

Discussion on the Problem of Joint and Several Liability in China's Civil and Commercial Law

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Abstract. Civil and commercial law is a very important part of China's legal system, it is the regulation of all kinds of commercial and civil acts laws and regulations. Joint and several liability in civil and commercial law is a relatively common kind of responsibility, but some contents of the joint and several liability in civil and commercial law are not in line with the actual life of today, so a series of problems arise. This paper discusses the concept and characteristics of joint and several liability in civil and commercial law, discusses the problems of joint and several liability in civil and commercial law, and puts forward some suggestions for solving them.

Keywords: Civil and Commercial Law; Joint and several liability.

1. Introduction

Civil and commercial law is a commonly used law in life, which is closely related to people's life. Civil and commercial law is divided into civil law and commercial law, among which the contents of civil law are personal law, property law, and commercial law has the bill law, the enterprise law, the insurance law, the bankruptcy law and the securities law. In China, the statutory norms of civil law include: general rules of civil law, marriage law, inheritance law, adoption law, property law, contract law, guarantee law, tort liability law, etc., and the written laws of commercial law include: company law, partnership law, sole proprietorship law, enterprise bankruptcy law, insurance, etc. Civil and commercial law to safeguard the personal interests of the general public, especially the joint and several responsibilities in the civil and commercial law, to protect the legitimate rights and interests of citizens to provide a solid protection, the application rate is wide. However, with the development of China's economy and society, there are some problems in the joint and several liability of civil and commercial law, which leads to the lack of sufficient legal reference in the delimitation of dispute liability, which affects the quality of handling cases and affects the application of civil and commercial law. Using the method of literature research, this paper discusses the characteristics of joint and several liability in civil and commercial law, the classification of joint and several liability in civil and commercial law, the existing problems and countermeasures.

2. An Overview of the Joint and Several Liabilities of the Civil and Commercial Law

The concept of joint and several liability originated in ancient Rome, and the concept of Joint and several liability in China originated from the commercial change law, which was then called the "joint sitting system", which was mainly responsible for criminal cases and property disputes. With the evolution of the times, the joint and several liability system of civil and commercial law has given a new concept, that is, there are two or more joint and several responsible persons, in the case of the existence of the other party, the phenomenon of guaranteeing the actual activities. It is important to note that if one of the joint and several responsible persons assumes all responsibilities, the responsibility to which all debt liabilities are attached disappears. Initially, joint and several liability was determined to ensure that the debtor paid back all its debts to creditors and that some of the relevant provisions in civil and commercial law were created to determine the problem of the debt dispute that had arose. The determination of this responsibility is now a safeguard to ensure the

important interests of the investors and partners concerned. Therefore, joint and several liability as an important part of the legal provisions of civil and commercial law. In the continuous improvement, the joint and several liability of civil and commercial law has its own unique characteristics: 1, the joint and several liability subject must be greater than or equal to two, and each of the responsible subjects must bear the responsibility to pay all external debts. 2. The characteristics of the mandatory joint and several liability, that is, any joint and several responsible person can not escape the responsibility of external liability matters, even if it has exceeded the scope of the responsible person in the subject of responsibility, the responsible person can not make a refusal, can not appeal the argument; or blur everything that the joint and a associated person should bear[1]. 3. There are differences and connections between the person responsible for the joint and the guarantor, the difference refers to when the relevant legal documents once the provisions of the joint and several responsible person, the joint and several responsible person will no longer be the general guarantor, the joint responsible person must bear the obligation to repay the debt. And when the legitimate rights and interests of creditors are infringed, they can bring a lawsuit against the entire responsible subject through legal channels in order to safeguard their legitimate rights and interests.[2]

Under the present circumstances, the joint and several liability determination in civil and commercial law is based on the proportion of responsibility, the fault party, and take into account some moral standards and ethical standards. Since there is no clear provision for the division of responsibilities, only these two aspects can be based on the corresponding decision. At the same time, the determination of joint and several liability follows certain basic principles, first of all, to judge the number of persons responsible and the proportion of responsibility, and then to clarify the debt relationship between the creditors and the subject object; Creditors and debtors must be subject to the constraints and restrictions of a particular agreement in order to be established. The principles and basis for determining joint and several liability are: statutory principles, agreed principles and the principle of fault.

