

On the Right to Rescind the Contract of the Breaching Party in Civil Code

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Abstract

Clause 2 of Article 580 of civil Code initiated the system of contract rescission application by parties. Its nature is to affirm the "contract termination right of the defaulting party" debated in the academic circle, set up a new contract termination system, and provide rules for the judicial field. This provision serves as the legal basis for the judge's decision, and entrusts the substantive rights of the parties. This provision is too broad, its application and interpretation should be further discussed, and its constituent elements can be divided into subjective elements and objective elements. The time of contract termination should be in line with the logic calculation of damages in Article 565 of the Civil Code, and the liability of the defaulting party should be flexible to avoid the contract deadlock into the execution deadlock, which is the third.

Keywords

The Breaching Party has the Right to Rescind the Contract; Article 580 of the Civil Code; Constitutive Elements; Restrictions Apply .

1. Introduction

On May 28, 2020, the Third Session of the 13th National People's Congress voted to pass the Civil Code of the People's Republic of China, marking the birth of China's first law in the form of a code. At the same time, both the Civil Code itself and the judicial interpretation in line with the Civil Code mentioned by President Xi in his speech, All represent the civil legislation and civil judicature of our country will usher in a new era. The new code has created a lot of new systems, so it is necessary for the academic circle to make a new discussion on the development of the new system in the socialist market economy, so as to achieve the optimal application of the Civil Code. The author will analyze article 580, Clause 2 of the Civil Code from the perspective of the fierce academic discussion on "the right to rescind the contract of the defaulting party". Article 580 clause 2 of the Civil Code sets up a new contract rescission rule, which is different from the traditional contract rescission right. The former termination rules of contract law include agreement termination and legal termination. The traditional legal contract rescission right is the right of formation. Article 94 and Article 96 of the Contract Law stipulate the circumstances and procedure of the legal contract rescission right. When one party exercises the contract rescission right, it only needs to notify the other party to produce legal effect. However, the right of the parties to apply for the termination of the contract as stipulated in Clause 2 of Article 580 of the Civil Code belongs to the right to form a lawsuit, and the right can only be realized by filing a lawsuit to the court to confirm the termination of the contract. In previous judicial decisions, some judges interpreted Article 94 of the Contract Law and included the non-breaching party and the breaching party as the subjects enjoying the legal termination right. In the author's opinion, this extended interpretation violates the traditional contract law system, and as a judgment, it is really wrong, for one thing. Some scholars believe that the clause 2 of Article 580 of the Civil Code provides a judicial right of termination, which is a procedural right, rather than the traditional legal right of termination. First of all, the judicial lifted first appeared in France civil code, it is defined as "in any case, to request

termination of the contract can be" put forward by means of litigation, and judicial relieve ultimately is the right of the court, the French civil code without any restriction, is done in the court how to judge and not by the civil code shall be specified, whether the final contract to lift or the parties can appeal to support, Discretion is still in the hands of the judge. However, clause 2 of Article 580 of The Civil Code of China, under the condition that there are three situations, the parties may file a lawsuit or apply for arbitration in the people's court, which is a substantial restriction on the exercise of rights, but not the restriction on the right of action. As a form of litigation, it is directly by the civil code provisions, differs from public law regulations of litigation, the civil code belongs to private law, the equal civil subject to the identity of the relationship and property relationship as its adjusting object, gives the corresponding right to terminate a contract, the parties to balance the interests of both parties, is advantageous for the court judgment to make a fair decision. In other words, paragraph 2 of Article 580 is the legitimate basis for the breaching party to terminate the contract, as well as the judgment basis of the court or the arbitration institution. If there is no such provision, does the court have legitimate legal reasons to support the breaching party to exercise the right to terminate the contract? The second.

