

Research on the Legal Problems of Improper Debt Collection

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Abstract: Financial institutions and private lenders regard third-party debt collection agencies as the only choice for them to efficiently collect arrears, resulting in many survey companies, business consulting companies, guarantee companies and some retirees from commercial banks joining the debt collection industry. However, the debt collection industry is still in a chaotic and disorderly state of development, with all kinds of illegal or improper vicious collection cases occurring frequently. There are also illegal collection methods such as violence and soft violence organized by third-party debt collection agencies, which are classified as evil forces by judicial organs. In the face of the third-party debt collection approaching industrialization, the best way is to recognize its legitimacy and draw appropriate behavioral boundaries for it. Under this background, it is undoubtedly of great theoretical significance and practical value to systematically discuss the legal regulation of third-party debt collection. This paper analyzes the legal problems of improper debt collection behavior, and puts forward some suggestions on how to standardize the debt collection behavior in the financial field.

1. Introduction

And sustained and rapid growth is the development trend of consumer credit in China, which also promotes the rapid development of debt collection industry in China. On the one hand, it is reflected in the increasing amount of credit card transactions, on the other hand, it is reflected in the active private lending influenced by the development of Internet finance [1]. Money financing is an important function of modern financial industry. There are two ways of financing: currency circulation and credit circulation. Traditional financial lending mainly adopts the guarantee system commonly used in the commercial society to ensure debt repayment [2]. However, the modern financial industry is different from this. One of its major features is that the subject with financial financing needs can directly obtain the required funds by virtue of its own good credit status. The lending business based on a good social credit environment has become a concrete manifestation of "the development of financial services entity economy" [3]. In recent years, third-party debt collection agencies have played a vital role in resolving the risk of non-performing assets of financial institutions and preventing systemic financial risks. However, the debt collection industry is still in a chaotic and disorderly state of development, with all kinds of illegal or improper vicious collection cases occurring frequently. There are also illegal collection methods such as violence and soft violence organized by third-party debt collection agencies, which are classified as evil forces by judicial organs [4].

The high cost of public relief, the lack of judicial execution, the inefficiency of legal debt collection agencies, the advantages of debt collection itself and other factors promote the popularity of debt collection activities, and the third-party debt collection industry in the modern sense of China has emerged and flourished [5]. The third-party debt collection industry not only carries the employment opportunities of a large number of social idlers, but also increases government tax revenue. It also makes contributions in saving debtors' credit, helping creditors realize their claims, alleviating the pressure of judicial dispute resolution and promoting the construction of social credit system [6]. Due to the unclear legal relationship between debt collection agencies and debtors, inadequate supervision of national laws and policies, and irregular behaviors of debt collection agencies in actual operation, the contradictions caused by third-party debt collection have become increasingly acute and related legal disputes frequently appear [7]. This not only damages the

legitimate rights and interests of all parties involved in third-party debt collection, but also adversely affects the stability and prosperity of China's financial market. In some specific circumstances, collection is the last resort to finance and return, which can fill the loopholes covered by the economic development bubble to the greatest extent. Therefore, third-party debt collection meets the needs of market development. With the time migration, the third-party debt collection is developing towards standardization, and it is expected to become one of the mature industries in the future.

2. Debt collection industry opportunities

Commercial lending is a typical commercial activity, which has strong profit characteristics. Creditors receive sufficient consideration while bearing the risk of lending, so they should have a higher awareness of risk prevention. Debtors should be required to provide adequate safeguard measures. In the current collection practice, it mainly appears in the form of judicial proceedings. In the practice of financial lending, creditors and debtors will reach an agreement on the loan amount, loan term, loan price, etc., and define the rights and obligations of both parties mainly in the form of loan contract. In this way, the creditor obtains the creditor's right, and the debtor bears the debt [8]. Considering the serious information asymmetry and insufficient information between the two parties, the creditor can't ensure that the debtor will perform its obligations in accordance with the contract, and the financial loan involved has an unrecoverable overdue risk.