3. Classification of Joint and Several Liabilities under Civil and Commercial Law

(The General Principles of Civil Law) clearly state that when there are two or more debtors, they are all liable for joint and several liabilities and are obliged to pay off their debts, and according to the relationship between the principals and the different conditions for their establishment, China's laws and regulations divide joint and several liability into three categories, namely, joint and several liability, joint and several liability, and joint and several liability[3]. (The General Principles of Civil Law) provide that joint and several liability shall be subject to the agreement of the parties or the provisions of the law[4]. Therefore, according to the reasons arising from joint and several liability, the joint and several liability can be divided into statutory joint and several liability and agreed joint and several liability, the statutory joint and several liability refers to the joint and several liability arising in accordance with the law, the joint and several liability has subjective fault, and the agreed joint and several liability is the joint and several liability arising in accordance with the prior mutual agreement between the parties. The parties are not necessarily at fault. According to the content of joint and several liability, the joint and several liability can be divided into breach of contract joint and several liability and tort joint and several liability. Breach of contract joint and several liability refers to the joint and several liability arising from the joint breach of the contract provisions by the parties, and the joint and several liability of tort refers to the joint and several liability arising from the occurrence of damage caused by the joint tort caused by the parties. After the joint and several liability is determined, the joint and several liability may be divided into general joint and several liability and supplementary joint and several liability according to the order of the debtor's liability. The debtors generally jointly and several liability, regardless of the primary and secondary, bear joint and several liability for the entire debt unconditionally. Creditors may, in no order, require any one debtor to pay off all debts. For partners, for example, the supplementary joint and several

liability shall be premised on the non-performance or full performance of the principal debtor in the joint and several liability, and shall assume joint and several liability only in the second order or in cases not necessarily equal to the total amount of the liability. With the continuous improvement of China's Civil and Commercial Law, the joint and several liability specified in the law will be classified as follows: 1, joint and several liability under joint liability: two or more persons to commit acts endangering the personal and property safety of others, one or more of them caused damage to others and can not determine the specific infringer of the perpetrators, in view of this situation, The perpetrator has a common liability within the perpetrator and is jointly and severally liable for the infringer. If the safety measures in the construction are not in place or the structure of the building is unreasonable and the management of loopholes and other reasons lead to personal injury and death accidents, then its specific responsibility needs to be shared by the construction personnel and the architects of the building. 2, bear the joint and several liability arising from the guarantee: in the absence of any guarantee measures, if the debt does not want to perform the corresponding legal liability, its joint and several liability will arise. For example, if the contract is under entered into, the guarantors are required to complete the required tasks and the corresponding responsibilities. 3, the joint and several liability of the entrusting agent, this type of joint and several liability exists in all the cases. According to the relevant legal provisions, the parties concerned shall assume joint and several liability for the problems that arise when the commission is actually made. If there is an illegal situation in the acting, the agent must bear joint and several liability, which is mandatory. In civil and commercial law, the principal agent responsibility is of great significance, because the agent behavior can be subject to the standard of joint and several liability of the agent, so it can effectively prevent the phenomenon of illegal agent.

4. Problems with Joint and Several Liability in Civil and Commercial Law

Civil and commercial law is to deal with all kinds of civil property disputes and commercial disputes in society. The use of civil and commercial law to manage and control legal acts, to ensure the authority of civil and commercial law, in order to make civil events compensation, relief and other acts into practice, with the development of China's social and economic development, the joint and several liability part of the civil and commercial law there are details, leading to the increase of the difficulty of law enforcement.

