

Study on the Protection of Legal Justice for Third Parties Without Independent Claims from the Perspective of Litigation Rights Protection

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Abstract: The third-party system without independent litigation provided for in the civil procedure law of mainland China is conducive to the one-time settlement of disputes, and realizes the protection of the rights and interests of third parties while improving judicial efficiency. However, there are internal defects in the establishment of this system, which are manifested in the unclear legal status of the third party, the lack of independent claims, the imbalance of rights and obligations, and the ambiguous standards for the determination of interests, which leads to the failure to realize the relevant legislative objectives and provide the third party with due protection. These deficiencies make it worthwhile to ponder whether the law can truly guarantee the justice it brings to people. For this reason, from the perspective of the right of action, which is easier to identify problems, this paper puts forward some suggestions for the problems in the third party system without independent claim, such as drawing on the third-party defendant system to make a typological distinction between the third parties, and perfecting the standards for identifying the rights, obligations and interests of the third party without independent claim, in order to improve the authority and completeness of the Civil Procedure Law in mainland China through such standards.

Keywords: no independent claim, third party, rights and obligations, civil litigation justice

1. Introduction

For many years, civil litigation in mainland China has been primarily based on the structure of the original defendant and the opposing party. However, with the continuous development of the economy, the number of civil litigation disputes has been increasing and more and more stakeholders are involved. As a result, the original single adversarial structure between plaintiff and defendant can no longer meet the needs of litigation. Against this background, China drew on the legislative experience of civil law countries and introduced the third-party system in the Civil Procedure Law of the People's Republic of China (for Trial Implementation), which came into effect in 1982. Third parties in civil litigation are distinguished by the existence of an independent claim, but from the perspective of existing legislation, third parties without an independent claim may be responsible for the outcome of the judgment, and the existing legislation does not provide a specific response to the definition of an interested party. Therefore, this paper intends to study the third party system without independent claims from the perspective of litigation rights protection, clarify the issues by sorting

out the current status of the legislation, and put forward suggestions in the light of the experience of the extraterritorial legislation and China's national conditions.

2. Overview of third parties without independent claims

China's provisions on “third parties without independent claims” are mainly embodied in Article 59(2) of the Civil Procedure Law of the People's Republic of China (hereinafter referred to as the “Civil Procedure Law”), which stipulates that: “Where a third party is not entitled to bring an independent lawsuit, the third party shall not be entitled to bring an independent lawsuit. If a third party does not have the right to initiate proceedings independently, but has a legitimate interest in the outcome of the case, it may apply to participate in the proceedings, or the people's court may notify it to participate in the proceedings. If the people's court adjudicates that the third party bears civil liability, it has the litigation rights and obligations of the parties. Based on this provision, it can be concluded that a third party without independent litigation rights refers to a third party who has an interest in the case and is unable to exercise his or her litigation rights, but whose interests will be directly affected by the outcome of the case, and who may therefore participate in the proceedings.

There are two specific ways to participate: one is to apply to the court yourself to participate in the proceedings, either orally or in writing, but the application must be examined by the court, which will then decide whether or not to approve the application; the other is to be notified by the court of the court's participation, and in the process of hearing the case, if the court deems it necessary to add a third party, it may do so in accordance with its authority. Through the analysis, it can be concluded that this type of third party does not occupy a dominant position in civil litigation, but more of an auxiliary role, i.e., they are in the same camp as one of the parties in the case, hoping to win the case [1].

3. Problems with the right of action of third parties without independent claims

3.1. Unclear legal status

The legal status is the basis for resolving disputes related to third parties without independent claims, which has been a long-debated issue in academia. According to the provisions of the Civil Procedure Law of Mainland China, if a third party without independent claim wants to obtain the right of appeal, it needs to get a judgment and fulfill the corresponding obligations in order to enjoy the same rights and obligations as the parties. In the absence of liability obligations, such a third party has no right to assert the litigation objectives of the case, and is not a party to the litigation until the results of the trial are announced [2]. This model improves the efficiency of the litigation to a certain extent, but weakens the position of the third party without independent litigation claims, which is obviously not a perfect legal system. Moreover, the restriction on the third party who has no independent claim to express his opinion makes it difficult for him to express his opinion and exercise his right as a real participant.

Take a simple example: A owes B \$100,000, and B sues A for refusing to pay A's debt when it becomes due. Since C is A's guarantor, i.e. a third party with an interest in the case and no independent claim. C cannot make an independent claim in the litigation, but if A loses the case, C may have to assume A's debt. In other words, a third party with no independent claim is neither a plaintiff nor a defendant in the action. Although the rights and obligations are set out in the parties' chapters and the parties are not equal, they are only auxiliary third parties, they may have to bear the responsibility for the outcome of the judgment, and it is obvious that this design is difficult to achieve logical self-consistency, and logical self-consistency is not achievable, and the impact on the rigor of the law is obvious. When the rigor of the law is questioned, the justice of the law can hardly be truly guaranteed.

