

Joint Liability in Civil and Commercial Law

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Abstract: Joint and several liability is a special kind of civil liability stipulated in civil and commercial law. Its purpose is to compensate for the relief. In essence, it means that the liability is not directly borne, but borne for the acts of others, and the victim is protected by law to a certain extent. The spirit of joint and several liability is fully reflected in our civil and commercial laws and regulations. However, the research on joint and several liability in the field of legal theory needs to be further deepened. This article mainly makes a brief analysis on the concept and constitutive requirements of joint and several liability, the legislative intent of establishing the joint and several liability system, the provisions on joint and several liability in civil and commercial law, and the recovery after assuming joint and several liability.

1. Introduction

As a far-reaching system in civil and commercial law, the joint and several liability system plays an important role in solving civil and commercial legal problems. Many civil and commercial laws in our country, including creditor's rights law and company law, have provisions on joint and several liability and point out the constitutive requirements of this special way of civil liability [1]. The joint and several liability system is an important system in the field of civil and commercial law in our country, but the basic civil and commercial laws of our country, such as the General Principles of the Civil Law, the Contract Law, the Company Law, the Guarantee Law, etc., only stipulate joint and several liability and do not give a specific explanation to the concept of joint and several liability [2]. However, the civil and commercial law has not clearly explained its concept, and the theoretical circle has not made a detailed study of it. However, joint and several liability is undoubtedly of vital significance in regulating creditors and preventing their illegal acts [3]. Therefore, we should start with our country's judicial practice, re-examine the elements, types and foundation of joint and several liability, and re-examine the elements, types and foundation of joint and several liability as well as the joint and several liability system in this type of liability and similar liability civil and commercial laws.

2. The Concept and Elements of Joint and Several Liability

2.1 The Concept of Joint and Several Liability

As mentioned earlier, the concept of joint and several liability has not been specifically explained in the basic law of civil and commercial law of our country. Different scholars have explained joint and several liability from different angles. For example, "joint and several liability is the civil liability that should be borne for violation of joint and several liability or joint tort, regardless of their respective shares, and regardless of the sequence." Joint operation between various institutions, cooperation between enterprises and joint operation between enterprises, if they do not have the qualification of a legal person, they may bear corresponding civil liabilities according to the proportion of their capital contribution or the agreement in the contract. Here, no matter how big or small each of us should bear the responsibility, and regardless of the order, we all bear the corresponding responsibility according to the wishes of the obligee and cannot refuse it [4]. According to the provisions of Article 130 of the General Principles of the Civil Law, if two or more people jointly infringe upon the rights and cause damage to others, they shall be jointly and severally liable. These concepts reveal some contents of joint and several liability to a certain extent,

but they have not been generally accepted by people. However, at present, people generally think that joint and several liability refers to a special kind of civil liability in which any one of the majority of liability subjects has to bear the responsibility of paying off all debts.

2.2 Elements of Liability

Up to now, there is no clear definition of joint and several liability in China's civil and commercial legislation. Scholars have summarized the joint and several liability system from various research perspectives. Joint and several liability, as a special civil liability, must meet the following special conditions in addition to the general constitutive requirements in some aspects: 1. There are more than two debtors; 2. There is a debt relationship between the joint and several liable person and the creditor, and the debt is inseparable; However, subjectively speaking, the two or more people did not have a common intention to cause such damages, and there was no common fault, whether they should also take joint responsibility. 3. The object of joint and several liability must be a kind of thing. Since joint and several liability is the main property liability and can be borne by the responsible person respectively, the object must be a kind of thing. 4. The undertaking shall be expressly stipulated by law or explicitly agreed by the parties. The assumption of joint and several liability shall comply with legal provisions, or the parties shall voluntarily agree to determine the assumption of joint and several liability. Among them, the agreement to assume joint and several liability appears mostly in the guarantee contract.

3. The Legislative Intention or Purpose of Establishing Joint and Several Liability System

For each of the most debtors who bear joint and several liability, they are obliged to bear all debts so as to realize the creditor's rights. Of course, creditors also have the right to demand any debtor to fulfill all debts. However, as the relationship between creditors and debtors is mainly reflected by contracts, most of which are group debt relationships, which are subjective in the determination of joint and several liabilities. In addition, due to consideration of relevant value policies and objective related matters, debtors may also bear corresponding joint and several liabilities [5]. There was no common fault in the incident, so the infringer should not be held jointly liable for compensation. What we want to analyze is, why should the law stipulate or allow the parties to stipulate that those who do not need to bear the responsibility should bear the responsibility and those who bear part of the responsibility should bear all the responsibility? That is why the legal responsibilities of those who do not need to bear the responsibility and those who bear part of the responsibility should be increased, or what is the legislative intent of establishing a joint and several liability system? On the premise that the contract entrustment is not clear, the principal shall bear civil legal liability to the third party. If there is collusion between the third party and the agent, the agent and the third party must jointly bear joint legal liability for acts aimed at damaging the interests of the principal. Not everyone agrees with it, but it is generally believed that joint and several liability is a kind of special civil liability in which any one of multiple liability subjects must bear all the liabilities.

