

Trust Protection Liability for Breaking off Negotiations

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Abstract: If a party violates the reasonable trust of the counterparty and improperly breaks off the negotiation, the party shall compensate the counterparty for the losses suffered as a result. Whether the damage liability for interruption of the negotiation constitutes requires the judge to make a fair ruling based on the party's contracting stage and the constituent elements of the liability for reliance, and considering relevant factors. The scope of liability for breaking off negotiation is usually limited to the interest of reliance, which needs to be determined by measuring the degree of fault of the party and the degree of trust of the counterparty on a reasonable basis. In the case where the negligence of the party has caused the counterparty to invest a large amount of trust costs, and the contract has become mature, the court may consider giving the counterparty compensation for the performance of the benefits. In exceptional circumstances where the party maliciously violates the negotiation obligation, the reliance damage can even exceed the performance interest, with the purpose of restoring the original situation.

1. Introduction

The traditional contracting model regards whether the contract is established or not, as the boundary line for the parties to bear the contractual responsibilities. This approach is conducive to the parties to judge the timing of the establishment of the responsibilities. However, the general negation of the responsibilities of the pre-contract stage may be unfair to the parties in good faith negotiations. This is especially true when one party arouses the trust of the other party, who carries out a trust action. Different opinions believe that one party can ask the other party to provide a guarantee undertaking before taking action. This view obviously ignores that the requirement to provide a guarantee undertaking is not a standard practice in a transaction, and it may "frighten" the counterparty of the negotiation [1]. Furthermore, a party's first investment in the negotiation phase based on the trust is likely to be required at the conclusion of the contract, is the key to the success of the negotiation, and is also of positive significance for the smooth performance of the contract after the conclusion of the contract. At this time, the requirement that the party must obtain a commitment and then take measures does not conform to the actual transaction.

Therefore, the legal order shouldn't stop protecting the reasonable trust of the party during the negotiation stage, and allowing the other party to arbitrarily break off negotiations. The question is, when the other party interrupts the negotiation, what conditions should be met so that the law can provide relief for the trust loss of the party involved in the good faith negotiation, and what is the scope of the relief? The key to solving this problem is to strike a balance between trust protection and contracting freedom.

2. Constitution of Trust Protection Liability for Breaking Off Negotiations

The theory of "Contract Maturity" believes that with the deepening of contract negotiation, the content of the contract is gradually complete, the trust of the parties is also increasing day by day, and the constraints on both parties are getting stronger. Correspondingly, the responsibilities of the parties are heavier. Therefore, in the contract negotiation stage, the so-called "intermediate agreement" can be admitted [2]. The Dutch court divided the contracting process into three stages. In the first stage, both parties enjoy complete freedom to break off the contract. In the second stage, according to the standard of reasonableness and equity, a party can still freely interrupt the contract,

but if he breaks off the contract, he must compensate the other party for the expenses. In the third stage, the parties no longer enjoy the freedom to break off the contract [2].

The division of the above-mentioned contracting phase emphasizes that the parties must be in a relatively mature contracting phase before the trust liability for damage of breaking off negotiations can occur. When a judge decides on a related case, he may use the stage of contracting the parties are in as a reference for judging whether the liability is established. However, even if the parties are in the second and third stages of the contract, it only means that there are possibilities that the damage liability may occur. Whether the liability has occurred, it is also necessary to examine whether the facts of the case meet the constitutive requirements of the liability. Regarding the trust damage liability for breaking off negotiations, in essence, it is necessary to judge the illegal behavior, subjective state, damage consequences and causality of the parties. The key to judgment is under what circumstances the party's interruption of negotiation is forbidden by the law and should be determined to be at fault. The following analysis focuses on these two aspects.

2.1 Discussion on the Violation of the Law When the Parties Broke Off Negotiations

Generally speaking, the interruption of negotiation by the parties is a legal and legitimate act, which is permitted by the transaction order and does not constitute an illegal act. However, when a party has gained the trust of the counterparty by actions or words, making the counterparty believe that the contract will be successfully concluded or the party will compensate for the cost and losses they have invested in the eventual failure to conclude the contract, then the party's arbitrarily withdrawing from the contract negotiation will violate the obligation of good faith negotiation is illegal. It should be noted that the actions or words of a party that cause the trust of the counterparty do not have to meet the requirements of the offer, but only need to constitute a "clear and definite" promise. In the U.S. system of "promise and estoppel", the actions or words of the parties that cause the trust of the counterparty are called "promises", and promises and offers are different in terms of the expression of meaning and the degree of restrained meaning [3]. The offer must be deterministic, and the promise is just that the promiser shows to the promisee that he is willing to be bound, but does not need to indicate what kind of responsibility he should bear [4].

In common law system, the premise that the parties' interruption of negotiation constitutes an illegality is that there is a pre-contract agreement between the parties [5]. Although in the civil law system, the existence of the pre-contract agreement is not a prerequisite for assuming the responsibility for interrupting the negotiation of reliance, but the content agreed in the pre-contract agreement can also become the "promise" of the parties. Typical situations of this type of pre-contractual agreement include an agreement on good faith negotiation, an agreement on both parties' investment projects, their respective investment obligations, and the order of investment, etc.

