

The Law on the Protection of the Interests of a Bona Fide Third Party in an Invalid Contract That the Property is Required to Be Registered the Ownership Rights

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Abstract:

When resolving the consequences of an invalid contract, protecting the legitimate interests of the bona fide third party is one of the important issues that need to be considered. The laws on protecting the interests of the bona fide third party have been revised, supplemented, and improved over time. However, up to the present time, the concept of the bona fide third party and the criteria for determining the bona fide third party are still not clearly defined. Additionally, the concept of "transferring property to a third party" has not been uniformly agreed upon in both legislative and executive aspects. This leads to different consequences when applying the law in practice. This paper focuses on analyzing theoretical issues, evaluating relevant regulations, and proposing solutions to improve the legal system.

Keywords —Protection, third party, bona fide, contract, invalid

I. OVERVIEW OF THE BONA FIDE THIRD PARTY IN CASE OF INVALID CONTRACT IN CIVIL TRANSACTION

A. What is a bona fide third party?

The term "bona fide third party" has been recognized in the Civil Code of 1995 and the Civil Code of 2005. In addition, in many other legal documents, this term is also used to refer to those affected by an invalid contract, who are not parties to the invalid contract. However, determining who is a bona fide third party that needs to be protected when the contract is invalid is a problem that needs to be clarified.

According to the legal dictionary, the bona fide third party in an invalid civil transaction is understood as "*a person who has transferred property through a civil transaction, and who does not know, nor is obligated to know, that the property was obtained by the transferor from an invalid transaction*" [1]. This is the approach taken in research conducted at the time when the Civil

Code of 1995 was in effect. At that time, the concept of the bona fide third party still relied on criteria such as "*not knowing and not being obligated to know*". To be recognized as a bona fide third party, they would have to prove that they did not know and were not obligated to know.

Currently, there still exist different views on the concept of the bona fide third party, and each approach has its specific suitability. If we apply this concept in the case of protecting the interests of the bona fide third party in an invalid contract, the bona fide third party needs to be identified as not a party to the invalid contract but a person who receives property through a transaction with one of the parties to the invalid contract and is not excluded from being bona fide [2]. Therefore, we can define the bona fide third party as follows:

The bona fide third party is the recipient of property as the object of an invalid civil transaction by one party to that transaction through another civil transaction. The bona fide third party is not a party to the invalid civil transaction and is not

aware of or required to be aware that the property received was the object of that transaction.

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B. Indicators of a bona fide third party

Through the analysis of the concept of a bona fide third party, the author presents four criteria to identify a bona fide third party in a void contract:

Firstly, the criterion of transferred property transfer: The property transferred to the bona fide third party must have been the subject of an invalid contract, and it must have been transferred by one party to the transaction to the bona fide third party through a civil transaction.

Secondly, the criterion of bona fide: The bona fide third party must not have known or should not have known that the property transferred to them was the subject of an invalid contract, but still established and completed the transaction.

Thirdly, the criterion of the transaction between the bona fide third party and one party to the invalid contract: The bona fide third party must receive the transfer of property through a civil transaction with one party to the invalid contract who transferred the property. Additionally, except for the case where the party to the invalid contract has no right to transfer the property to the bona fide third party due to the invalid contract, the civil transaction must satisfy the remaining valid conditions of a civil transaction.

Lastly, the criterion of completed civil transaction: The civil transaction between the bona fide third party and one party to the invalid contract has been completed, and the bona fide third party has received the transfer of the property.

C. The basis for protecting the bona fide third party in case of an invalid contract

When considering the bona fide third party, the bona fide of this entity is a central and essential factor. Essentially, bona fide means that the party did not know and had no reason to know that they

were entering into a civil transaction with a party to an invalid contract. This forms the basis for the legal system to protect the interests of the bona fide third party when a contract is invalid. They are not in a position to know or be obligated to know that the property transferred through the civil transaction was the subject of an invalid contract, and therefore, they cannot be aware that the transaction in which they are participating should not be carried out because the transferor does not have the right to dispose of the property. From the perspective of the bona fide third party, they believe that they are establishing and executing a valid civil transaction with a party who has the right to dispose of the property. Therefore, if there is a conflict of interest when the contract becomes invalid, the law relies on the lack of fault or bona fide of the third party to ensure that the interests that they would have been entitled to if the contract were not invalid are protected, thus providing a basis for protecting the interests of the bona fide third party when a contract is invalid.

II. THE SITUATION OF PROTECTING THE BONA FIDE THIRD PARTY ABOUT AN INVALID CONTRACT WITH THE PROPERTY REQUIRED TO REGISTER OWNERSHIP RIGHTS UNDER CIVIL LAW

A. Current legal regulations on the protection of bona fide third parties in the case of an invalid contract

The 2015 Civil Code currently divides the protection of bona fide third parties when the contract is invalid into two main cases based on whether the subject matter of the contract is required to be registered or not. The classification based on the registration nature of the property is reasonable and important as the registration of ownership rights to the property greatly affects the presumption of the bona fide of the third party. This is a fundamental aspect of determining how to balance the interests between the bona fide third party and the property owner. In this paper, the author only refers to the case where the subject matter of the contract is a property that requires registration of ownership rights.

