

A Study on the execution objection of proxy shareholding

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Abstract: With the development and prosperity of commercial activities, entrustment agreement as a new type of legal relationship in commercial activities is more common, but also accompanied by commercial risks and complex legal problems. This paper mainly discusses the execution objection of entrustment agreement in civil execution procedure. Through combing the existing literature, the basic concepts such as shareholder qualification and agency legal relationship are clarified. Then, by commenting on typical cases, it summarizes the focus of disputes in current practice and its practices. At the same time, it is divided into two types: completely hidden shareholder and partially hidden shareholder to discuss the execution objection. Finally, on the basis of the theoretical and practical analysis, the legal issues of proxy shareholding are connected with the civil execution procedure to solve the execution objection of proxy shareholding.

Keywords: entrustment, commercial affairs, appearance, execution objection

1. Introduction

In the commercial field, equity entrustment agreements are gradually increasing in daily business activities, and the resulting legal problems are also gradually increasing. One of the most common problems in civil execution procedure is that the contemporary famous the agreement of the shareholders as the debtor is enforced, whether its dormant shareholders can serve as an outsider to execution objection, when dormant shareholders execution objection, the court can according to the famous dormant shareholders and the generation of the agreements signed between shareholders, on the basis of dormant shareholders actually enjoy rights advocates, To protect the rights and interests of hidden shareholders. However, if the interests of the hidden shareholders are protected, the interests of the enforcement applicant will be destroyed to some extent, resulting in the judgment of the enforcement applicant cannot be substantially guaranteed. Therefore, in practice, due to the lack of clear legal provisions, courts at all levels may issue different judgments in the same case. Therefore, timely confirmation of the effectiveness of the entrustment agreement in the execution procedure is conducive to the realization of the unity of judgment and the balance of individual cases, and to avoid the situation of different judgments in the same case.

2. Views on whether entrustment can be enforced

In the process of handling the execution objection of entrustment, the main problem to be solved is to balance the rights and interests of the actual investor and the applicant. There are two different views on whether the entrustment can be enforced. The disputes in the trial of such cases mainly focus on whether to affirm the application of the theory of appearance doctrine.^[1]

The first is that the entrustment agreement can be enforced. The first is that the entrustment agreement is an internal relationship and should not oppose any external third party. Second, creditors have trust interests based on the appearance of registration and need priority protection. Third, the risk distribution in the entrusted equity should be borne by the hidden shareholders. The core law is mainly based on the understanding of the third party in article 32, Paragraph 2 of the Company Law. The third party should use the expanded interpretation, that is, it should not be limited to the interpretation of equity transactions, but should be extended to the civil execution. Scholars Sun Hongtao and Liu Meng hold that there is no clear law at present that the "third party" must be subject to the execution of the transaction, namely, the common understanding of equity transaction. Therefore, according to the view that it is not prohibited by law, the interpretation of the third party can be expanded to the third party in the execution.^[2] Scholar

Liu Junhai also believes that, from the perspective of legal role, the "third party" here includes the bona fide third party in the transaction relationship as well as the bona fide third party in the execution procedure.^[3]

While another view is that the agreement can not be enforced, and that for the third person should be in accordance with the direct interpretation of law, in equity trading, trading trust interests of shareholders and creditors under the name "is directly produced in the generation of a stake in the target, so for the interests of the trust protection is particularly important, but in civil execution procedure, The relationship between nominal shareholders and creditors is an ordinary creditor's right, and the generation of the trust interest is not directly based on the equity object held on behalf of the shareholder, so the system of bona fide third party should not be used to protect the trust interest. Li Jianwei believes that there is no sufficient reason to include the creditors of the registered shareholders into the third party of the shareholder registration confrontation, and the protection of the third party should not be at the expense of the original rights of the equity, and the interests between the third party and the nominal shareholders should be balanced.^[4]