3.2. Imbalance in the relationship between rights and obligations

From the surface of the system design, there is no independent right to claim the third party has no substantive rights to the subject matter of the lawsuit, because they should undertake their own obligations before, and does not have their own independent right to express their own views, put forward their own claims. On the contrary, mainland China still allows such persons to participate in litigation, and they have certain rights to participate in litigation, which shows that the content of the Civil Procedure Law in this regard is based on due protection [3]. But the problem is that, in the existing design, this kind of subject's rights and obligations are not even balanced, no independent right to claim the third party enjoys the power to be limited compared with the defendant type of third party to bear the responsibility of the responsibility if lose the lawsuit, obviously is not equal. Since a third party with no independent claim has no rights prior to the litigation, why should it be held liable for the outcome of the judgment? Such a design will inevitably lead to the third party not having the right to independently claim to stand with the defendant and not enjoying the same rights as the defendant, but being obliged to bear the defendant's defeat. In order to avoid the possible liability of the defendant after the defendant loses the lawsuit, and the third party without the right of independent litigation is worried that the exercise of the right of appeal at the end of the lawsuit is too complicated and the time limit is too long, it is likely that the third party without the right of independent litigation will take sides, thus affecting the stability and fairness of the law in the lawsuit.

3.3. Criteria for participation in litigation are too subjective

According to Chinese legislation on the participation of third parties without independent claims, the main criterion for judgment is “having a legitimate interest in the case”, legitimate interest is an abstract concept, there is no precise definition indicating the specific scope of legitimate interest, and the existing legislation has not been interpreted, nor has it introduced more detailed and workable provisions. However, through the actual situation and the conclusion reached in the case, basically can be summarized as follows: as long as the result of the trial of the lawsuit is considered to have an impact on the third party, the third party can apply to participate in the proceedings, can also be notified by the court ex officio to participate in the proceedings of the third party [4]. Therefore, in practice, the court has a great deal of subjectivity in judging whether it is favorable to itself, which actually depends on the discretion of the adjudicator. In particular, when the court adds a third party ex officio, it is very easy to add a third party by mistake or indiscriminately, and the result of such treatment will lead to a significant increase in the scope of third parties without independent claims, so it is very important to clarify the criteria for participation in the litigation.

4. Suggestions for Improvement of the System of Third Parties without Independent Claims

4.1. Introduction of a third-party defendant system

For the problem of unclear legal status of third parties without independent claims, reference can be made to the third-party defendant system in the United States. The reason for establishing such a system in the United States is to consider that civil disputes may affect the interests of third parties, and if such a system is not established, it will lead to serious infringement of the third party's own legal rights and interests in litigation. For example, in a car accident, after the plaintiff has filed a lawsuit and won, the defendant and the insurance company are generally liable, but it cannot be ruled out that the defendant has violated the provisions of the insurance contract in the car accident, and new lawsuits may arise [5]. By including the insurance company as a third party, the insurance company becomes a third-party defendant [6]. However, if the insurance company is in fact a third-

party plaintiff in this action, such a shift in roles can both improve judicial efficiency and protect the interests of all parties. This system is relatively rich in what can be learned from it.

However, the legislative system of mainland China is very different from that of the United States, and mainland China has borrowed a lot of jurisprudence from the civil law system, while the common law system is very different from the civil law system in terms of the basic logical structure and the discretion of the judge, so for the time being it is not appropriate to copy all of them. However, this does not mean that there are no references. Combined with the actual situation in mainland China, this legislative experience will be the third party in civil litigation is divided into auxiliary third party and the defendant third party, which auxiliary third party only in the case has an interest in the case, and do not have to bear civil liability, naturally do not enjoy the equal rights of the parties. The third party as the defendant third party shall bear civil liability, and enjoy the right to bring a lawsuit. When the status and qualification of the subject corresponds to the obligation of assuming responsibility, it effectively solves the main problem that the third party who has no independent right of assertion in the litigation is worried about.

4.2. Improvement of the provisions on the rights and obligations of the third party without independent right of action

In terms of the original intent of the legislation, as the third party without independent right of action is designed to allow the court to assume the responsibility of the case on its own after ascertaining the facts, in order to avoid duplication of lawsuits and thus to improve the efficiency of the law. In other words, a third party with no independent claim is bound by the matters adjudicated. Therefore, it is necessary to grant and determine the rights and obligations of third parties without independent claims, and here we mainly discuss the rights and obligations of respondent third parties. For example, it is permitted to file counterclaims in lawsuits, and it is stipulated that previously effective judgments may be regarded as exempted facts in trials, etc. However, the fact is that the introduction of a new legal system will inevitably lead to fluctuations in the rigor of the law anew, and the creation of new legal theories must be flawed by their incompleteness and irrationality, therefore, with regard to that law, the author believes that it is possible to increase the scope of exercising the rights of this type of third party, i.e., although they do not participate in the litigation of the The author believes that the scope of the right of such third party can be increased, that is, in the litigation, although not involved in the plaintiff and the defendant, but can independently put forward the corresponding views and evidence, rather than after the conclusion of the case, and then take similar remedial measures, so that the third party responsible for filing an appeal, in order to prevent the imperfections of the legislation infringement of the right of the right of non-independent litigation. Raising issues in the midst of litigation may affect the efficiency of litigation, but in the long run, this model in fact greatly reduces the likelihood of a second appeal and essentially improves the efficiency of litigation.

