

The Adversarial Impact of Lease Rights in Chinese Law

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Abstract: The legislation of “sale without breach of lease” is a rule set up in the context of the creditorization of property rights to prevent the owner’s autonomy from being damaged due to the separation of ownership rights. However, protecting vulnerable lessees is not the purpose of the legislation, but only its purpose—the manifestation of legal effects at the level of social impacts. Civil law countries uphold the creditor’s rights attribute of leasehold rights while strengthening their adversarial effect. In contrast, leasehold rights in Anglo-American law have the dual characteristics of property and contractual rights. Our country’s legislation inherits the legislative philosophy of German law, and relevant rules are scattered in the Civil Code, property rights, judicial interpretations, and some administrative legislation. The lease right should be understood as the sum of the rights enjoyed by the lessee to request the lessor to deliver the leased property and to occupy and use it. Theoretically, the right to claim and the usufruct right in the lease right should not be artificially separated. However, the right to claim stage. The lease right has no adversarial effect. Our country lease rights should maintain the nature of creditor’s rights, and space should be reserved for establishing property leases in special laws. The adversarial effect of the lease right is one of the situations in which the creditor’s rights are materialized. It is the inevitable result of the rich content of the law of obligations and the decline of the law of property under the restriction of the legal doctrine of property rights. The lease right is a real usufruct right based on a debt relationship, and its antagonistic effect comes from the use of the subject matter based on the lease contract based on the premise of publicity.

Keywords: Lease right, Confrontation effect, Possession, Publicity, Legal effect

1. Determination of the Confrontation Effect of Lease Rights

1.1. Confrontation effect of lease right is determined

The term “lease right” seems very clear at first. Still, it becomes confusing when you think about it carefully: generally understood, lease right refers to the rights enjoyed by the lessee, but what rights are expressly included, the objects to which the rights refer, and What the effect is, it seems complicated to say clearly^[1]. Therefore, clarifying the concept of lease rights is the primary issue that needs to be resolved to explain the connotation of the aggressive effect of lease rights. To solve the source of the antagonistic effect of the lease right, after clarifying the meaning of the lease right, the following two issues need to be discussed: whether the lease right is independent. If the right to lease is separate, what kind of right should it be classified as?

1.2. Differences and clarifications on the concept of leasehold rights

The extension of the classification of the nature of leasehold rights causes the difference in understanding the concept of leasehold rights. The difference in definitions is mainly reflected in whether to recognize the leasehold rights for using the leased property or to regard the leasehold rights as claims like a creditor’s right—basis and considered as a whole. For example, those who hold the view that “the lease right is the right to benefit from the use of the property” define the lease right as the “right to benefit from the use” and emphasize that the lease right only refers to the “right to benefit from the use of the property” that the lessee enjoys after the leased property is delivered. The total amount of possession rights necessary for using the proceeds.

Therefore, the lease right takes the leased object as the object revolves around the possession of the

leased object and does not include the stage before the lessee takes possession of the leased object. Therefore, the lease right is only reflected as a use of the leased object, and the rights enjoyed by the lessee before the leased object is delivered and taken possession of are not called lease rights. Similar definitions also include the right of the lessee to possess the leased property for the benefit of its use, and the right begins with the possession of the leased property. Therefore, some scholars have proposed that the lease right is the general term for the lessee's right to possess and use the leased property to earn profits^[2]. On the contrary, those who believe that the lease right is the sum of various lease claims enjoyed by the lessee believe that the lease right is a general term for multiple claims enjoyed by the lessee based on the lease contract, including the delivery of goods to the lessor. The right to claim for the leased property and maintenance of the leased property also includes the right to possess, use, and benefit from the leased property. This definition does not separate the lessee's right to claim from the lessor before taking possession of the leased property from the right to use and benefit from the subject property after taking possession of the leased property. Instead, it separates the claim against persons from the property of usage benefits.

Similarly, this problem is also quite common in the research on the definition of land lease rights and bareboat charter rights. According to some commentators, the land lease right refers to the lessee's claim to use the land for the person leasing it. As for the use of the land, it is just the exercise of the claim. For another example, although there is no explicit legal provision for the right to bareboat charter, according to the definition of bareboat charter contract in Article 144 of the Maritime Law, it can be understood as "the lessee's right to charter a bareboat in a bareboat based on the provisions of the bareboat charter contract." The right to possess, use the ship, and obtain certain benefits during the lease period^[3]. In comparison, the former identifies the land lease right as a right to claim the lessor's land, and the use of the land is only a legal right to exercise the claim. The effect and the latter emphasize the lessee's usufruct rights to the possession and use of the ship.