3. Typical case analysis -- Huang, Li retrial

3.1 Basic case review

Huang mou, Li mou department husband and wife relation. On February 13, 2012, Shuchuan Company cooperated with A company to set up xinjin small loan company. December 19, 2011, Huang will cash 5 million yuan into the bank account designated by Shuchuan Company, the transfer voucher contains: pay Huang Chengdu investment. Shuchuan company will huang mou into 5 million yuan investment into the new jin small loan company bank account listed investment, accounting for 5% of the company's equity. On May 31, 2012, Huang mou, Li mou and Shuchuan company signed "confirmation", stating: the parties confirm that the shares are actually huang Mou investment, shares belong to Huang mou all, the shareholder rights and obligations by Huang Mou enjoy and bear; Shuchuan company is only a nominal shareholder, does not actually enjoy the rights of shareholders and undertake shareholder obligations; Company shares with transfer conditions, in accordance with the provisions of the law transfer to Huang, before the transfer, the shares by Huang to exercise shareholder rights and perform shareholder obligations, if the need to change the transfer procedures provided by Shuchuan Company; At the same time, there is a private loan dispute case between PI and Shuchuan Company [(2015) Demin Yi Chu Zi No. 15]. After the judgment comes into effect, Shuchuan company does not take the initiative to fulfill its repayment obligations. Subsequently, Huang mou, Li Mou to a court of trial put forward execution objection application.

3.2 Case review

In the judgment of the first instance of the case, the court of first instance determined that 5% of the equity belongs to Huang mou, Li Mou, PI mou for the share can not apply for compulsory execution; But in the second trial judgment, the second trial court rejected the first trial judgment, denied huang, Li share ownership, support PI enforcement application. The Supreme Court upheld the ruling of the second trial, but corrected the incorrect interpretation of the applicable law. For the fact of the same case, different courts have made different decisions, and the main source of the dispute is also based on the issue of whether the shares in the entrustment agreement can be enforced, and the discussion of this issue can be based on two points. One is the definition of the legal act of seeking explicit investment interests. The second part is the definition of "third party" in Article 32 of the Company Law of the People's Republic of China.

In the discussion of the nomenclature of investment interests, the court of second instance proposed that the nature of Huang's behavior was to request the nomenclature of investment interests, and then to fight against PI's enforcement after the nomenclature. However, the nature of the process of nomenclature constituted a disposition of executed property. Violated the provisions of Article 26 of the Supreme People's Court on the people's Court's civil execution of the seizure, seizure, freezing of property, so rejected huang, Li's request. But in the retrial, the Supreme Court that request investment rights and interests who belong to confirming the legal relationship, its behavior should be to restore legal relationship in order to protect the actual investor counterproposal actual amounts enjoy rights and interests, do not belong to the foregoing provisions of the punishment to be executed property, so for the second instance court held a denial attitude to this kind of argument, However, a statement of judgment

denying the argument does not constitute a judgment that will affect the substantive outcome.

In legal interpretation is discussed in the third person, the second instance court thinks, according to the commercial principles, about appearance is proclaiming the reflected power leads to a third person has the right to produce reliable appearance, even if the reality does not accord with the third person trust, as long as the third person's trust is reasonable, the third person is civil juristic act effect should be priority protection by law. Based on the above principles, the creditors of nominal shareholders who are not based on equity disposal should also fall into the category of "third party" under legal protection. Although between Huang and Shu Chuan company equity of the real intention agreement, but also in the actual exercise of the right to Huang, however, the actual exercise behavior is just for internal company, as an external of the third person should fulfill the duty of reasonable care is through the query for industry and commerce archives, for the actual insider trading are difficult to fulfill the reasonable attention; And the court of first instance is simply through for Huang, Li Mou has management activities for Shu Chuan company's day-to-day operations, for the interests of the equity, is simple that Huang, Li Mou has the right to deny an application for compulsory execution, its not fully protect the interests of a third person, for the leather one, their interests have been harmed.

