



Action of the Third Person Withdrawing from the Perspective of Comparative Law

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The system of the revocation of the third party is not a universally established litigation system. As far as the establishment scope is concerned, the countries of the system of the third party's revocation are mainly France and China. Considering the limited application scope of the third party revocation suit in Taiwan Province of China and Macao Special Administrative Region of China, this paper mainly studies the similarities and differences between France and Mainland China.

I. Establishment value

(i) France

The French action of revocation by a third party dates back to 1539, when there was a provision for a third party who objected to an abusive judgment on appeal (also translated as abusive revocation) and was liable to a fine if it lost. In 1556, however, it was stipulated that the judgment of transfer of title to the estate should be enforced, whether or not a third party objected to the ruling. As for the formal establishment of the appeal of the third party's revocation in France, the French academic circles consider that it was the French Civil Procedure Code in 1806. But it is not until 1975 that the French Code of Civil Procedure prescribes the action of revocation of the third party and the abuse of the action of revocation of the third party. Article 582 of the Code of Civil Procedure of 1975 stipulates the concept of "the action of the third party's revocation": "The action of the third party's revocation is the action of the third party's request to revoke or change the judgment in order to protect his interests from the infringement of the judgment. The action of the third party quashed the dispute identified in the judgment, thereby remaking the judgment on a factual and legal level. "

The aim of setting up the system of the retraction of the third party in France is "mainly based on the idea that the judgment shall not prejudice any third party who is not guaranteed to hear or defend for interests". Therefore, the appeal

of the third party's revocation in France is mainly to provide a remedy for the injured party because of the effective judgment.

(II) China

At present, there are three theories about the legal value of the revocation of the third party in China, namely, "correction theory", "substantive right relief theory" and "double interest protection theory". Scholars who hold the theory of "correcting errors" believe that the main aim of the appeal of the third party is to correct the erroneous judgment. According to the theory of substantive right relief, rescinding erroneous judgments, rulings and mediation statements is only a means of relief, and providing relief for the third party is the fundamental goal. According to the theory of "double interests protection", the aim of the third party's revocation action is mixed. The third party's revocation action is not only to provide relief for the third party, but also to provide a procedural guarantee for the third party.

Although the Report of the Law Committee of the National People's Congress on the Results of the Review of the Amendment to the Civil Procedure Law of the People's Republic of China (Draft) states that the legislative purpose of the appeal of a third party is to provide substantive relief to a third party outside the case whose civil rights and interests have been infringed upon, the establishment of a legal system often deviates from the original intention of the legislator and is redefined as needed by society. In fact, if we only understand the purpose of the lawsuit of the third party's revocation as the relief of substantive rights and interests, then in reality we can not have too high requirements for its trial procedure, as long as it can achieve the purpose of substantive relief, the same, if only understood as the mechanism of procedural relief, then there is no need to provide relief after the trial procedure. But in fact, China's third party revocation action has put forward strict



requirements in substantive relief and procedural protection, so it has dual purposes in fact.

II. Subject of action for revocation

1. France

The subject of the French third party's revocation action is any third party who has an interest in the effective judgment, as long as it is not a party to the original action and does not entrust an agent to participate in the action. At the same time, in order to prevent the debtor from maliciously colluding in fraud litigation and to protect the interests of the creditor, the article also provides that a third party may also file a suit of revocation if the creditor of the parties or other successor of rights considers that the judgment impairs his rights or has other grounds. However, for non-litigation cases, unless the non-litigation case is the final judgment, the third party can only be allowed to file a lawsuit of revocation of the third party if the third party has not received the notice of judgment.

2. China

The subject scope of the revocation action of the third party in China should be the third party who has the independent claim and the third party who has no independent claim. Meanwhile, a third party filing a lawsuit for revocation of a third party shall satisfy the following two criteria: first, the third party shall not participate in the lawsuit due to a reason which cannot be attributed to itself; second, the third party shall have evidence to prove that the contents of the judgment, ruling or mediation letter which has come into legal effect are erroneous, and harm its civil rights and interests.

However, for the reason of "not participating in the litigation due to causes not attributable to himself", it refers to the circumstance of not being listed as a party to an effective judgment, ruling or mediation statement and having no fault or obvious fault. Including: (1) Where he/she does not know about the lawsuit but does not participate; (2) Where his/her application for participation is not approved; (3) Where he/she knows about the lawsuit but is unable to participate due to objective reasons; and (4) Where he/she does not participate in the lawsuit due to any other reason which cannot be attributed to him/her. " With regard to the evidence under "there is evidence proving that the judgment, ruling or mediation document has become legally effective... erroneous and has damaged the civil rights and interests thereof", the third party shall provide the evidential materials under the following three circumstances: a. Failure to participate in the litigation due to reasons not

attributable to him; b. All or part of the contents of the judgment, ruling or mediation document that has become legally effective are erroneous; and c. Wrong contents of the judgment, ruling or mediation document that has become legally effective damage the civil rights and interests thereof.