Our country does not have an accurate definition of leasehold rights in legislation. Still, in practice, it is generally believed that leasehold rights represent the rights enjoyed by the lessee based on the lease contract, and there is no contradiction in excluding the lessor's rights. It is controversial whether the lease right only includes the lessee's right to control the possession and use of the leased property or whether it also consists of the lessee's right to request the lessor based on the agreement in the lease contract. Inside. In my opinion, the concept of leasehold rights should be understood as the sum of the rights enjoyed by the lessee to request the lessor to deliver the leased property and to possess and use it. The lease right shall include the lessee's right to have and use the leased property and the lessee's right to request the lessor to perform its contractual obligations before the lease contract is completed and the leased property is delivered to the lessee.

1.3. Legislative choices in China

Our country adheres to the principle of legal property rights. Therefore, whether the lease is a property right should be strictly observed and stipulated by law. In academic terms, the legal principle of property rights should be understood as follows: The legal doctrine of property rights refers to the principle that the type and content of property rights within a unified legal area must be clearly defined by law. Therefore, the parties cannot create new property rights by themselves through autonomy of will, nor can they agree on property rights and legal relationship contents other than legal provisions in the legal relationship. According to the legal principle of property rights, property rights not established following the property rights section of the Civil Code or other property rights stipulated in other laws cannot be recognized as property rights. For now, my country's existing laws do not indicate that leasehold rights are a type of property right. Moreover, in the contract part of the Civil Code, Chapter 14 of Typical Contracts in Part II stipulates the content of the lease contract, which positions the lease right system within the scope of creditor's rights law. Therefore, judging the leasehold right as a property right only from this perspective is not sufficient.

Therefore, different types of property rights should be distinguished based on their nature, and property rights should be classified into two types: essential and functional. Among them, fundamental property rights include ownership, "usufruct property rights," etc., all of which have "control over the world." Fundamental property rights should establish standards and boundaries that are uniformly recognized by society. "As a principle, their types and contents must be determined by It is stipulated by law and cannot be created arbitrarily by both parties through a contract." The primary purpose of functional property rights is not to create property rights but to ensure the realization of creditors' rights. It is a subordinate position to creditor's rights and is designed to maximize the exchange value of things. "The basic rights of things are used to guarantee the realization of creditor's rights." Functional property

rights include mortgage rights, pledge rights, transfer guarantees, liens, etc. For such functional property rights, the parties can freely create them by reaching a consensus on the principle of autonomy of will. The lease right is the lessee's right to possess and use the leased object, and the operation of its rights is reflected in the realization of the utility value of the object. If it is set as a property right, it is an essential property right and misses the creation of the party's autonomy.

2. Conditions for application of the rules on the antagonistic effect of lease rights

Regarding the establishment of the constituent elements of my country's "sale and purchase does not constitute a lease" rule, the disputes mainly focus on three issues: first, whether movable and immovable properties should be distinguished as lease items; second, whether the lease items should be delivered to the lessee; third, whether the lease item should be furnished to the lessee; Whether the person chooses to apply the rules and is willing to continue to perform the contract^[4]. Regarding the first question, there are many different legislative examples in other countries and regions, and our country's legislation does not stipulate that "sales without breaking the lease" only includes real estate leases and excludes movable leases, so it is not appropriate to have this as a constitutive element^[5]. As for whether it is reasonable to apply "sale without breaking lease" to movables, there are different views in the theoretical circles. Regarding the second question, although Article 229 of my country's original Contract Law did not stipulate that the leased property be delivered to the lessee, Article 725 of the Contract Part of the Civil Code has added the clause that "the lessee shall possess the leased property following the lease contract". The clause stipulates that the lessee takes possession of the leased property due to accepting the delivery of the lessor, which agrees that the lessor should deliver the leased property to the lessee.

Moreover, if the application of "sales without breaking the lease" does not require the lessee to possess the leased property, it will be ineffective in publicizing rights and is unfair to the buyer. Regarding the third question, Article 14 of China "Judicial Interpretation of House Leasing" stipulates: "If the ownership of a leased house changes during the lease period, and the lessee requests the transferee to continue to perform the original lease contract, the people's court shall support it." The lessee's request to continue performing the lease contract as stipulated is a reminder made by the lessee for the buyer to perform its obligations. Currently, the "sales without breaking the lease" rule has already met the necessary conditions. Suppose the lessee chooses not to propose to the buyer to perform the original lease contract. In that case, it should be regarded as an expression of intention to terminate the contract and a choice of subsequent relief methods. The establishment and application of legal rules should not be affected by the following expressions of intent by the parties.