It is not difficult to see from the summary of the above theory and practice disputes that the main focus of the dispute is the scope of the "third party" in article 32 (3) of the Company Law, that is, whether the creditors of the nominal shareholders who are not based on equity transactions belong to the scope of the "third party". Remains to be seen in terms of theory in this paper, the controversial argument, but in the process of practice by analyzing the representative judicial cases of the Supreme People's Court for retrial, the referee is the substantial support to support socialism gradually tilted appearance, the recognition of equity-based trade creditors belongs to the company law of the protected the concept of the third person. In the civil ruling written by The Supreme People's Court (2015) Minshen Zi No. 2381, the Supreme People's Court considers that the third party is limited to the third party who has equity transaction with the nominal shareholder. Three years later, in the civil judgment of Huang mou and Li Mou retrial, the Supreme Court affirmed the third party is not limited to the creditor who has equity transaction relationship with the nominal shareholders, and the focus of the judgment is inclined to the appearance of commercial affairs by materialism. Similarly, Jiumin Ji In 2019 reaffirmed the doctrine of commercial appearance, and clearly pointed out in Article 3 that the concept of "third party" in Article 32 (3) of the Company Law should be synchronized with the application premise of the limitation of "good faith" in Article 65 of the General Principles of civil Law.

4. Fully hidden shareholders and partially hidden shareholders

In the practice of the court ruling, the hidden shareholders enjoy real stake, with no objections with shareholders qualification recognition attitude, dormant shareholders enjoy shareholders in when to perform the obligation of capital contribution of real right, based on the inseparability of equity, equity is both property rights and identity rights and interests of comprehensive rights.^[5] The application of bona fide acquisition system to the third party of the transaction is an indirect recognition of the actual shareholder rights of the hidden shareholders. However, in practice, not all hidden shareholders will actively exercise shareholders' rights, so it is practical to classify hidden shareholders and discuss whether they can resist enforcement according to their circumstances.

4.1 Discrimination of concepts of fully hidden shareholders and partially hidden shareholders

A completely anonymous shareholder refers to a completely anonymous shareholder who does not exercise the company's daily business activities and rights that shareholders should exercise in the actual implementation process of the company, and belongs to the list of shareholders. The shareholder rights exercised by the completely anonymous shareholder are mainly reflected in the acquisition of due investment income through proxy agreement. No matter the name of the nominal shareholder is recorded in the register of shareholders or the industrial and commercial registration, then there is no appearance of rights.^[6] At this time, the completely hidden shareholder has not actually obtained the rights of shareholders, and the legal relationship between it and the nominal shareholder is more like a legal relationship of creditor's rights. At this time, the scope of the third party can not be considered. Therefore, even if the creditor exercises the right to execute the shares of the nominal shareholder, the completely hidden shareholder can rely on the creditor's right through the equity entrustment agreement to request the nominal shareholder to assume the liability for compensation. This kind of behavior is based on the completely hidden shareholders lazy to exercise their rights, so the identification of shareholders to

maintain a denial attitude;The second is to ensure the execution of the judgment, because if the qualification of the completely hidden shareholder is confirmed, it will lead to that when the equity is enforced by the court, the person subjected to execution avoids the risk of execution through fictitious proxy agreement, which damages the interests of the creditors applying for execution.

Not completely dormant shareholder, different from completely dormant shareholders, the shareholders although without industrial and commercial registration, but in the company's actual operation actively exercise their shareholder's rights belong to the famous company's shareholders, namely, in all kinds of the board of directors or board of supervisors in the company's actual operation with a trace of the exercise of rights in the process. Although the commercial registration is still in the name of the nominal shareholder, the nominal shareholder is no longer the actual equity owner, and the entrusted equity is owned by the anonymous shareholder. This case involves a discussion of fighting a third person.