4. The Main Classification of Joint Liability

At present, China's civil and commercial law does not classify joint and several liability. The different joint and several liability determined in the civil and commercial law can correctly determine civil events from different angles and standards. The purpose of the author's classification of joint and several liability from different angles is to deepen the understanding of joint and several liability, grasp the legal characteristics of joint and several liability from different aspects, and correctly define civil liability.

4.1 Legal Joint and Several Liability and Agreed Joint and Several Liability

This classification is mainly based on whether the debtor assumes joint and several liability is based on the direct provisions of the law or on the agreement between the parties. No matter the

number of debtor or creditor is two or more than two, according to the law and the contract agreement, the creditors with joint and several rights have the legal right to demand the relevant debtor to fulfill the debt paying obligations. If it comes from legal provisions, it is legal joint and several liability. For example, relevant laws have pointed out that “if an agent and a third party deceive the principal through mutual association and damage their interests, then the agent and the third party who are combined with each other shall bear corresponding joint and several liabilities” [6]. For example, article 66, paragraph 2, of the general principles of the civil law stipulates: “if the agent and the third party collude to damage the interests of the principal, the agent and the third party shall bear joint and several liability.” The joint and several liability arising from the agreement between the parties is the agreed joint and several liability, such as the joint and several liability arising from the agreement of the guarantor of the joint and several liability. When endangering the lives and property of others, the owners of buildings and structures shall jointly bear civil liability with the perpetrators. This kind of responsibility is most applicable in the construction field of construction units and in the case of falling of affiliated facilities of buildings. Based on the fact that the damage has been caused, it is necessary to bear joint and several liability. In the actual judicial practice, the judgment of joint and several liability under different circumstances is also different.

4.2 Joint Liability for Breach of Contract and Joint Liability for Infringement

According to Article 89 of the General Principles of the Civil Law, there are joint and several liabilities between the debtor and the guarantor. If the guarantor asks the creditor to repay the debt service obligation that should be performed, and the debtor refuses to perform, the guarantor with joint and several liabilities can perform according to the agreement. Joint and several liability arising from the fact of breach of contract is joint and several liability for breach of contract, and joint and several liability arising from the fact of infringement is joint and several liability for infringement. The significance of this classification lies in the different imputation principles of the two, because joint and several liability for breach of contract and joint and several liability for infringement belong to liability for breach of contract and liability for infringement respectively [7]. At the same time, if this phenomenon occurs on the premise that relevant agreements have been made between the parties, then this kind of liability should be the joint and several liability agreed upon. Therefore, the agent still chooses to act as an agent when he knows that the agency affairs are illegal or the principal will not stop the agent from developing when he knows that the agent is using his agency rights to engage in some illegal activities. The occurrence of this kind of situation is often due to the lack of clear commitment to the content of the guarantee and the guarantee method. Then, if there are two or more guarantors on the same debt, it is required to clarify the responsibilities of the guarantors. If this is not done, the guarantors shall jointly bear the responsibilities caused. The guarantor has the legal right to recover the debts from the debtor when fulfilling the obligations.

5. The Difference between Joint Liability and Adjacent Concepts

5.1 The Difference between Joint and Several Liability and Adjacent Concepts

Joint and several liability and supplementary liability Joint and several liability refers to a special kind of civil liability in which any one of the majority of liability subjects has to bear the liability to pay off all debts, while supplementary liability is “the civil liability of compensation for the insufficient part of the property paid by the responsible person who should bear the liability for compensation in accordance with the law” [8]. There is joint and several liability between the guardian and his client. If the entrusted party makes a mistake in the process of guardianship of the guardian, the guardian shall not only bear the corresponding civil liability, but also bear joint and several liability with his guardian. This classification of joint and several liability is mainly based on the different attribution principles between the two. Joint and several liability for breach of contract belongs to liability for breach of contract, and liability for breach of contract also belongs to the principle of no fault. All debtors in joint and several liability are in the same position, and any

debtor is responsible for paying off all debts. The time sequence of undertaking is different: the joint and several liable persons have the obligation to undertake all debts from the date when the debts are due, and the joint and several liable persons in the supplementary liability shall only undertake the unpaid shares when the property of the principal debtor is insufficient to undertake; Once the damage result caused by the responsible person cannot be clearly defined, the jointly dangerous actors shall be jointly liable. This kind of joint and several liability fills up the blank of judgment on torts caused by common dangerous acts in relevant regulations of civil and commercial law, and is recognized by law.