Property subject to registration is a type of property that can be relatively easily identified by

its owner through a certificate of ownership (or land use rights if the property is land use rights). At the same time, when transferring ownership of these properties, the parties must also carry out legal procedures related to the issue of registering property ownership rights. Based on these characteristics, protecting the interests of third parties in cases where contracts are invalidated due to property subject to registration depends heavily on the event of registering property ownership rights.

According to the registration of ownership of the property, Clause 2 Article 133 of the 2015 Civil Code specifies two cases regarding the protection of third-party interests when a contract is invalid: the case where the subject matter of the transaction is a property that has been registered with ownership rights, and the case where the subject matter of the transaction has not been registered with ownership rights.

Firstly, in the case where the subject matter of the transaction is a property that has already been registered, Paragraph 1 Clause 2 Article 133 of the 2015 Civil Code stipulates that: "If a civil transaction is invalid but the property has already been registered with the competent state agency, and then transferred to a bona fide third party in another civil transaction who relies on that registration to carry out the transaction, that transaction shall not be invalid."

According to this provision, for the bona fide third party to be protected when the previous contract is invalid, the property which is the subject matter of the previous invalid contract must be registered with the competent state agency, and the bona fide third party must rely on that registration to believe that the party in the invalid contract is the owner of the property and proceed to establish and execute the transaction. As analyzed above, registering ownership rights reflects the recognition of state ownership by a subject.

Therefore, relying on the registration of ownership rights to determine the owner of a property is also the limit that the law can require other entities to comply with when participating in civil transactions. In the above case, when the bona fide third party has relied on registration but still

cannot know whether the transferring entity has the right to transfer the assets due to an invalid contract, then the bona fide third party in this case also needs legal protection through the recognition of the validity of their civil transaction. At the same time, besides protecting the rights of the bona fide third party, recognizing the validity of the transaction in this case also contributes to the stability of civil transactions, especially when registered properties have significant value or play an important role in social life.

For the case of properties that have not been registered for ownership or use rights, Article 133, Clause 2, Section 2 of the 2015 Civil Code stipulates that: " In cases where the transacted property which is required to be registered has not been registered at a competent authority, the transaction with the third party shall be invalid, except for cases the bona fide third party received such property through an auction or a transaction with another party being the owner of such property under a judgment or decision of a competent authority but thereafter such person is not the owner of the property as a result of the judgment or decision being amended or annulled."

It can be seen that in this case, the subject matter of the contract is a registered property that the parties have not yet registered with the competent state agency. Therefore, in principle, the civil transaction of the third party will be invalid and they must return the property to its rightful owner. However, there is an exception in this case where the bona fide third party immediately receives the property through auction at an authorized organization or transacts with a person who, according to the judgment or decision of the competent state agency, is the owner of the property, but later this entity is not the owner of the property due to the annulment or amendment of the judgment or decision. It can be seen that in these exceptions, the bona fide third party neither knew nor the transferor had obtained ownership of the property that was established by another competent state agency, and this establishment was later changed. Therefore, in these cases, it is necessary to protect the bona fide third party by recognizing the validity of the transaction.

For cases where a bona fide third party is established as the rightful owner of a property due to the recognition of the validity of their civil transaction, similar to the cases above, if any party is at fault leading to the establishment of the transaction with this third party, they will have to reimburse the costs and compensate the previous owner of the property.

Based on the above analysis of cases where the rights of a bona fide third party need to be protected when a contract becomes invalid, it can be seen that the law has relatively comprehensive provisions on this issue, which is an important contribution to resolving conflicts of interests between the owner of the property and the bona fide third party when the contract becomes invalid.

B. Practical protection of bona fide third parties about invalid contract

In general, the practice of protecting the bona fide third party when a contract becomes invalid has achieved certain results, although there are still some difficulties in the application of the law in practice. First of all, in the case where the contract is invalid and the object of the contract is not registered property, this is a relatively clear situation for protecting the bona fide third party when the contract becomes invalid and does not create too many obstacles when applied in practice. Specifically, the court still recognizes the validity of the transaction with the bona fide third party, except in cases where the third party receives the property through a contract without compensation with someone who has no right to dispose of the property or the object of the contract is a property that has been seized from the owner without their consent. [4].

However, for invalid contracts in which the object of the contract is a registered asset, there are various disputes and many obstacles that still exist. The most common type of dispute, in this case, is the case of shared ownership of land use rights, such as shared ownership between spouses or shared ownership within a household, which is transferred by one registered owner in the land use right certificate to another entity, and that entity continues to transfer or trade the land use right. In

addition, there are also cases of transactions with a bona fide third party based on a legal judgment or decision that is currently in effect and establishes them as the rightful owner, but the judgment is later annulled or revised. For these cases, the law has now provided relatively clear regulations. However, in reality, there are still many conflicting views regarding the protection of the legitimate interests of the bona fide third party.