4.2 whether an incomplete hidden shareholder can fight against a third party

In the discussion is not completely the equity of dormant shareholders and nominal shareholders signed agreement whether or not can be against a third party, need to clear this equity held by a shareholder whether to belong to a special kind of property rights, in the study of theory and practice in front of the discussed, dormant shareholders of actual participation in the company management we need to recognize its shareholder qualification, That is, the ownership of the equity in the entrustment agreement. Analogies apply to the spirit of Article 6 in the Interpretation of Some Issues concerning the Application of the Property Law of the People's Republic of China (I). We know that although incomplete hidden shareholders do not have the appearance of commercial registration, their essence is still a kind of special real right, and this special real right can fight against a third party although it is not registered. But in civil law, common principle is prior to the creditor's rights real right, so for the actual participation company daily business activities, active incomplete dormant shareholders exercise the shareholder power should be have special property rights, can fight ordinary creditors, so the same in the enforcement procedure should be approved not entirely the property of the dormant shareholder protection.

Secondly, the balance of interests between creditors of nominal shareholders and incomplete hidden shareholders. The interests of creditors of nominal shareholders are rooted in the trust interests of the appearance of rights of industrial and commercial registration, which is also the legal support to enforce the equity of nominal shareholders. However, whether the creditors of nominal shareholders have trust interests in the entrustment agreement is also a debatable issue. The equity of the nominal shareholder registered in industry and commerce is not necessarily the basis for the creditor to have a general creditor's right relationship with it. If the creditor of the nominal shareholder is a loan relationship of trust interest based on the registered equity, then the establishment of a security right based on the trust interest is the real generation of trust interest. The opposite is the risk problem of the hidden shareholder, as the hidden shareholder does not actually perform the registration procedure, it needs to bear the foreseeable risk, but the foreseeable risk has already existed in the rules of the equity transaction, in the equity transaction of the entrustment is applicable to the identification of the bona fide acquisition system in civil law. The entrust other generation of shares may be nominal shareholders through good faith system to transfer to a third person, it belongs to the risks arising from the normal generation shareholding agreement, if that nominal shareholders creditors can perform incomplete dormant shareholders holdings of shares, it is not completely hidden risk to become nominal shareholders shareholder in the name of the guarantor, Every common monetary creditor's right of nominal shareholders needs to bear the risk of execution, which belongs to the slanted legal interest mode, the risk of incomplete hidden shareholders is infinitely amplified, and the creditor's trust interest of nominal shareholders is infinitely protected.

In huang mou, Li Mou retrial, Huang Mou, Li mou full participation in the preparation of the company, directly participate in the company's shareholders' meeting, the board of directors and supervisors' meeting, the exercise of shareholders' rights;The profit distribution of the company is directly into the bank account of Huang mou, Li Mou, the company knows xiao Mou, Li Mou is the actual investor of the shares held by shuchuan company, and Huang Mou, Li Mou actually contributed the equity share of the investment;Right now Huang mou, Li mou belongs to not completely hidden shareholder. In this case, the nominal shareholders do not participate in the actual operation of the company and only have the name of the stock registration, and both the court and the company have actually recognized the status of the shareholders of the hidden shareholders. At this time, the anonymous shareholder should be defined as not completely anonymous to enjoy shareholders' rights, and the enjoyment of shareholders' rights means that it enjoys special real rights, according to the principle of real rights prior to creditor's rights in civil law, it should be able to oppose its ordinary creditor's rights.

5. Suggestions on improving the enforcement objection system of entrustment shareholding

5.1 Improve the connection of procedures for execution of objections to entrustment shareholding

In the civil execution procedure, the execution objection procedure is mainly based on formal review, emphasizing the pursuit of efficiency value in the execution objection procedure. However, the lawsuit of execution objection resolves the error of execution which may be caused by the presumption of true right holder according to the principle of commercial appearance doctrine, so it should not be a simple formal appearance examination, but a substantial examination according to the actual rights and obligations. Therefore, in the academic circle, it is generally considered that the action of execution objection is a new type of complex action, which has both the characteristics of formation action and confirmation action.^[7]