To sum up, I believe that the following conditions should be met for the application of the rules on the confrontation effect of lease rights: The ownership of the leased object is transferred to a third party. The lease contract is valid. The leased object is delivered to the lessee for possession and use.

3. Methods of publicizing the aggressive effect of lease rights

The "sale without breaking lease" system originated from Roman law and was inherited and developed by the German Civil Code. Generally speaking, Article 229 of my country's original Contract Law stipulates that "sale and purchase shall not constitute leasing." According to this article, if the ownership of the leased object changes during the lease period, it will not affect the validity of the lease contract. Because the language of this provision is unclear, there are many doubts at both the theoretical and practical levels. Regarding substantive law, since leasehold rights do not have corresponding means of publicity, the effect of "real rights" they achieved has been questioned. Therefore, some scholars believe the lease right should be given a particular publicity effect through the lessee's possession of the leased property to be effective against third parties^[5]. In terms of procedural law, there are cases where parties forge lease contracts to hinder enforcement procedures. When handling such cases, some judges regard the lessee's possession of the leased property as one of the elements to examine whether the lease relationship truly exists to avoid "sale and purchase" Random abuse of the "no-break lease" rule.

Regarding these issues, our country is not without responses at the legislative level. In Article 31 of the "Regulations of the Supreme People's Court on Several Issues Concerning the Handling of Enforcement Objections and Reconsideration Cases by the People's Courts" (from now on referred to as the "Regulations on Enforcement Objections and Reconsideration"), the Supreme People's Court applies the rule of "sales do not break the lease" in judicial trials. There are restrictions on fact-finding, which stipulate that the lessee should take possession of the real estate before the court attaches it, proving that

it has used the real estate. In the contract section of the Civil Code, while continuing the “sale and purchase does not break the lease” system of the original Contract Law, legislators also adopted the views in Article 31 of the “Provisions on Objections to and Reconsideration of Enforcement.” Contract Article 725 stipulates that if the ownership of the leased property changes during the lessee’s possession period following the lease contract, the validity of the lease contract will not be affected. The significant difference between this provision and the original Article 229 of the Contract Law is that the latter regards “the lessee’s possession of the leased property” as one of the constituent elements for applying the rule of “sales do not break the lease.” Also, it makes it subject to judicial interpretation to handle cases. The fact-finding rules have been raised to the level of legal application.

First, publicity of lease rights is a prerequisite for obtaining counterforce. From the perspective of the legal basis, the lease right can only have an adversarial effect on a third party if it receives public credibility and is widely believed by society^[6]. Later, when there is a conflict between the rights of the lessee and the third party, there is a need for priority protection. Our country’s property rights theory adheres to the “principle of publicity of property rights,” meaning that the creation, maintenance, and changes of property rights rely on legal provisions to be displayed to society, thereby gaining social recognition and protection. According to the theoretical mechanism of German law, the underlying commonality that a contract can obtain the effect of property rights is reflected in the dual superposition of statutory and publicity mechanisms. The publicity mechanism allows the public to know the contract’s content in advance, while the statutory mechanism makes the publicized contract content known in advance; the type and publicity method shall be determined. In order to ensure that the property owner can independently exercise the right to control the property and that the exercise of this right does not cause damage to the interests of others other than the property owner, property rights should be created, maintained, and changed in a manner permitted by law. Legal facts are disclosed to the public. In other words, only when property rights are admitted to the public to gain widespread recognition can they generate universally recognized credibility, and only when the law is necessary to protect them. As stipulated in the “legal principle of property rights”, the type and content of property rights must be limited to the scope specified by law. Otherwise, the right will not gain credibility through the public disclosure methods specified in the law and, therefore, will not be able to confront third parties. Force. It can also be considered that the publicity mechanism is the fundamental reason why a contract can be used against third parties, while the statutory mechanism is a legal confirmation and expression.

In the same way, the effect of leasing rights against third parties should be based on the disclosure of rights. If there is no disclosure, there will be no confrontation. For this reason, Article 725 of my country’s Civil Code stipulates the publicity effect of lease rights based on the lessee’s possession of the leased property.