2. Applicable Requirements and Limitations of the Right to Rescind the Contract by the Breaching Party

2.1. The Subjective Important Document

A party does not breach the contract in bad faith. The so-called malicious breach of contract refers to the negative treatment of contractual obligations by the parties after signing the contract, so that the interests expected by the other party cannot be realized. The theory of efficient breach of contract in common law system does not exclude the state of malicious breach of contract, but as long as the interests pursued by one party are beneficial to social interests and exceed the interests expected by the other party, which is different from China. Both contract Law and Civil Code still reflect the morality of contract. In practice, most breach of contract is subjective fault of one party, we should distinguish subjective fault from subjective malice. Fault includes intent and negligence, and negligence, whether in a crime or tort, is less morally reprehensible than intent, so we need to be sure of the "negligent breach" scenario. Second, intentional and malicious. The difference between the two is only a difference of degree. After analyzing different judicial cases, the author makes the following suggestions: First, the situation of the breaching party does not change after signing the contract, but simply does not want to perform the contract, which is a malicious breach of contract and should be excluded. Second, most cases of contractual deadlock cannot be explained by the doctrine of situational change, so it is necessary to make some additions. Change the default party oneself circumstance, mostly belongs to the commercial risk in practice, using the principle of changed circumstances can not protect the interests of their own, so the breaching party fails to perform the contract, at this time, the intentional default, integrated both sides benefit, the default party deliberately default moral can condemn sex is smaller than the first case, the judge to sentence the breaching party of termination of the contract. Third, judges are more flexible in applying the rule in cases where both parties are at fault, because both parties are morally reprehensible. Consistency of understanding of the purpose of the contract. Aim generally in the form of black and white contract between the parties, but its implementation status, subjective differences between the two sides are, often appear: a party that the contract purpose can be realized, thus not exercising termination right, one of the parties think the goal cannot be achieved, the contract so you need to exercise the termination right stop in time. What we need to examine here is the possibility of the observant party subjectively realizing the purpose of the contract. When the non-breaching party considers that the purpose of the contract can be

realized through payment, it will form a defense against the breaching party's right to terminate the contract. The key to the right of rescission is to discuss whether the defense constitutes an abuse of legitimate rights or violates the principle of good faith. In the process of the author's discussion, it is not difficult to find that the source of termination right of the breaching party is closely related to this type of behavior of the non-breaching party, so it is necessary to limit the subjective understanding of the non-breaching party. For the breaching party, we can only through its debt behavior performance of the difficulty of to define the subjective understanding of the "contract purpose cannot be achieved", once this kind of situation, cannot implement standard is reached. For the observant party, we try to define the subjective state of the observant party by lowering the standard of the realization of the purpose. The non-breaching party will not have the above two difficulties (otherwise the non-breaching party will become the breaching party). Previous scholars believe that the behavior of the breaching party affects the economic benefits expected by the non-breaching party in concluding the contract. the author thinks that in the breaching party expectant benefit under the rules of the termination of the contract, measured by the standard shall be reduced, the default party appeared two kinds of situations, observant party knows or should know they are looking forward to the interests of the part or all cannot be achieved, to reach the standard I want, That is, the consistency of understanding of the purpose of the contract is established. Page Numbers

2.2. Objective Elements

Apparent unfairness of the defaulting party. Since ancient times, law has been committed to solving the problem of fairness, no matter legislation or judicial practice can not be avoided. In the academic circle of Our country, there are single and double elements of explicit unfairness. The author puts explicit unfairness into the objective elements of the contract termination rule system of the breaching party to reduce the requirement of proof applicable to the breaching party, and only identifies whether it is explicit unfairness to the breaching party from the perspective of balance of interests. If the contract continues to be performed, the breaching party will suffer a large loss of economic benefits, while the expected benefits obtained by the non-breaching party will be lower than the loss. We can't measure all contractual relationships in terms of dollars and cents from a personal interest perspective, but it is a way of analyzing most market transactions. The expected benefits of the non-breaching party are compared with the benefits lost by the breaching party in full performance of the contract, and the three relationships of greater, equal or less are obtained. When the relationship of greater exists, we will deny the obvious unfairness under the rule system; when the relationship is equal or less, we will definitely have reached the state of obvious unfairness. From the social interests, when enterprises belong to the contract by one party, the representative of the generally greater than the personal interests, social interests and corporate social responsibility is unable to avoid our problems to discuss the contract alone, corporate social responsibility is the combination of internal and external interests, we have common interests, is collection of social public interests. When the enterprise performs the contract as one of the parties, there is a high probability of threatening these interest sets, we can be sure that the performance of the contract is obviously unfair. For example, we take the bankruptcy of enterprises as the price of fulfilling the contract, which will have a negative impact on both personal and social interests.

