined that the actor has the purpose of illegal possession. The determination of the purpose of illegal possession needs to combine the subjective intention of the actor with the objective behavior, so as to make the determination more accurate, so it is impossible to think that the actor constitutes a crime. Therefore, in the identification of civil fraud and contract fraud, it is necessary to comprehensively consider various factors, rather than simply infer the purpose of possession by the processing results of possession of property.

4. Correlation between the result of possession of property and the purpose of possession

In legal theory, civil fraud and contract fraud are two related but different concepts. It is necessary to construct a multi-dimensional analysis framework to explore the correlation between the results of possession of property and the purpose of subjective possession, so as to provide an important basis for judicial judgment. For the distinction between the two, whether the purpose of possession should be inferred from the results of the possession of property is a key issue. To distinguish whether the fraud in the contract belongs to criminal fraud or civil fraud, we must first examine whether the parties in the case have the intention of illegally occupying other people's property.^[9] The result of possession of property refers to the treatment and result of the property obtained by the breaching party through fraudulent means in cases involving civil fraud or contract fraud. The purpose of possession refers to the intention and purpose of the breaching party through the implementation of fraud. There is a certain correlation between the two, and the study of this correlation is of great significance for accurately judging and identifying civil fraud and contract fraud.

In the study of the correlation between the results of the possession of property and the purpose of possession, there are many factors to be considered. First of all, the result of the possession of property can provide important clues and basis to help the court or arbitration institution to judge the intention and purpose of the breaching party. For example, if a breaching party fraudulently obtains property in an illegal or improper manner and commits an offence against the property, such as transfer, concealment or resale, it can be inferred that the purpose of its possession may be

deliberate deception and illegal profiteering. Secondly, the results of the possession of property can also reflect the attitude and behavior of the breaching party to the consequences of the breach of contract. If the breaching party takes active action to investigate responsibility, return property or repair damage after default, it may indicate that its purpose of possession is out of misjudgment or accident, not intentional fraud or fraud. However, it should be noted that the result of possession property processing cannot be used alone as the only evidence to judge the purpose of possession. Although the results of the disposal of the property in possession can provide important clues, other factors, such as the behavior of the breaching party, the record of past behavior, relevant evidence, etc., still need to be considered to obtain more accurate and comprehensive judgment results. The presumption of the purpose of illegal possession of the crime of contract fraud should be based on the basic conditions of signing the contract, the performance of the contract, the disposition of the property obtained, the cause of the breach of contract, the other party's understanding of the breach of contract, and the treatment after the breach of contract. The overall rather than a single, comprehensive rather than one-sided consideration and judgment, on the basis of which an accurate conclusion is drawn.^[10] Therefore, in the distinction between contract fraud and civil fraud, the result of possession of property should be used as an important reference for inferring the purpose of possession, but it should not be too dependent on this single factor. More evidence and related factors need to be considered comprehensively to avoid wrong judgment and evaluation of the rights and interests of the parties.

5. Conclusion

This study takes the concept of civil fraud and contract fraud as the core, and deeply discusses the feasibility of inferring the purpose of subjective possession based on the result of possession of property disposal. By systematically combing the legal theory literature and combining the empirical analysis of typical judicial cases, the following research conclusions are formed.

From the perspective of constitutive elements, civil fraud refers to the act that one party causes the other party to fall into a wrong understanding and make an untrue intention by making up facts or concealing key information in the process of contracting. The essence of this act is to destroy the authenticity of the expression of intention, and its purpose is to promote the conclusion of the contract, which is not necessarily accompanied by the transfer of property ownership. In contrast, contract fraud is manifested as the use of fraud, coercion, abuse of job convenience and other illegal means, in the process of contract performance to induce or force the other party to make a negative intention, so as to achieve the purpose of illegal possession of other people's property. Compared with civil fraud, contract fraud is characterized by the ultimate goal of obtaining actual property interests, involving the substantial transfer of property ownership or control rights.

In terms of the judicial determination of the purpose of possession, the study found that there are obvious limitations in relying solely on the results of property disposal to infer subjective intent. First, the final result of the contract transaction is affected by many objective factors such as market supply and demand fluctuations, commercial risks, etc., and it is easy to misjudge the facts only based on the status of property disposal; second, civil fraud and fraud may show complex manifestations in practice, and in some cases, there is no actual property transfer. If one-sided emphasis is placed on the disposal results, it will be difficult to accurately grasp the essential characteristics of the behavior.

Based on the above research, when distinguishing civil fraud from contract fraud in judicial practice, in addition to considering the results of property disposal, it is necessary to comprehensively examine the subjective intention, implementation means, performance ability and other multiple factors of the actor to construct a systematic identification standard. At the same time,

it is suggested to further improve the legislative and judicial interpretations, refine the constituent elements of the two types of behaviors, and strengthen the legal regulation, so as to effectively protect the legitimate rights and interests of the parties to the contract and maintain the market economic order and social fairness and justice.

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