III. The Object of the Revocation Action of the Third Party

1. France

According to the French provision, a third party may file a suit of rescission against a judgment that harms his civil rights, unless the law prohibits it. Later, according to the legislative spirit, the French judicial precedent defined the extension of the "judgment" here: the judgment or conciliation statement of the commercial court, the labor conciliation committee, the rural rent parity court and other special courts, like the ordinary court, are all regarded as the "judgment" that can file the lawsuit of the third party. However, the following restrictions still exist: a. No appeal by a third party against an interlocutory judgment may be lodged; b. Action by a third party against an adoption judgment may be lodged only if the adopter may be accused of wilful fraud or fraud; c. In the case of a change in the judgment on matrimonial property, a creditor of one of the spouses may lodge an appeal by a third party against a change in the judgment on matrimonial property, except for children of the spouse in principle; d. No appeal by a third party against a declaration of permissibility of a French arbitral judgment may be lodged; e. In a non-suit, only a third party who has not received notice of the judgment may lodge an appeal by a third party against the decision; f. No appeal by a third party against the administrative act or settlement of the court may be lodged [9]. Moreover, French jurisprudence holds that, in principle, divorce proceedings may not be instituted against a third party, unless the divorce decision unreasonably restricts grandparents' visitation rights to their grandchildren, or because of the existence of litigation fraud in the divorce proceedings or because the joint property division arrangement of the decision prevents the realization of the claims of the spouses' joint creditors.

2. China

According to the provisions of the Civil Procedure Law of the People's Republic of China, the object of the lawsuit of the third party for revocation shall be the effective judgment, ruling and mediation document that damage the civil rights



and interests of the third party. Under the present legal system of civil litigation in China, the third party's rulings and mediation documents that damage its civil rights and interests can be relieved through its own relief procedures, there is no need to file a lawsuit of the third party's revocation. However, the author holds that whether it is a valid judgment, ruling or mediation document, as long as it involves the interests of a third party outside the case, it naturally has legal effect on the third party. However, compared with judgments and conciliation statements, only a small number of rulings relate to substantive civil rights, and the current decisions relating to substantive civil rights are mainly those of prior execution and non-execution, property preservation and conduct preservation. Because the object of the third party's revocation action is mainly to relieve the civil substantive rights, the third party's revocation action can only be allowed when the civil substantive rights are involved.

At present, the Civil Procedure Law of the People's Republic of China does not clearly prescribe the applicable scope of the lawsuit of the third party's revocation, but merely prescribes the circumstances of non-acceptance. According to the provisions, "Where a lawsuit for revocation by a third party is filed under any of the following circumstances, the People's Court shall not accept the lawsuit: (1) cases handled pursuant to non-litigation procedures such as special procedures, supervisory proceedings, procedures for announcement of summon, bankruptcy procedures, etc; (2) contents in judgments, rulings or mediation letters on void marriage, revocation or rescission of marriage etc which involve identity relationship; (3) valid judgment for a representative lawsuit made by a rights holder who has not participated in registration stipulated in Article 54 of the Civil Procedural Law; or (4) valid judgment for a public interest lawsuit made by a victim who harms public interest stipulated in Article 55 of the Civil Procedural Law."

IV. Proceedings

1. France

In accordance with the provisions of the French Code of Civil Procedure, unless otherwise provided by law, the claim of a third party for revocation may be brought as a claim within 30 years from the date of judgment. At the same time, a person who brings a judgment of damage in another litigation process may bring a lawsuit of the third party's revocation at any time, not subject to the limitation of the litigation period. For disputed and non-disputed cases, the French Code of Civil

Procedure stipulates that unless the judgment expressly informs the third party of the period of action and the means of appeal, the time limit for the third party to withdraw the action is two months.

The court that has jurisdiction over the action of a third party for revocation shall have jurisdiction in two circumstances. If the action of a third party for revocation is a claim in this case, it shall fall under the jurisdiction of the court that rendered the effective judgment; if the action of a third party for revocation is incidental, it shall fall under the jurisdiction of the higher court and the court of the same level that rendered the judgment and did not violate the exclusive jurisdiction provisions of France.