2.3. Restricted Application

Here it is necessary to make it clear that the scope of the right to rescind the contract of the defaulting party does not only include non-monetary obligations. The actual performance stipulated in paragraph 1 of Article 580 of the Civil Code is limited to non-monetary debts. As a clause that should belong to the system of "termination of contractual rights and obligations", Paragraph 2 and Paragraph 1 belong to the system of breach of contract. The former only contains three exceptions logically and does not contain the first half of paragraph 1. Article 48

of Jiumin Records only limits the scope of application to "long-term contracts", including but not limited to contracts with continuous payment of money. Should be discussed, as a new rule, we need to reflect on the future, when the rule is applicable to appear what kind of legislative purpose beyond question, as prof yong-jun li speaking, there are more than 400 judicial case the breaching party of termination of the contract, may after the enforcement of the civil code, such cases may develop to the thousands of thousands of parts, by that time, China's social trading order will also change, in order to maximize the interests of the pursuit of breach of contract as the spiritual connotation of the trading concept slowly infiltrated into the market economy system. This is not what legislators want to see, nor is it what all the scholars who support the termination right of the defaulting party want. Therefore, it is necessary for us to apply this right or rule restrictively. Prohibition as a general clause. In judicial practice, the application of legal principles can only be affirmed in the case of insufficient supply of rules or unfair rules, which does not have the generality of application. We elevate the status of the contract termination rule of the defaulting party to a level similar to that of the legal principle, limiting the abuse preference of the parties' rights and the preference of the application of the judge's rule. The following two conditions can be used as rhetoric or "hindrance" to limit the application: first, the application of termination of agreement. The system of contract law has been divided into agreement termination and legal termination, agreement termination and general agreement termination. Termination of the agreement means that the contract can be terminated if both parties reach a consensus through consultation. Contract is a contract, as the performance of the autonomy of the parties, the parties may be set up to a common means for their own "lock" or common use keys to open the "lock", even if the law is not agreed to lift, we also should definitely and their behavior on the effectiveness of any legal effect under the condition of party autonomy, for both sides, there is no so important. In the breaching party to exercise its right of termination of the contract, the judge shall determine whether has the maximum probability of rejected the possibility of a deal to lift and if not, the judge should actively as a "great man", agreement to lift, for the benefit of the contract, can understand more than the parties, the judge as a middleman, only do legal interests balance. Second, the application of arbitrary termination of indefinite contract. Article 563 (2) of the Civil Code stipulates, "In the case of an indefinite contract with obligations for continuous performance, the parties may terminate the contract at any time, provided that they give a reasonable notice to the other party." An indefinite contract reflects the particularity of the trust relationship between the parties, which means it can be established and terminated at will. Where one party notifies the other party of the termination of the contract, the other party may file an objection to the people's court, and the court shall examine it. The judge should distinguish between the parties' right to terminate the contract arbitrarily and the breaching party's right to terminate the contract. Different rules apply and different constitutive elements are examined. For example, Company A leased office building A of Company B for one year on January 1, 2018. After the expiration, Company A continued to perform the rental contract to Company B, and Company B did not raise objections, and have refused other companies who want to lease A office building (A office building is located in the prime of the city). Half A year after the lease, Company A had financial difficulties and orally informed Company B that it did not intend to continue leasing office building A and planned to withdraw all equipment in July 2019. However, Company B refused, and Company A applied to the court for rescinding the contract. Analyzing the interests of all parties: Company A has financial problems. If company A continues to lease office building A, it will be unable to pay huge rent, resulting in huge losses. If party B agrees to terminate the contract, it needs to find a new tenant at some cost and bear the expenses of various property services and other services by itself. First of all, the implied behavior of both parties forms an indefinite lease relationship, and there is an indefinite lease contract between them. If the judge makes a judgment to terminate the contract according to paragraph 2 of

