

The Dimension of False Litigation Identification under the Scope of the Civil Code

Zhang Yang, Luan Dongqi, Xuan Ang

Dalian Ocean University, Dalian, 116300, China
jack294646524@gmail.com

Abstract: *With the continuous progress of the implementation of the civil Code, the identification and treatment of false litigation cases tend to be standardized and exemplary. By comparing the key areas with a high incidence of false litigation, such as private lending disputes, labor contract disputes and sales contract disputes, the comparison of whether they conform to the behaviors regulated by the civil code is identified. At the same time to the civil code scope of the false litigation identification should be the pattern and real performance analysis, put forward the construction of the civil code key areas of false litigation case think-tank, increase the binary control mechanism guarantee advance recognition, and perfect the case of outsiders again program against improvement Suggestions, for under the civil code scope of false litigation identification opinions, to speed up the construction of false lawsuit litigation cases and the development of the civil code has a positive role.*

Keywords: *Civil Code; False Litigation; Private Lending Dispute; Prior Identification*

1. Introduction

The Civil Code is the code of the people and the first law named after it since the founding of China. People-based, Canon as the series, but with the continuous development of economic society, high rates of false litigation risk and cause the extensive concern of the society from all walks of life, and high rates of false litigation areas such as private lending case, labor contract dispute case, buying and selling contract disputes, with a divorce case is civil protection areas. In the current society where the civil Code is in operation, it is the requirement of The Times and the process of rule of law for the legislature and judicial organs to strengthen the identification and regulation of false lawsuits through the use of the civil code.

2. The question is raised

With the integrity and refinemen of China's economic construction, the rising state of economic crimes follows. From adding Article 112 of the Civil Procedure Law in 2012 as the basis for sanctions against false civil litigation, to imposing the punishment of false litigation in 2015, and to the Supreme People's Court issued the Guidelines on Preventing and Sanctioning against False Litigation in 2016, the issue of false litigation has become an important issue in the society and judicial affairs. False litigation cases occur frequently in many fields, such as private lending, divorce, real estate ownership, compensation for road traffic accidents and damage, enterprise bankruptcy, state-owned enterprise restructuring, well-known trademark certification, insurance claims, land expropriation and demolition compensation and resettlement, application for payment order, real right of security and other civil and commercial trials. Most of these fields are adjusted and controlled by China's civil Code, especially in the frequent private lending disputes, labor contract disputes and sales contract disputes. Therefore, it is very important to clarify the problem of false litigation under the scope of the civil code, and the starting point and key of preventing and cracking down on false litigation is the identification of false litigation.

3. The appropriate mode of false litigation identification under the scope of the civil Code

3.1 Clarify the false litigation behavior under the scope of the civil Code

Article 2 of the Civil Code stipulates that the civil law adjusts the personal relations and property relations between natural persons, legal persons and unincorporated person organizations with equal

subjects. The purpose of civil law is to guarantee the personal relationship and property relationship between equal subjects, and the importance of the civil code takes property relationship and personal relationship as its guarantee purpose. However, false litigation cases violate the principle of good faith stipulated in the civil Code, and borrow legal civil procedures to harm the interests of the state, the public interest or the legitimate interests of outsiders. Among the cases of suspected false litigation, the top three cases are private lending disputes, labor contract disputes and sales contract disputes. Under the background of the implementation of the Civil Code, it is clear that the false litigation behaviors in private lending disputes, labor contract disputes and sales contract disputes will play a guiding significance for the identification of false litigation behaviors.

(1) False litigation behavior in private lending disputes

Private lending false litigation, refers to the parties in order to obtain illegal interests, through malicious collusion, fabricating facts, forging evidence, fictitious legal relationship of private lending civil litigation, intended to make the people's court to make wrong judgment and execution, infringement of the third party, the collective or national interests.

(2) False litigation behavior in labor contract dispute cases

Labor contract dispute handling in our country law has special provisions, in Fujian wang xing labor arbitration execution false litigation supervision case (case no. 55), the parties for priority from execution payment, the parties forge evidence will ordinary debt relationship for labor dispute application for labor arbitration, arbitration award or conciliation statement, according to apply to the people's court for compulsory execution, the behavior is identified as a false litigation behavior.

(3) False litigation behavior in sales contract dispute cases

The behavior of false litigation of sales contract mostly shows that the parties make a contract that is not the true intention to cover up the illegal purpose in a legal form. China's civil code records 19 typical contracts in detail, but in judicial practice, due to the ever-changing human living environment, the types of contracts applied and signed are also different. In the process of formal review of contracts, it is equally important to distinguish whether they are false contracts included in false litigation.