4.1 The Division of Joint and Several Liability in Civil and Commercial Law is Vague

The unclear division of responsibility between the persons responsible for joint and several is one of the important problems existing in the joint and several liability of civil and commercial law. For example, A is a migrant worker, birthday invited friends B, C, D to celebrate together, A drunk, B, C, D to send him back to live alone in the home, put A in bed, BCD three people left, the next day BCD learned that A died due to excessive alcohol intake. Family A E took the BCD trio to court and demanded a fine of 450,000 yuan for compensation for Death A for the reasons of violating the right to life. The local grass-roots people's court determined that Individual Reason A caused excessive intake of alcohol, B, C, D sent him home has fulfilled the duty of care, and there is no direct reason to prove that A's death and B, C, D there is a causal relationship, so dismissed E et al. Therefore, E and so on do not continue to appeal to the High People's Court, and believe that B, C, D although A sent home, but did not do the corresponding care work, after the sentence was determined, because from A drunk to death there is no other reason, proving that A's death and drunkenness have a direct relationship, and B, C, D Three people because they think they are okay and do not fulfill the corresponding duty of care and observation attention, after leaving led to The death of A, which makes the three people form a corresponding joint and several liability. However, due to excessive drinking for A itself, the responsibility for changing the sentence to A is 80% and the rest is assumed by BCD[5]. In a drunken accident, the vehicle belonged to A, but that night B borrowed the car from A and hit victim C after getting drunk. After the fact C filed a lawsuit with the court, demanding some compensation from B. According to the provisions of the Civil and

Commercial Law, the owner of the accident vehicle A shall also be prosecuted as a defendant, and shall bear the financial compensation with B, even if B is unable to pay compensation. Although A only lent the car to B, it still needs to be punished by law. It can be seen that the division of joint and several liability is vague, it is difficult to precisely locate. The lack of a direct basis for dividing or assuming responsibility leads to different verdicts[6]. In the actual case processing process, although each of the responsible persons of the subject of responsibility is jointly and several liability relationship, but because each case is different, itself is unique, and in the actual case process, each person has a different fault, Therefore, the responsibility in the final trial process is also different, however, in the civil and commercial law joint and several liability, there is no clear provision for these, from the perspective of joint tort analysis, the court needs to be in accordance with the clues and evidence provided by creditors to investigate and determine the responsibility of the infringer. However, there is no clear determination of the sharing of liability between co-infringer who has not been prosecuted or who have already been prosecuted. It can be said that the division of responsibility and the unclear definition of the responsible person affects the entire judicial sentencing process.

4.2 There is a Lack of Linkage between Substantive and Commercial Law

The specific content of the rules of civil and commercial law is analyzed according to the current practice of civil and commercial law, but because the civil and commercial law and substantive law do not have a very strong connection, so the actual case processing, the role of the joint and several liability system is difficult to give full play. If it is simply the procedural provisions of the simple exercise of civil and commercial law, it may lead to the unreasonable use of the joint and several liability system, which can not effectively solve the actual creditor's rights relationship. Chinese law stipulates that if there is an opposition or contradiction between civil and commercial law and substantive law, the solution of substantive law should be chosen first, and then the legal provisions of the joint and several liability system should be combined with the relevant provisions, and an effective solution to the creditor's rights problem should be found.

4.3 The Use of the Right of Choice is Unreasonable

When the court deals with infringement cases in accordance with the relevant laws, it takes into account all factors, and on this basis, it will recommend that the plaintiff sue the infringer. But whether to sue the infringer is the plaintiff's own right, the court can not replace the plaintiff exercise or enforce. In China's civil and commercial law, the rights of infringers are stipulated, on the one hand, the litigation rights of civil procedure law, and on the other hand, the civil entity rights arising from substantive law. From the plaintiff's point of view, if the plaintiff gives the corresponding right to choose in the litigation made by the violator of joint and several liability, and wants to sue some creditors, his own interests and legitimate rights and interests can be maintained accordingly according to the various provisions of the civil joint and several liability system. However, for the right to joint and several liability, if the act of the joint infringer is placed in it to carry out, it will lead to contradictory solutions in the course of litigation, for most of the people who are not responsible but prosecuted will also have a corresponding impact, and the justice and difficulty of the sentence will have a corresponding impact.

4.4 There is No Clear Prosecution Effectiveness in Civil and Commercial Law

In China's legal norm system, the effective litigation period of ordinary civil cases is three years, specifically when the debt reaches the time limit for performance, and within the prescribed three years, creditors are protected and supported by the law because their rights and interests have been damaged. However,(China's Guarantee Law)provides for a conflict between creditors and joint and several responsible persons in the subject of responsibility and ordinary litigation. In the Guarantee Law, if the joint and several person responsible fails to perform his responsibility within the prescribed time limit, the creditor may demand the corresponding liability from the responsible subject within six months of the expiration date of the performance of the responsibility. However,

during the term of the contract, if the creditor does not hold the responsible subject to responsibility, the responsible subject may be exonerated[7]. Moreover, in the civil and commercial law or other laws, there is no clear provision on the statute of limitations for joint and several liability, which will greatly infringe upon the legitimate rights and interests of creditors. In addition, the absence of a clear provision for the statute of limitations is likely to lead to differences in the standards considered between the parties and the trial, thus creating contradictions and increasing the uncertainty of the entire case.