At the same time, a third-party relief system without independent claims should be set up, because China's legislation in this regard is almost blank, but in practice, there may be cases where third parties who have nothing to do with the matter join the lawsuit, which may seriously jeopardize the interests of the third parties and affect the fairness of the law. Therefore, we may try to establish a mechanism to allow third parties to pursue damages without independent claims, and at the same time impose restrictions on both the court and the plaintiff, as a means of urging the plaintiff to be more attentive to reality and consider the situation in exercising his rights, and the court to be more prudent in dealing with the matter, taking into account the circumstances and facts of multiple parties, and to make a truthful and reliable judgment.

4.3. Improvement of interest determination standards

In modern society, the law plays a vital role in maintaining social order and safeguarding civil rights. However, with the increasing complexity of civil legal relations, the number of cases in which third parties are involved in litigation continues to increase, and how to protect the interests of third parties without independent claims has become an urgent problem. In order to achieve this goal, it is necessary to guard against the subjectivity of interest judgments and to limit the discretionary power of judges. In mainland China, consideration can be given to introducing a third-party participation system based on unsolicited applications, supplemented by ex officio supplementation by the court, in order to better balance the interests of all parties.

Specifically, considering that it takes a long time to amend the law, a categorical distinction can be made between third parties who do not have an independent claim, distinguishing them from defendants. For example, according to the Civil Procedure Law and relevant judicial interpretations, a third party without an independent claim refers to a person who does not have an independent claim to the subject matter of the litigation between the parties, but who participates in the litigation because he or she has a legal interest in the outcome of the case. However, this approach is inherently flawed, as the enumeration of the law is always limited and cannot cover all actual situations. Moreover, how the legal interest is recognized is still to be confirmed, in the current legal system, there is no specific and clear boundaries for the legal interest, and the lack of clarity of the boundaries will lead to loopholes in the application of the law, which naturally shakes the justice of the law, therefore, the author believes that it is possible to refer to the scope of the supportive provisions of the Criminal Law of the People's Republic of China, and by summarizing the practical experience, to make clear that it is necessary to join the third party criteria. At the same time, the determination of legal rights and interests can also be made through the exemplary cases of the Supreme People's Court of the People's Republic of China, through the national examples, combined with the provisions of the law, so as to arrive at a specific and effective scope of the defined concepts.

In addition, from the perspective of the protection of the right to litigation, there are still many problems in the current system, such as unclear litigation status, unbalanced rights and obligations, and overly subjective criteria for judging interests. For example, in judicial practice, the court's ex officio addition of a third party to a lawsuit often lacks clear criteria, which can easily lead to the principle of judicial passivity being trampled upon [7]. In addition, the criteria for identifying a third party without an independent claim are also controversial, and need to be made clearer and more specific, especially when determining that "he has a legal interest in the outcome of the case". What constitutes an interest and the degree of interest will be the basis for the judgment. Obviously, can't all have a trace of interest in all people are regarded as a third party, also can't set the standard of interest is too harsh, how to grasp the appropriate degree, is still an important issue that needs to be resolved.

With the rapid development of society, the importance of the law is becoming more and more prominent, the general public's legal awareness is also increasing. Therefore, the protection of the rights of third parties without independent claims should be emphasized more. In the future, relevant laws and regulations should be further improved to clarify the scope and standard of the third party without independent claim, and at the same time, the regulation of judges' discretion should be strengthened. Through these measures, the interests of all parties can be better balanced, judicial justice can be promoted, and the overall legal awareness of society can be enhanced.

5. Conclusion

In this paper, from the perspective of litigation rights protection of the third party law without independent litigation claims through the current civil procedure law of mainland China and other

countries on the inadequacy of civil procedure law and defects and related issues of the research and law, so that the existing civil procedure law in the defects of the supplement and optimization of the law, can better promote the law's justice and perfection and rigor, thus making the law reflects his value. However, due to the limitations of the researcher's personal academic level, as well as the understanding of the civil procedure law in mainland China and the examples did not do enough to fully understand and analyze, so in the study slightly personal advice and subjective color for the lack of rigor and imperfections in the place hereby apologize!

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