3.2 Clarify the false litigation acts in the civil proceedings

The Civil Procedure Law stipulates the ordinary procedure of first trial, summary procedure, second trial procedure, special procedure and trial supervision procedure. The parties of a civil lawsuit in any procedure may increase the tilt to the false lawsuit. In false litigation cases, the parties use the civil procedure law to implement false litigation, including the case between the parties to collusion, a malicious, by forging evidence, fictitious facts to affect the correct results of the case, at the same time, in the civil code of the present society, with the trial centered trial system, the judge in the trial of the false litigation identification puts forward new challenges. In the process of the trial, what criteria should the judge take to screen whether the lawsuit filed by the parties is a false lawsuit. At the same time, when the court finds that there is a false lawsuit, whether the withdrawal application is allowed and how to prevent the false litigation should be strengthened and improved in the process of judicial practice.

3.3 Clarifying the processing procedures in the stage after the identification of false litigation

When the court has made a preliminary case characterization of the case, and has determined the case to be a false lawsuit, it should be dealt with in combination with the specific behavior tendencies of the parties. If the people's court has verified a false lawsuit and the parties have no subjective repentance, the court shall reject the request and punish the act of obstructing the civil lawsuit according to the law; if the false lawsuit is implemented for the purpose of defrauding property or evading and abolishing debts, which constitutes a crime, it shall be investigated for criminal responsibility according to the law. If the parties have the intention of repentance and intend to withdraw the lawsuit, should the court withdraw the lawsuit. In the process of handling false litigation cases, if the people's court is suspected of duty crimes, the clues and relevant materials to the anti-graft and anti-blasphemy departments; for the parties, agents and other participants of false litigation, the procuratorial organ shall promptly transfer the case clues and relevant materials to the public security organ for handling.

4. The real performance of false litigation identification under the scope of the Civil Code

4.1 The difficulty of identifying "false behavior"

The identification of "false behavior" is the most difficult part in the practice of false litigation cases. According to the second paragraph of Article 307 of the Criminal Law, the crime of false litigation refers to the act that a natural person or unit intentionally brings a civil lawsuit with fabricated facts, hinders the judicial order or seriously infringes upon the legitimate rights and interests of others. As we all know, any civil action needs to be facts and reasons, otherwise the claim can not be satisfied. In view of the identification of the false behavior, the false behavior is very likely that the parties themselves fabricate the facts or the evidence to bring a lawsuit to the court, and may also be manifested as negotiating with others, using others to bring a lawsuit with the false facts or the evidence. In the process of judicial practice, the identification of the false litigation behavior is still quite insufficient due to the restriction of the judges and the imperfect development of the false litigation system.[1]

4.2 Determine the judge's subjective mobility difficulties in advance

Taking the time of false litigation to obtain the effective judgment as the time demarcation point, the identification mechanism of false litigation can be divided into pre-mechanism and post-mechanism. The way of prior identification includes that the filing judge actively identifies the false lawsuit, the trial judge actively identifies the false lawsuit, the judge identifies the false lawsuit according to the clues provided by the victims outside the case, and the judge identifies the false lawsuit according to the clues provided by the procuratorial organ, the public security organ and other departments.[2] After the identification way includes the third party to cancel the lawsuit, execution objection, execution objection lawsuit, retrial application for the relief procedure of the victim outside the case, the procuratorial organs, the court outside the victim appeal to start the retrial procedure, the retrial procedure in accordance with the court, the victim outside the case to overturn the false litigation judgment.[3] According to the empirical studies of the scholars, among the false cases that have been identified, the proportion of the judges who voluntarily identified the cases in the first trial procedure is relatively small.[4] It is mainly because the identification of false litigation cases is different from the traditional cases, and the traditional cases are a typical triangle model, that is, both parties are independent, and the judge makes a judgment for the trial center. And the difference is that the false litigation cases of the parties are often not their independent relationship, the traditional triangle trial mode into bilateral trial mode, and because of the principle of debate requires the judge, the judge scope by the litigants and litigation data, in addition to special circumstances can not take the initiative to investigate to collect evidence.[5]