5. Recommendations on the Existence of Joint and Several Liability under Civil and Commercial Law

The civil and commercial law affects the operation and development of social economy, which is the law closest to the people's livelihood issues. In China's civil and commercial law, the proportion of joint and several liability is high, this paper analyzes the joint and several liability in the civil and commercial law, clarifies the type of joint and several liability in our national commercial law and finds out the existing problems, on this basis, puts forward the relevant measures to improve the joint and several liability of civil and commercial law.

5.1 Introducing More Laws in Joint and Several Liability Determination

A single civil and commercial law cannot meet the full realization of joint and several liability determination, so in judging actual cases, more laws need to be used appropriately, such as the use of substantive and procedural law to analyze and judge the problem. Substantive law mainly solves the problem of human rights and obligations, procedural law as a guarantee of substantive law, in accordance with the procedure of legal identification is also essential. In addition, a lot of joint and several liability by the joint tort and other issues, so, the combination of more laws and civil and commercial law can better identify joint and several liability. Taking the substantive law and the civil and commercial law as an example, there is a difference between the two, only by adding the liability determination to the substantive law and the civil and commercial law, can the result of joint and several liability be protected according to the substantive law, and the reasonableness of the result determination is effectively guaranteed[8]. Only by strengthening the correlation between civil and commercial law and substantive law in the actual trial can we protect the judgment of joint and several liability to the maximum extent, so as to make the actual results more reasonable.

5.2 Classification of Co-infringers

Generally speaking, the co-infringer has too many and complicated relations, if there is no certain standard, it is difficult to determine the responsibility separately. Therefore, it is necessary to establish certain criteria for determining the relevant liability in the tort law, and to classify and delineate the co-infringers. It can be divided according to the two cases of joint litigation and partial litigation, if the number of co-infringers exceeds a certain standard or the case situation is more serious, it is necessary to file a lawsuit against all parties. The court will only give the case if the article is met. In some of the more special cases, some litigation may be judged on the basis of the degree of involvement.

5.3 The Severity of the Liability of the Co-infringer

In the current civil and commercial law, it is stipulated that the joint infringers involved in the case should bear the corresponding responsibility, but did not formulate a more clear standard for the extent and weight of the infringer's involvement. Therefore, in the trial of the case may appear unfair, and prone to disputes and grievances, perhaps some of the joint responsibility of the fault is not very large, but bear a large part of the responsibility, and some of the persons responsible for the whole case should bear most of their responsibility, However, the trial results did not let him assume his due responsibilities, so, to improve the joint and several responsibilities in the civil and commercial law, we need to identify the seriousness of the responsibility of the common infringer,

in the civil and commercial law set the corresponding judgment criteria so that different types of cases can be based on the law, in the judgment more reasonable. To ensure that the responsibility and obligation of each joint and several responsible person in the trial process of the case is clear and reasonable, and to guarantee the fairness and reasonableness of the trial result, so as to realize the application value of the joint and several responsible persons in the civil and commercial law.[9]

5.4 Protecting the Legitimate Rights and Interests of the Parties

In the actual handling of the corresponding legal cases, joint and several liability needs to be based on the actual situation of the case, as well as the legal performance of the joint and several liability fair and reasonable to ensure the legitimate rights and interests of the parties themselves, not only to ensure the legitimate rights and interests between the debtors, but also to protect the legitimate interests of creditors. For example, in an economic case with the participation of multiple shareholders, each shareholder has its own amount of compensation, and the specific amount of compensation needs to be based on the proportion of shares actually held by these shareholders. Therefore, for the process of joint and joint responsibility determination, it is not only based on the relevant laws and regulations, it needs to be reasonable in accordance with the case of different nature and different circumstances, so as to guarantee the principle of fairness and fairness of the whole case, and to a certain extent, the interests of the debtor and creditors can be guaranteed. When the law is actually regulated, it is necessary not only to guarantee the interests of creditors, but also to protect the relevant interests of the debtors in joint and several liability. To safeguard the legitimate rights and interests of creditors, we must do a good job of respecting the creditor's right to choose, change the situation that can only be selected after the litigation. And to safeguard the legitimate rights and interests of the debtor must be combined with the actual situation of the joint and several responsible persons in the subject of responsibility, to ensure that the responsibilities of each debtor should be clear, to maximize the protection of the legitimate rights and interests of each person.[10]