From the perspective of the implementation subject, debt collection is nothing more than the collection activities carried out by creditors in their own name or by a third-party debt collection agency, which can be classified into two types: self-collection by creditors and collection by a third-party. The sustainable development of the credit market is inseparable from the policy guidance of the state, which is closely related to the changes of people's consumption ideas and consumption patterns, and the widespread promotion of credit consumption by financial institutions. After the reform and opening up, the rapid development of domestic economy has greatly improved the national income level, and the diversified commodity services and consumer advertisements have continuously flowed to the consumer market. In the field of financial lending, debtors' inability or unwillingness to repay their debts is more prominent, and the cases of inability to pay off their debts or failure to repay their loans on time occur frequently, and occasional cases turn into group effects.

3. Current situation of financial lending

In practice, in order to effectively occupy the credit consumption market, financial institutions often win a favorable position in the competition of consumer credit market by relaxing the credit conditions and lowering the loan threshold. However, the persistent irrational competition among major financial institutions, coupled with the poor credit risk management of financial institutions and the lag in the construction of personal credit information system, has made the debtor's debt default problem increasingly serious, which has led to the increasing scale of non-performing loans of financial institutions. As an important role in the relationship of credit consumption, consumers have the right to decide how to consume independently, so the irrational consumption behavior of consumers is an important reason for the disorderly expansion of consumer credit market. However, it is obviously biased to attribute the disorderly expansion of consumer credit market to consumers' irrational credit consumption. Because the disorderly competition of financial institutions and the lag of legal regulation are also important reasons for the disorderly expansion of consumer credit market and the increasing scale of non-performing loans in financial industry.

In an ideal state, the credit constraint mechanism can run smoothly. For the sake of improving the credit status, maintaining the social image, maintaining the financing ability and other multiple considerations, the debtor will generally perform the debt repayment obligations in strict accordance with the contractual agreement between the debtor and the creditor, and the creditor need not worry too much about this. However, there is often a big difference between the actual

situation and the ideal state. Because the loan granting audit is not strict and the credit infrastructure is not perfect, both risk control and credit constraint fail. The rapid development of the credit market not only stimulates domestic consumption demand and strengthens the internal strength of economic development, but also causes many consumers who lack the corresponding financial knowledge and financial management ability to lose themselves in the tempting consumption ocean, and then makes themselves fall into the crisis of "excessive debt". Therefore, an increasing number of consumers' irrational credit consumption behaviors make people fall into the dilemma of debt default, and at the same time, it also leads to a rapid increase in the scale of non-performing loans of financial institutions, which seriously affects the asset quality of financial institutions.

4. Legal issues of improper debt collection

4.1 Legal nature of third-party debt collection

Law and finance are interactive, and the law lays the foundation of the financial system framework. In reality, there are no financial activities or financial markets outside the legal system. The main basis and foundation of the activities of the third-party debt collection industry are related laws, which not only determine the existing state of the third-party debt collection industry, but also affect its future development track. Debt collection, as a way and means to realize creditor's rights, is mainly due to the fact that the debtor fails to fulfill the payment obligation in accordance with the contract due to imputable reasons, which leads to the fact that the creditor's own available interests may be infringed or actual losses have been caused. Although the relevant regulatory agencies or local governments have issued many departmental rules and local regulations, such as the code of conduct for self-collection and outsourcing collection of credit card debts of banking financial institutions or the regulatory norms for small loans and debt collection in peer-to-peer lending, it is an indisputable fact that the regulatory effect is not satisfactory because of its low level of effectiveness and limited regulatory scope.

It should be recognized that private relief itself is not a new thing, its essence is a way of dispute resolution, which runs through the whole evolution of civil society and political state. If the settlement of disputes in the early stage of civil society mainly depends on private relief and social relief, then the establishment of a political state is to standardize, institutionalize and legalize some dispute settlement methods in the form of public relief, which greatly limits the scope of application of private relief.