In addition, publicity of leasing rights is inevitable to ensure the stability and security of transactions. From the perspective of law and economics, public disclosure of lease rights can protect the interests of third parties from unknown infringements and is an inevitable requirement to ensure the stability and security of transactions. When the rights and obligations outlined in a civil legal act only involve the interests of the parties within a specific scope and do not affect third parties outside the scope, the legal act is only effective for the parties involved. It does not need to be disclosed to the public^[7]. If the legal act is not only effective between the parties but also involves the interests of a third party, the third party should be made aware of it by publicizing its rights so that it can affect its interests before deciding whether or not to act. Reasonably anticipate and prepare for future impacts. When there is a lack of disclosure of this right, the third party suffers unknown risks because of its inability to know its rights and obligations. This is unfair to the third party: on the one hand, due to unreasonable and unpredictable risks existence, the third party may withdraw the legal action that has been taken, and the stability of the transaction will be affected; on the other hand, the rights obtained by the third party through the legal action of the transaction will be damaged due to unknown reasons. , the security of transactions cannot be discussed.

Due to the lack of publicity effect of the lease right, the buyer of the leased property cannot directly know the existence of the lease relationship from external representations. While the buyer is uncertain whether the transaction can proceed smoothly, he must also investigate the actual condition and burden of the leased property. It takes a lot of time and money. Moreover, the buyer will be unable to obtain the right to possess and use the subject matter, and the integrity of its right to enjoy ownership will be restricted. This legal mechanism that does not consider the buyer’s interests is unfair and unreasonable. As scholars have said, for rights that have a significant impact on transactions or exclusive rights, if the law does not give them publicity effect, the rights holders’ interests will be damaged due to the lack of publicity means, thereby endangering transaction security. The existence of a lease relationship imposes

additional restrictions on the exercise of ownership rights, which not only excludes the owner from possessing and using the subject matter but also affects the value of the subject matter and creates certain obstacles to the logistics transfer of the subject matter^[8]. Therefore, the lease right provides a particular means of publicity so that the third party can objectively understand the actual status of the subject matter, rights burdens, etc., and decide whether or not to perform specific legal actions while seeking advantages and avoiding disadvantages, which is to ensure the stability of the transaction—and safety requirements.

4. The legal effect of lease proper confrontation

The rule of sale without breaking the lease originated from German law and was adopted by the laws of various countries in modern times. Before the promulgation of the Civil Code, my country's rule that sales did not violate leasing was stipulated in Article 229 of the original Contract Law. Due to the lack of restrictions in this article that regulate the application of sales and purchases without breach of lease rules, abuse of the rules frequently occurs in judicial practice. Debtors collude with third parties to establish false lease contracts to harm the interests of creditors, resulting in the issue of unenforceability of effective judgments. Article 725 of the Contract Part of the Civil Code modifies the constituent elements of the rules. It makes “the lessee takes possession of the leased property” one of the conditions for the application of sales without breaking the lease rules, thereby determining the signing time of the lease contract, thus avoiding the need for the third. The three people reversed the lease contract and fabricated the lease facts to hinder the execution of the judgment.

The rule of sale without breaking the lease originated from German law and was adopted by the laws of various countries in modern times. Before the promulgation of the Civil Code, Chinese rule that sales did not violate leasing was stipulated in Article 229 of the original Contract Law. Due to the lack of restrictions in this article that regulate the application of sales and purchases without breach of lease rules, abuse of the rules frequently occurs in judicial practice. Debtors collude with third parties to establish false lease contracts to harm the interests of creditors, resulting in the issue of unenforceability of effective judgments. Article 725 of the Contract Part of the Civil Code modifies the constituent elements of the rules. It makes “the lessee takes possession of the leased property” one of the conditions for the application of sales without breaking the lease rules, thereby determining the signing time of the lease contract, thus avoiding the need for the third. The three people reversed the lease contract and fabricated the lease facts to hinder the execution of the judgment. However, compared with foreign laws, Chinese legislation on sales and leases still has the following two shortcomings in terms of legal effect: On the one hand, my country does not stipulate the validity of the rules on sales and leases, and the lack of validity rules casts doubts on the understanding of leases on sales and leases, and this has led to objections to the legislative intent of the rule; on the other hand, my country's rules on purchasing without breaking the lease lack attention to the parties' expression of intention and have not done anything about whether the rules are applicable and whether the effectiveness of the rules is different when the parties have other expressions of intent^[9]. At the same time, my country has always had considerable controversy regarding the effect and theory of non-transaction leasing. According to the provisions of German law and the Civil Code of Taiwan, if the ownership of the leased property is transferred during the existence of the lease relationship, the original lease contract continues to exist between the lessee and the buyer, and the buyer joins the lease contract as a new lessor. This effect theory is called the “contract status assumption” model and is generally accepted by academic circles.