5.5 Improving the Proceedings

The process of design, improvement and perfection of civil and commercial law needs to constantly improve the procedure to meet the requirements of creditors for the degree of litigation. The reason is that different creditors' claims are different in the processing of different cases, so there are differences in the degree of litigation. If in the course of the case, the proceedings in a static form, it will cause distress to the handling of the whole case, and even affect the legitimate rights and interests of creditors. Therefore, the design of civil and commercial law needs to constantly improve the procedure, as far as possible to make the proceedings diversified, and combined with its applicability, and to ensure that the entire litigation process is reasonable, open, fair and fair to improve the efficiency of litigation, so that the relevant laws can be fully integrated with the actual case, to ensure that the system can meet the requirements of the actual situation. Then improve the application efficiency of the whole civil and commercial law joint and several liability, and effectively protect the rights and interests of both debtors and the subject of responsibility. [11]

5.6 Balancing the Relationship between the Subjects of Civil and Commercial Law

When the relationship between the various subjects in the civil and commercial law is balanced, it is necessary to measure the level of development of science and technology and the specific economic conditions, which can effectively guarantee the efficiency of the work of civil and commercial litigation cases. If a new joint and several-person person and a new creditor's relationship emerge, it is necessary to coordinate the principal relationship between the two, while ensuring the reasonable performance of the relevant rights and obligations. Only in accordance with the facts, and the subject in the civil and commercial law to clarify, can promote the mutual adaptation between the subject and behavior of the civil and commercial. In the judgment process of the case, it is necessary to define the rights of the subject of the civil and commercial behavior, and

effectively prevent the confusion and the chaotic judgment result which arises due to the uncertainty of the subject of creditor's rights and debts.

6. Summary

In many aspects of the infiltration of joint and several liability in civil and commercial law, although the corresponding improvement and optimization, but there are defects, resulting in its practical application is limited, the effect can not be effectively guaranteed, in order to solve this problem, first of all, China should constantly update and supplement the joint and several liability system in the civil and commercial law, clearly divide the joint and several liability, Can not start from its own one-sided, it needs to be better regulated in the law, so that we can effectively highlight the authority of the joint and several liability system.

Secondly, in the introduction and joint and several liability system of relevant laws and regulations, from all aspects of the combination of procedures and systems, to further protect the civil and commercial law in the joint and several liability has the fairness. Finally, the inconsequential damages in the joint and several liability shall be treated as joint and several liability, and the specific implementation shall be carried out in the light of the seriousness of the matter, so as to further realize the purpose of protecting the legitimate rights and interests of creditors and debtors. For the provisions of joint and several liability, it is necessary to improve the various problems in them after their actual use, so as to guarantee the legality and reasonableness of the determination. In view of this situation, the state's procedures and systems and other aspects of the identification of joint and several liability provisions need to be accelerated, but also in accordance with the actual application of the effect of targeted improvement and optimization. Adopting the classification determination method to effectively decompose the liability of the joint infringer, and determining the liability of the relevant infringer according to the severity of the case, so as to ensure the effective play of the fairness and fairness of civil and commercial law, so that the identification and trial of joint and several liability can be based on law. In addition, according to the substantive law and procedural law, it is necessary to clearly divide the responsibilities to be borne by the responsible person, and according to the guidance of the relevant contents of the procedural law, the joint and several liability is specifically divided, so that the system is in line with the actual situation, so that the accuracy of the trial of the case can be effectively improved. At present, the Civil and Commercial Law still needs to make adequate public opinion polls and municipal investigations to further improve the relevant legal provisions, so that when dealing with civil economic cases can have the law to comply with, to protect the legitimate rights and interests of the parties to the case.

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