4.2 Legal relationship in third-party debt collection

China has not clearly stipulated in the law, nor has it clearly established an administrative supervision department to regulate the third-party debt collection industry in terms of organizational structure. Even though the relevant regulatory laws and regulations emphasize the subjective responsibility of the regulatory authorities and the measures that should be taken against the illegal acts of the debt collectors, there is no legal specification that clearly states which department is responsible, thus forming a situation of insufficient supervision or multiple supervision. For debt disputes in the civil field, in addition to the judicial proceedings or administrative intervention provided by public relief, many creditors will also tend to choose private relief channels after weighing the advantages and disadvantages, which is also the main reason for the large number of third-party debt collection agencies. The collection of third-party debts is not a formal dispute resolution procedure, but a creditor's right realized with the help of private forces. Among them, private power is not only a form of its own power, and third-party debt collection agencies that are not subordinate to the public power system obviously belong to the category of private power.

The third-party debt collection agency in the assignment of creditor's rights belongs to the nominal creditor, inheriting the rights, obligations and appearances of the creditor. The debt collection activities carried out are actually to realize their own creditor's rights. The third-party debt collection agency in the principal-agent relationship is neither a creditor nor a debtor, which has the appearance of a third-party. However, because its main purpose of debt collection is to assist

creditors to realize their claims, it has an obvious value tendency and does not belong to a neutral third-party. As the subject of administrative supervision is indifferent to the development of the third-party debt collection industry, it is seldom willing to learn and master relevant regulatory knowledge. Even if it has enough motivation to improve relevant skills and capabilities, it is difficult to fully master complete administrative supervision knowledge.

5. Optimization path of legal regulation of third-party debt collection industry

The attribution of legal responsibility for improper collection should be defined among the original creditor, the third-party debt collection agency and the third-party debt collection personnel involved in the third-party debt collection activities. It is necessary to clarify the supervision and management obligations of the original creditors before, during and after collection in the collection outsourcing contract and collection legislation. It is required that the original creditor should carefully collect the outsourcing organization in advance, and strictly examine its qualifications. If any improper collection infringement is found in the event, it should be stopped in time and ordered to make corrections. If it is found afterwards, it should avoid further expansion of losses caused by unlawful harm. As far as the debt collection industry is concerned, the state has not brought it into the track of legalization through legislation. Although the improper collection behavior has been regulated accordingly, there are few direct requirements for the collection behavior of third-party debt collection agencies. We should improve the construction of social credit system as soon as possible, establish a disciplinary mechanism for dishonesty, increase the cost of breach of contract, take credit constraint as the driving force to drive debtors to perform their contracts, protect the legitimate interests of creditors, and solve the problem of debt collection from the source.

The third-party debt collection agency shall not evade the tort liability of improper collection because it has already punished the collection practitioners. It is the employer and should be the first responsible body externally. After the original creditor and the third-party debt collection agency bear the tort liability to the injured debtor, they can recover from the collection personnel who have made improper behaviors, so as to play an important role in warning the employees to collect legally and legally. You can set up a self-discipline association of debt collection industry, undertake to formulate professional standards and business norms of debt collection, conduct self-discipline management of members and employees, accept complaints against members and employees, organize and carry out the qualification examination of debt collection employees and other functions, and form a self-discipline order of debt collection industry. Administration and industry self-discipline work together on the debt collection market in the financial sector, which can greatly reduce the occurrence of illegal and improper collection behaviors and promote healthy competition in the industry.

6. Conclusions

The existence of third-party debt collection has a reasonable basis, but the lack of effective legal regulations leads to frequent vicious incidents of improper collection, so the industry has been controversial and not recognized by the law and the public. Under the background of the downward pressure of the national economy, the surge of non-performing loans, and the unclear attitude of the state towards the legality of debt collection agencies, it is an inevitable trend to promote the orderly development of the third-party debt collection market in China to supervise the collection behavior of third-party debt collection agencies efficiently and normatively. The healthy development of the debt collection industry is inseparable from the change of the mentality of government departments and the public. Only by correctly understanding the necessity and importance of the debt collection industry can we jointly promote the healthy and orderly development of the industry. Third-party debt collection not only solves debt disputes, but also indirectly plays a positive role in social order. On the premise of not violating national laws, the two parties finally resolve debt disputes through negotiation, which really plays a positive role in maintaining market economic order.

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