5. Conflict coordination between the antagonistic effect of lease rights and other property rights

From a vertical perspective, the determination of the priority of mortgage rights and lease rights in our country's legislation has experienced a change from “the conclusion of the mortgage contract-the conclusion of the lease contract” to “the establishment of the mortgage right - the transfer of possession of the leased property”.

Since the lease contract does not have a concrete means of disclosure for third parties to check, to make it easier to determine the establishment time of the lease relationship, Article 405 adopts the same modification idea as Article 725 of the “sale and purchase does not break the lease” rule, and changes “The mortgaged property has been rented out” means “the mortgaged property has been rented out and possession has been transferred.” Horizontal comparison shows that the design of the timing of the “mortgage does not break the lease” rule in various foreign laws is also different. Section 567 of the German Civil Code provides for “the imposition of burdens on the dwelling by the lessor,” and Section 567(1) provides for “the transfer or imposition of burdens before the delivery of the dwelling.” As for

whether the lease relationship can compete with the lease right, on the one hand, it examines whether the leased property is delivered to the lessee for possession, and “the leased house is delivered to the lessee” as the point in time to determine the priority; on the other hand, it examines whether the mortgage right is established, so the priority is determined based on the time when “the lessor sets the burden with rights as content.” Article 426 of the “Civil Code” in Taiwan stipulates that the effectiveness of establishing fundamental rights in the leased property shall be based on when the mortgage right is shown as the criterion for determining the priority. As for the lease relationship, the provisions of Article 425 shall apply *mutatis mutandis*. The leased property shall be delivered to the lessee. Possession serves as the point in time when order is determined.

When discussing the priority of lease and mortgage rights, Article 405 of the Civil Code still fails to consider the elements of confrontation. On the one hand, the application of the provisions when different publicity requirements are stipulated in the leasehold rights of real estate and special movables has not been considered. This article has already discussed the selection of requirements for disclosure of lease rights in my country. The lease of real estate and particular movable property should adopt the registration adversarial principle and make special provisions in addition to the general provisions of Article 725 of the Civil Code^[10]. Correspondingly, when determining the time sequence of lease and mortgage rights, possession should be the primary criterion, and registration should be the secondary criterion.

On the other hand, there is a lack of attention to the different effects of chattel mortgage registration. Some scholars believe that whether the mortgage right is registered is a requirement for whether it can challenge the leasehold right. ② Paragraph 2 of Article 190 of the original Property Law stipulates that a previously established and registered mortgage right can contest the lease. Still, Article 405 of the Civil Code does not provide this provision. Moreover, the Civil Code uses “the establishment of mortgage rights” as the time point for determining priority, which ignores the time synchronization between the establishment and registration of chattel mortgage rights.

6. Conclusions

The discussion on the contentious effect of lease rights in our country has been going on for many years. The ambiguity of rights and the confusion in the design of rules have caused scholars to seek new approaches in hermeneutics constantly, and judges continue to be troubled by applicable law issues. Problems arise one after another in judicial practice. There are cases where lessors and third parties take advantage of the loopholes in the rules on the adversarial validity of lease rights to harm the interests of lessees, and there are also cases where lessors and lessees take advantage of false lease relationships to harm the interests of third parties. In other words, the rules on the adversarial effect of lease rights may fail to protect the lessee's interests and may be abused in some circumstances. With the advancement of various legislative works in our country in recent years, especially the promulgation and implementation of the Civil Code in 2020, it is necessary and essential to comprehensively rationalize and discuss the rules on the confrontation effectiveness of lease rights. The doctrinal research on the regulations on the adversarial effect of lease rights is based on the substantive law of our country, as the data is a systematic arrangement work and is limited to not exceeding the content of the substantive law. With regard to the legislative status of the rules on the adversarial validity of leasehold rights in China, the contents of the Civil Code include both general provisions and special provisions on housing leases or special movable property leases in the contract section, property rights section, separate laws, judicial interpretations and administrative regulations. By dividing the types of changes in the ownership of the leased property, analyzing the forms of lease contracts with adversarial effect and the different states of the lessee's possession of the leased object, it can be clarified that the lease right can have an adversarial effect if the conditions are met. When the owner rents out the house, the relationship between the right of residence and the right of lease should pay attention to the difference between the right of residence established by will and the right of residence established in the form of a contract, and the confrontation between the right of lease and the ownership of the leased property should be distinguished whether the agreement to lease is registered or not.

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