2.2 Discussion on the Fault Elements of Trust Liability for Breaking Off Negotiations

The trust liability for breaking off negotiations cannot be found only from the goodwill of the counterparty. Only when the parties are at fault at the same time can the trust damage liability rule be reasonably explained. Regarding the negligence judgment of the party, it is first necessary to explore whether the damage is reasonably foreseeable. Here, as long as the "reasonable third party" in the position of the promiser can foresee it, it does not require the promiser to foresee in fact. Secondly, by judging how close the parties are, indirectly judge the degree of care obligations that the parties should bear. When the parties have not yet formed a relationship of trust (the first stage), under normal circumstances, neither party's actions should be deemed to be negligent, and then they should be required to bear the liability for reliance compensation. In the case where a certain relationship of trust has been formed between the two parties (the second stage), at this time either party should take care of the other's trust, and when it violates the other's trust without justified reasons, the party should be deemed to be at fault. When an agreement has been reached between the two parties and the contract has not become effective due to external factors such as approval (the third stage), unless the parties have excuses for exemption, they shall be deemed to be at fault. After the foregoing judgment, the court should consider whether there are sufficient factors to

exclude or limit the scope of the duty of care, and balance the conflicts between honesty and credibility, protection of trust, and freedom of contracting. The court should judge whether the duty of care to others meets the requirements of reasonableness, fairness and justice.

In judicial practice, judges can judge whether the parties involved deliberately or negligently in the contract negotiation based on the following circumstances: First, the progress of the negotiations between the parties. In the formal negotiation stage, if there was a basic consensus on the general content of the contract, the possibility of imputation could be relatively high. Second, whether one party actively instructs the other party or passively acquiesces to the other party's prior behavior, such as tacitly approving preparatory work. Third, one party has the dominant power to negotiate, on the one hand, it actively raises the counterpart's expectations for the establishment of the contract. On the other hand, it delays the contract period, or the parties know that the other party has done preparations, but fail to give proper notice or warning, allowing the situation to continue to develop. Fourth, industry practices, customs between parties, types of transactions and their considerations. Fifth, reviewing the rationality of the parties' words and actions [6]. Of course, requiring the party to bear the liability for damages for interrupting the negotiation means that the losses caused by the counterpart's trust input must be caused by the party's negligent conduct, and the party's trust is within a reasonable range.

3. Scope of Trust Liability for Breaking Off Negotiations

3.1 Compensation for Breaking Off Negotiations is Usually Trust Interest

First of all, it should be clear that the parties are not required to force their consent to enter into a contract before reaching an agreement, because the law should not force them to pursue an unprofitable project. Therefore, in the negotiation stage, the parties are required to bear the responsibility to protect the trust of the other party, and compensation for the losses caused by the interruption of the negotiation should be an exception [7]. When deciding to grant trust relief to the parties, there must be a solid reason to avoid excessive interference with the parties' autonomy of will. Secondly, the damages for breaking off negotiations cannot be too loose or too strict. Too loose will not protect the honest contractors, and too strict will easily cause the "chilling effects" of the contract or lead to excessive trust investment. Liability for damages for breaking off negotiations needs to strike a balance between the freedom of contracting and the protection of trust. Generally, it is believed that the scope of damages for breaking off the contract is the trust interest, including the parties' reliance on the establishment of the contract due to the other party's fault and the cost of the contract and the trading opportunities abandoned. Taking trust interest as the scope of damages can basically take into account the trust interest of the counterpart and the freedom of contracting of the promise party for the parties in the contracting stage.

Judges need to consider the degree of fault of the parties and the degree of trust of the counterpart based on a reasonable basis when judging the liability for trust damages for breaking off the negotiation. The elements of fault and the degree of trust are the nodes that balance the freedom of contracting and the protection of the trust interest. After reaching the conclusion that the trust liability for breaking off the negotiation is established, the determination of the scope of damages for individual cases also needs to determine the extent of damages in the above-mentioned comparative and weighing framework, rather than simply adding up various costs [8].

3.2 Damage and Expected Interest for Breaking Off Negotiations

In a few cases, breaking off negotiations may require damages for performance interest. Professor Farnsworth believes that the promiser's lack of integrity will encourage the court to take greater damages for the expected interest [2]. Of course, the amount of damages awarded to the expected interest by the judge in the trust damage liability for interrupted negotiations must be based on strict conditions. The factors considered include whether the content of the contract is perfect or not, whether the reason for the contract's failure to establish and take effect can be attributed to the parties, and It is expected whether the compensation for damages will lead to the

loss of the regulatory purpose of the legal norms, etc. To put it simply, when one party's behavior is sufficient to make the counterparty trustworthy, and the contract to be concluded has reached maturity, and the final contract cannot be established and effective due to personal reasons, the party shall bear the loss that is equivalent of the interest of carrying out the contract.

In special circumstances such as malicious intent, the "actual loss" of the counterparty whose negotiation is interrupted will not be limited to the performance interest of the contract for fairness considerations [2]. For example, in the lease contract, the lessor made false statements about the condition of the house, causing the lessee to suffer losses that exceeded the performance interest. At this time, it would be unfair and contrary to the meaning of damages if the counterparty is not compensated for damages that exceed the performance interest.

4. Conclusion

The negotiation between the parties in a complex transaction is a gradual process, during which the trust between the two parties gradually increases, and the pre-contract liability for the purpose of protecting such trust is generally recognized. As a result, under exceptional circumstances, the distinction between freedom of contract and strict contract compliance needs to be adjusted, and the difficulty of interrupting the negotiation of reliance and liability is to find a reasonable distinction between the two. The law provides that the liability for trust damages for breaking off negotiations can remind the parties to pay attention to protecting the trust interest of the counterparty and prevent them from abusing the freedom of contracting. Not only that, the liability for trust damages upon interruption of negotiations can also prompt the parties to clarify their rights and obligations at the conclusion of the contract through a pre-contract agreement.

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