Article 563 of the Civil Code, it will be beneficial to PARTY A and unbalanced to Party B. If the judge makes a judgment based on paragraph 2 of Article 580 of the Civil Code Company A shall pay the rent to Company B, failing to pay the rent will be deemed as a breach of contract in this contract.]], it will be beneficial to Party B (due to certain compensation for losses), and the interests of Party A will be unbalanced. As the author pointed out above, the contract termination rule of the defaulting party is prohibited from being applied as a general clause, therefore, such case can only be judged by article 563 (2) of the Civil Code. When the interests of company B are out of balance, the court can also judge Company A to compensate company B for certain losses according to the principle of fairness. So regardless of whether they are according to the rules, which can get similar results, termination of the contract, company b got a certain compensation (damages), but in comparison, when apply 2 paragraph of article 563 of the required trial costs low, namely the simplicity of the constitutive requirements, (2) of article 580, if applicable, you will need to spend a certain number of "kung fu".

3. Improvement of the Right to Rescind the Contract of the Defaulting Party

From the perspective of comparative law, this system is the first of its kind in China, and there is no legislative precedent to follow. It is not certain whether this system can be effective or lead to other social risks after it is applied. To avoid more unknown risks, it is necessary to answer the question of the relevance of this rule. About the release time. The traditional contract rescission right is rescinded when the notice or copy of complaint reaches the breaching party, but the new law does not stipulate the time limit of rescission after the breaching party exercises the contract rescission right. It is the first time for China to set up a clause with the spiritual connotation of "the right to rescind the defaulting party", which should be complete in the legislative system, and the second clause of Article 580 should conform to the second clause of Article 565. Breach of contract termination right while remove with the traditional legal rescission in different ways, but if the court ruling, termination of the contract should apply to our country to the other party through litigation to lift the system of legal rules, the effectiveness of the contract the cutoff point should be applied the general legal effect of exercising termination right - when the indictment copy to other party. The author believed that the existence of the contract the deadlock, has already cost more cost, the parties in a timely manner allows the parties from out in the contract is the money due, so in order to safeguard the interests of the parties to their respective, when the court confirmation can be done to remove, the effectiveness of the contract should be within the limit of the indictment copy arrived at each other, to limit liability for damages. Liability of the breaching party. The liability for breach of contract in China's contract compilation system is generally of remedy rather than punitive, In the context of Article 580 clause 2 of the Civil Code, the liability for breach of contract mainly refers to damages and liquidated damages. "Filling up principle" is the basic principle of calculating damages. What the author wants to discuss here is not whether punitive damages should be applied to the contract termination rules of the breaching party, but to put forward some suggestions or assumptions about the path of assuming the liability for breach of contract for reference in practice. Consider such a problem: A requests to terminate the contract due to monetary debt breach, and the court decides to terminate the contract and compensate the non-breaching party for losses. Does this situation form its own closed loop? The application of the contract termination rule of the breaching party helps Party A to escape from the contract deadlock, but thus causes the interest imbalance to the non-breaching party. The court may take compulsory enforcement against the liability for breach of contract (mainly the compensation for losses), but it has no effect in practice. From the debt of original contract to the debt of compensation for damages, from a contract deadlock to an execution deadlock, in

the application of this rule, the observant party did not get substantial benefits. Therefore, we need to reflect that in this battle where the breaching party will win, we need to adjust the consequences of the rules. "Not affecting the assumption of liability for breach" is the way for legislators to protect the non-breaching party, but sometimes it is just a formality, such as the interest imbalance mentioned above. Usually, the court will perform according to the contract after the termination of the contract in the judgment, to judge whether the two sides have a case of return of unjust enrichment, in the previous part to perform the contract, due to the termination of the contract, credit will be returned to the interests of the contract, has obtained the court can make flexible on this path, the offset compensation of debt will return the improper benefit, This approach can achieve the effect of simultaneously relieving the non-breaching party under the rule of the right to rescind the contract of the breaching party.

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