5.2 Joint and Several Liability and Unreal Joint and Several Liability

The so-called unreal joint and several liability “refers to the debts that most debtors pay according to the uniform content generated by accident due to different reasons, and each assumes the obligation of full performance, and all debts are eliminated due to the performance of one of the debtors” [9]. Especially in the civil and commercial law, the emergence of most vague contents of liability results in many uncertain joint and several liabilities being determined as joint and several liabilities. Here, the plaintiff faces the following two kinds of objects: one is the substantive rights arising from the substantive law; One is the litigation claim arising from litigation law. However, if the creditor only brings a lawsuit to one of the partners, the partner shall bear all the repayment obligations, and the court shall not have the right to add the other partners as co-defendants. Creditors have different claims: in the unreal joint and several liability, there are many debtors, and creditors have several claims. if creditors realize a certain claim, they should not make claims to other debtors, while in the joint and several liability, creditors can simultaneously exercise several claims to several debtors.

6. Problems to Be Solved Urgently in Joint Liability in Civil and Commercial Law

6.1 Determination of Litigation Subject

If there are two or more joint and several liable persons, the obligee may bring a lawsuit to one or several or all of them. If the obligee only brings a lawsuit to one or more of them, are the other joint and several liable persons the co-defendants? Paragraph 3 of Article 65 of the General Principles of the Civil Law stipulates: “If the authorization is unclear, the principal shall bear civil liability to the third party, and the agent shall be jointly and severally liable.” Paragraph 3 and paragraph 4 of Article 68 stipulate respectively: “If the agent and the third party collude to damage the interests of the principal, the agent and the third party shall be jointly and severally liable.” In an accidental situation, a payment relationship is generated for the same situation, and a joint relationship is assumed for the performance of obligations. In one debtor, the performance of obligations is completed, while the remaining debtors have the right to defend. That is to say, when there is only one litigation object between several parties and the other party, if the parties want to exercise their litigation rights and obligations, they must sue together. For supplementary joint and several liability, if the obligee only brings a lawsuit to one or several of them, the other joint and several liable persons will be added as co-defendants. For example, in a traffic accident machine, if the victim only brings a lawsuit against the driver or the owner of the vehicle, the court shall list the driver and the owner of the vehicle as co-defendants. This is enforced by law.

6.2 The Attribution of Specific Liability in Joint and Several Liability

Although the unreal joint and several liability does not belong to the category of joint and several liability, there are certain differences and connections between the two. Most of them are debtors and the payment content is uniform. In general joint and several liability, if the obligee lists all the joint and several liable persons as defendants, the specific liability of each joint and several liable person shall be determined based on the agreement between the joint and several liable persons on the premise of ensuring the realization of the obligee's rights; If there is no agreement, it shall be divided according to the law. The determination of joint and several liability generally follows the

standards prescribed by law, and takes effect only after the parties perform the legal agreement, and joint and several liability arises. However, those who are not really jointly and severally liable have their own independent reasons. Any one of the joint debtors can claim compensation from all creditors. Therefore, the plaintiff can choose any one of the joint debtors and has the right to demand the corresponding repayment. Of course, in order to protect the interests of the debtor, the debtor is allowed to bear joint and several liabilities and then recover from other debtors. In the supplementary joint and several liability, the number of defendants does not change with the number of lawsuits filed by the obligee, i.e. all responsible persons are added as defendants. At this time, the responsibility and the order of performance among the responsible persons should be determined to avoid unnecessary litigation.

7. Conclusion

Joint and several liability refers to the clear stipulation based on the law. Due to the occurrence of the same legal event, multiple responsible persons need to bear not only their own share of the responsibility but also the responsibility of all responsible persons for several civil and commercial liabilities with the same payment content. Due to the rapid development and constant changes of China's social economy, relevant legal staff should keep pace with the times when making laws. They should fully consider the actual development of China's society and look at problems from the perspective of development. In this modern world that upholds the law, the continuous improvement of the law will enable the people to enjoy fairer treatment and the interests of the people will be protected to a greater extent. Our legal workers should also keep pace with the times when making laws. They should fully and comprehensively consider the actual development of the society, protect the rights and interests of the people from being harmed and safeguard the legitimate rights and interests of the people.

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