4.3 Post-hoc identification of reprocedure difficulties

The post-identification and re-procedure is the mechanism by which the parties enter the civil procedure again by filing the third party lawsuit to withdraw, the execution objection, the execution objection lawsuit, and applying for retrial. Among them, the typical difficulty of the relief procedure proposed by the parties concerned in the process of post-identification lies in the lag and one-sided nature of its own existence. Among them, the lag refers to that the post-identification mechanism focuses on the substantive rights of the victims outside the relief case, and ignores the harm of the false litigation behavior itself to destroy the judicial order. This is also the main difference that scholars point out between civil law and criminal law in regulating false litigation.[6] Such general creditors are neither the necessary joint litigants in the original instance who can apply for retrial, nor can a third party cancellation as a third party with independent claim or a third party without independent claim. The most important of these is that the common false lawsuits generally do not go to the stage of court enforcement, and therefore the victim can not receive relief in the enforcement procedure.[7]

5. Improvement of false litigation identification under the scope of the Civil Code

5.1 Building a think tank for false litigation cases in key areas of the Civil Code

With the continuous development of digital economy innovation, it is accompanied by the digitalization and standardization of the rule of law. The construction of think tanks in key areas of false litigation is a positive response to the construction of a law-based government and the modern digitalization of the rule of law. Integrating the false litigation cases in key areas into the think tank of

the national legal system can not only break the different restrictions of time and region, but also play a positive role in the pre-identification and post-identification of the false litigation.

5.2 Add the binary control mechanism to ensure prior identification

In judicial practice, the one-yuan trial system of judges is often played out in traditional cases, but due to the particularity of false litigation cases, fellow judges, in the face of greater interests, can not naturally change into justice because they are engaged in a legitimate profession. The regulation of false litigation cases in criminal law belongs to the relief after the event, which cannot start out before, and fundamentally prevent and identify false litigation cases. Therefore, in the process of controlling the discretionary driving, adding full-time false litigation judges can effectively avoid the occurrence of this situation.[8] The powers of full-time false litigation judges run through the whole stage of the litigation process, and enjoy the full right to investigate and collect evidence. At the same time, it has an intermediate bridge connecting outsiders, public security organs or procuratorial organs. Then to realize the prior identification and prevention of false litigation.

5.3 Improve the confrontation between outsiders

False litigation not only has a serious damage to the judicial order, but also protects the legitimate interests of the third party outside the case, and protects the legitimate rights and interests of the outsiders in the false litigation cases. It is a key measure to protect the legitimate rights and interests of outsiders in false litigation by appropriately expanding the scope of outsiders in false litigation. To avoid the phenomenon that the infringed general creditors can only seek relief by appealing to the judicial authorities.

6. Conclusion

The arrival of the era of civil code requires that all sectors of society should have the ability to bid farewell to the old year and usher in the new. In view of the problem of false litigation, the neck of prevention and governance lies in the identification of false litigation behavior. The root cure of false litigation lies in the social trust mechanism regulated and created by the civil code and the enhancement of judicial authority. Under the trial-centered litigation system as the center, the key to solve the problem of false litigation identification is to find the balance between the mode of false litigation identification. False litigation seriously infringes on the legitimate interests of others, destroys the transaction trust mechanism, and damages the process of economic development. False litigation behavior is a stain on the road to the construction of judicial authority. All legal staff should focus on solving this problem as soon as possible, and make continuous efforts to build a more green and healthy civil and commercial environment.

References

- [1] Zhang Mingkai. *Fundamental Issues of the crime of false litigation* [J]. *Law*, 2017 (1).
- [2] Wu Zeyong. *The Regulation of False Litigation under the Legal Background of the Civil Procedure Law* [J]. *Jiaotong University Law*, 2017 (2).
- [3] Zhang Weiping, Ren Zhong Zhong. *Research on the procedural rights protection system of the third party outside the case* [J]. *Legal Science*, 2014 (6).
- [4] Qiu Birong. — takes 220 judgements as a sample [J]. *Southeast Judicial Review*, 2017 (10).
- [5] Weng Xiaobin. *Power exploration doctrine turns to debate doctrine thinking* [J]. *Legal Studies*, 2005 (4).
- [6] Gege. —'s Analysis and Research based on an Empirical Perspective [J]. *Jiaotong University Law*, 2017.
- [7] Pan Jianfeng, Han Jingru. *The nature orientation and relationship inquiry of the third party's revocation appeal are explored* [J]. *Shandong Social Sciences*, 2015 (7).
- [8] Wang Qian. *Strengthen node monitoring to accurately fight against false litigation* [N]. *People's Court Daily*, 2016-07-04