In terms of the connection of procedures of execution objection of entrusting shares, it can be discussed according to different adaptation modes of execution stage. First, before the equity is sealed, if the hidden shareholder has actually obtained the complete equity (i.e., the incomplete hidden shareholder discussed above), the execution can be excluded in the execution objection stage. At this stage, the execution objection stage is mainly to conduct formal review, and the behavior of the hidden shareholder actually acquiring the equity can be solved through efficient procedures. Second, after the equity is sealed up, the actual investor can only exclude the execution through the result of the execution of the objection lawsuit. In reality, based on the substantive review characteristics of the lawsuit of execution objection and the economic substantive characteristics of the hidden shareholders, there are more and more effective choices for this kind of execution mode. Based on the analysis of the above procedures, the hidden shareholder should pay close attention to the property status of the nominal shareholder at any time, and in the case of the possible insolvency of the nominal shareholder, it should change the industrial and commercial registration information in a timely manner or file a lawsuit for confirmation, so as to ensure its investment rights and interests.

5.2 Improve the legal interpretation of "third party"

Legal interpretation method is to achieve legal interpretation and apply different legal interpretation method, to some extent, can make up for the existing legal loopholes, and solve the judicial referee, in the process of complicated disputes, generation of shareholding execution objection, it is in company law the question of whether the third person can be extended to the other party in the civil. Whether the purpose of legislative interpretation includes the third party in good faith in the transaction relationship and the third party in good faith in the execution procedure is a point that needs to be responded by the current legal interpretation. The important purpose of legal interpretation is to prevent the mechanism of judicial activities, that is, to judge cases procedurally in accordance with the original judicial precedents, and to prevent the judicial discretion of judges, that is, judges judge cases according to their own legal interpretation when weighing specific cases. Through the above description, the author tends to balance the interests of the hidden shareholders and the third party in the judicial interpretation of the third party, and it is not easy to blindly expand the connotation of the legal interpretation of the third party.

5.3 Balancing the interests of the hidden shareholders and the third party

The application of commercial externalism can improve the efficiency of execution and timely realize the interests of creditors. At the same time, the pursuit of efficiency does not mean giving up a fair, just when the two conflict of emphasis, use of appearance, though is likely to damage the interests of the holder of the actual but also worth to protect the interests of creditors, stand in the perspective of creditors is fair, even if the actual obligee cannot get relief in the execution objection lawsuit. This is not conducive to the balance between the two. The application of externalism in the execution procedure can maintain the interests of non-transaction creditors and the credibility of the company registration authority, and also achieve the effect of maintaining transaction security to a certain extent. However, this effect is based on the damage to the interests of the actual investors, and the court can not apply the doctrine of appearance in judicial practice without restriction, in the case of non-benevolent third parties and internal relations, which are obviously unfair or seriously damage the interests of the actual investors.

6. Conclusion

As commercial activities frequently, and the continuous improvement of the commercial law, civil

and commercial, the boundaries are blurring between the commercial law in introducing the concept of civil law, company law discussed in this paper such as the generation of shareholding discrepancy problem, that is the nature of the laying of the system of "the third person in good faith" of the discussion, for the civil and the concept of the civil procedure law can copy to the company law, How to deal with the connection between commercial field and civil execution is the problem that needs to be solved in civil and commercial field. In practice, there are cases of hidden equity disputes in company law increasing year by year in various courts, and how to effectively protect the rights of hidden shareholders in compulsory enforcement. Mainland legal system country for protection problem of the dormant shareholders did not make clear a regulation, also no relevant laws and regulations in our country, but in order to meet the country's pursuit of a fair trial now, improve the efficiency of litigation, at the same time reduce the pressure on the judge's trial big change requirement of the civil lawsuit, in the enforcement of dormant shareholders rights protection must be attention. It is hoped that this paper can arouse the academic circle's attention to the protection of rights of hidden shareholders in the compulsory execution and promote the improvement and development of civil and commercial law.

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