2. China

According to the provisions of the Civil Procedure Law of the People's Republic of China, the court with jurisdiction over the revocation of a lawsuit filed by a third party shall be the people's court that has made an effective judgment, ruling or mediation statement. The main consideration of the provision is that the revocation of a lawsuit filed by a third party will often involve false litigation, and the case is more complicated than that of ordinary litigation. However, the court of original trial has a certain understanding of the case during the process of rendering a judgment, ruling or mediation statement, and the trial of the case by the court of original trial is more helpful for the judge to find out the truth and completely resolve the case. However, after the third party files a lawsuit with the people's court, the court shall, within five days upon receipt of the bill of complaint and evidential materials, deliver them to the other party, who shall, within ten days upon receipt of the bill of complaint, put forward written opinions. At the same time, the court shall examine the statement of claim, evidential materials and written opinions of the other party submitted by the third party, and may also question the parties if necessary. Meanwhile, the court shall decide whether to file the case within 30 days upon receipt of the statement of claim.

5. Legal Effect

1. France

The enforcement of the original judgment must be suspended in accordance with the French Civil Procedure Law after the appeal of the third party for revocation is filed.

According to Article 591 of the Civil Procedure Law of France, after the third party wins the case, the judgment of the original action related to the interests of the third party will no longer be



valid for the third party, but other contents involved in the judgment of the original action will still be valid for the party concerned. However, if the case is undivisible, the judgment of the third party to revoke the case is valid for all parties. In the second case, the third party loses the lawsuit, so the judgment of the original lawsuit is valid. In order to prevent the third party from abusing the litigation right, France regulates the behavior of the third party abusing the revocation lawsuit. According to the provisions of the French Code of Civil Procedure, if a third party abuses the appeal for revocation, he will be fined up to 3,000 euros (from "100 to 10000 francs") and may be sentenced to compensate the other party for his loss.

(II) China

Upon examination by the court, where the court deems that the criteria are satisfied and the claim of the third party is valid, the court shall deal with the change or revocation of the original judgment, ruling or mediation letter.

What attracts more attention in China is the application of the choice between the third party's revocation lawsuit and the third party's application for retrial. According to the provisions, if the people's court rules to retry the effective judgment, ruling or mediation statement during the trial of the third party's revocation lawsuit, the people's court that accepts the third party's revocation lawsuit shall rule to incorporate the third party's claim into the retrial procedure. However, if there is evidence proving that the parties to the original trial maliciously collude with each other to damage the legitimate rights and interests of a third party, the people's court shall first hear the case of the third party's withdrawal of the lawsuit and rule to suspend the retrial. The Supreme Court held that the third party could only choose one remedy for the damage to the civil rights and interests caused by the effective judgment, and wrote in the judgment: "In order to save litigation costs and better protect the rights of the parties concerned, it is not appropriate for the applicant to file a separate lawsuit for revocation by the third party when filing an application for retrial."

There will be some overlap between the third party's revocation action and the third party's enforcement objection in the course of application. After the third party's revocation action is filed, the third party may still raise the enforcement objection as long as the enforcement of the original judgment, ruling or mediation document is not suspended. But when the objection of the outsider is rejected, it can only be relieved by the retrial, not by the third party.

V. Summary

Comparing the system of the revocation action of the third party in France with that in China, we can sum up the following similarities:

1. In terms of litigation conditions, both overseas and in China, a third party outside the case is required not to participate in the original litigation due to reasons not attributable to him, and his civil rights and interests are impaired by the effective judgment;
2. With regard to the jurisdiction over cases of retraction by a third party, the court that rendered the final judgment usually has jurisdiction over cases of retraction by a third party.
3. With regard to object, the action of a third party for revocation in France and Mainland China may apply to judgments, rulings and conciliation statements.

However, due to the different legislative background and legal culture, there are also great differences in the third party revocation system:

1. In terms of the scope of subjects, France has no restrictive provisions on the scope of subjects, and in principle, any third party outside the case who has not participated in the litigation and has suffered damage to civil rights and interests may bring a lawsuit. In terms of mainland China, it only stipulates that the third party who has the independent right of claim and the third party who does not have the independent right of claim whose rights and interests are damaged, but the damage caused by the causes shall be ignored;
2. With regard to the time limit for litigation, the time limit for litigation as prescribed by France is relatively long, 30 years, and for special circumstances, a lawsuit of revocation by a third party may be filed permanently. For the time limit for litigation of revocation by a third party in Mainland China, it is relatively vague to only stipulate that the time limit is within six months from the date when the judgment is known or should be known;
3. With regard to the validity of the original judgment, the Mainland China region has stipulated that the filing of a lawsuit by a third party for revocation shall not affect the enforcement of the original judgment, while France, on the contrary, stipulates that the enforcement shall not be carried out unless a guarantee is provided. However, the effectiveness of the third party after the victory, the French provisions do not affect the effectiveness of the original judgment on the original litigant, and the mainland of China does not give clear provisions on this issue;



4. With regard to the regulation of the abuse of litigation rights, France stipulates a punishment mechanism for the abuse of revocation action by a third party, which can be imposed a fine or the party concerned may apply for damages; and the mainland of China only stipulates the citation of general punishment for abuse of litigation.