An example of this situation is when the subject of the contract is an unregistered asset and a third party receives this asset through auction. Although according to Clause 2, Article 133 of the 2015 Civil Code, transactions with a bona fide third party are valid, in practice, the owner of the property often makes it difficult for the third party to register their ownership of the property, claiming that there were irregularities in the auction process. Regarding this issue, there are still two opposing views on the application of the law. The first view holds that the auction must be conducted by proper procedures for Clause 2, Article 133 of the 2015 Civil Code to be applied to protect the bona fide third party. However, the second view holds that even if the auction was not conducted properly, the bona fide third party is still protected under Clause 2, Article 133 of the 2015 Civil Code. It can be seen that this is still an issue that needs to be promptly addressed in the application of the law on protecting bona fide third parties when contracts are invalid.

In addition, one of the types of cases that have encountered obstacles in recent times is transactions between bona fide third parties and parties to invalid contracts, specifically transactions that involve collateral. The reason for the difficulties in these cases is due to Clause 2, Article 133 of the 2015 Civil Code which states that "property is transferred through another civil transaction to the bona fide third party". The use of the term "transfer" in this provision has confused the application of the law in these cases, as some collateral transactions do not involve the "transfer" of the property but only the "registration" of it, such as when land use rights are mortgaged. Some courts still apply the provision on protecting bona fide third parties to determine the validity of contracts

when the underlying contracts are void and the mortgagee is a bona fide third party [5].

Thus, it can be seen that mainly the cases related to protecting the rights of bona fide third parties in the case of invalid contracts are relatively clear, but there still exist some difficulties and divergent views in the application of the law.

III. SOME RECOMMENDATIONS TO IMPROVE THE LEGAL PROTECTION OF INTERESTS OF THE BONA FIDE THIRD PARTY

Based on the above analysis, the following recommendations can be made to improve the legal framework:

Firstly, the law needs to supplement provisions to define and provide criteria to identify the bona fide third party in cases of invalid contracts.

The Civil Code of 2015 has yet to provide an official definition and criteria for identifying a bona fide third party. As a result, there are still conflicting opinions regarding the concept of a bona fide third party and the criteria for identifying such a party. Specifically, it is necessary to clarify that the "third party" does not refer to the parties involved in the invalid contract, and the "bona fide" element does not apply to cases where the third party did or should have known that the transferred property was the subject of an invalid contract. Additionally, it is important to distinguish between the concepts of a bona fide third party and a bona fide possessor.

Secondly, there is a need for specific guidelines and regulations for cases where a bona fide third party acquires property through auction.

As mentioned above, establishing ownership rights for the third party in this situation presents significant challenges in practice due to the requirements for legal action regarding the auction results of the property owner. In such cases, there are still opposing viewpoints on the application of Clause 2, Article 133 of the Civil Code 2015. From the perspective of the author, the law should recognize auction sales contracts in cases where procedural violations occur during the auction process, to protect the rights of the bona fide third

party, as the error in this situation does not lie with this party.

Thirdly, there is a need for guidance on cases where properties have been registered under Clause 2, Article 133 of the Civil Code of 2015.

The law should guide how to interpret the term "transfer" in Clause 2, Article 133 in a way that includes secured transactions or not. Because secured transactions are still civil transactions, but this type of transaction also has many specific characteristics that confuse the application of the law. For example, can an invalid contract change the status of the property pledged when the pledgor must be the owner of the property? And if the pledgor changes, can the purpose of the security agreement still be fulfilled?

Although currently, according to Official Letter No. 64/TANDTC-PC dated April 3, 2019, of the Supreme People's Court, "mortgage of property must be considered a conditional transfer of property; to ensure the interests of the mortgagee, the provision "transfer by another civil transaction" in Clause 2 Article 133 of the Civil Code shall be applied even in the case of transactions related to mortgage of property".

The author argues that the uniformity of the phrase "transfer of collateral to the collateral recipient for disposal" in Article 6 of the 2015 Civil Code with the phrase "property transfer" in Article 133 of the 2015 Civil Code is inappropriate because the basis of transfer in these two cases is different. The transfer in Article 6 of the 2015 Civil Code is one of the activities to remedy the breach of obligations by the mortgagor or third party, while the transfer in Article 133 is an obligation arising from a contract. Moreover, even if this uniformity is reasonable, the scope explained in Document 64 is only limited to the mortgage contract and has not been attached to other types of security contracts. Therefore, there is no basis to determine whether the secured party is immediately protected in other security contracts outside the mortgage under Article 133 of the 2015 Civil Code. Therefore, issuing guidelines related to Article 133 of the 2015 Civil Code is still necessary.

IV. CONCLUSIONS

The provision on the protection of bona fide third parties in civil transactions is aimed at ensuring stability and reducing disruption in civil transactions, as well as being consistent with the reality that the bona fide third party is unaware and unable to know about the previous invalid civil transaction. To ensure the rights of the parties, some issues regarding the current provisions on the protection of bona fide third parties need to be noted. However, this issue has not been strictly regulated by the law, leading to various interpretations and difficulties in applying it to practice. Through analyzing the concepts of bona fide third parties in the Civil Code, the author has identified the characteristics of bona fide third parties and evaluated the current legal provisions. Based on this, the author proposes some recommendations to improve the legal protection of the rights of bona fide third parties when the contract is invalid.

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