

Several Researches on Joint Liability in Civil and Commercial Law

Wenjing Zhao

Qinghai Open University, Xining, Qinghai Province, 810008, China

Keywords: Civil and commercial law, Joint and several liability, Problems, Countermeasures

Abstract: Joint and several liability system occupies a very important position in the whole civil and commercial law system. Under the social background of rapid economic development, joint and several liability has exposed many defects and deficiencies. In view of related problems, relevant departments should attach great importance to it. Because of the practical application of joint and several liability in civil and commercial law, the ultimate implementation purpose of joint and several liability is seriously hindered. Therefore, it is extremely necessary and of high social value to carry out in-depth research on the joint and several liability system. This paper combines legal provisions and judicial practice, studies and analyzes the problems existing in the application of joint and several liability in civil and commercial law, and puts forward several countermeasures.

1. Introduction

With the proposal and development of the concept of ruling the country by law, the process of ruling the country by law is also accelerating. Civil and commercial laws are closely related to people's lives, and joint and several liability is an important part of them. Not only to assume his part of the responsibility, but to be responsible for all the responsibility, any one responsible person's performance of the responsibility will lead to the elimination of the responsibility of all relevant responsible persons [1]. Joint and several liability is mainly to compensate for relief and further increase the legal liability of the parties in civil and commercial legal relations, thus effectively protecting the legitimate rights and interests of creditors [2]. However, the relevant laws do not clearly explain the meaning of joint and several liability, and the provisions on joint and several liability in China's civil and commercial legal system are relatively scattered and have not formed a systematic network and lack more in-depth academic research results as guidance. Therefore, in order to better implement the joint and several liability system in civil and commercial law and realize its good sustainable development, it is necessary to attach great importance to the problems of joint and several liability in civil and commercial law, to suit the remedy to the case, and to formulate effective solutions and countermeasures.

2. The Connotation of Joint Liability in Civil and Commercial Law

Joint and several liability in civil and commercial law refers to the civil liability formed by the debt relationship when the parties have two or more parties, according to the agreement of the parties themselves or relevant laws and regulations, all the parties need to bear part or all of their common debts. When the obligee requests repayment, he or she shall unconditionally assume part or all of the debts or other responsibilities [3]. In the case that the main contract is valid and the guarantee contract is invalid, if the creditor is not at fault, the guarantor shall bear the corresponding losses of the creditor and the corresponding joint liability. As well as due to problems in design and construction, it is necessary for the building owners, management personnel and design and construction personnel to jointly undertake the responsibilities. Creditors' losses should be jointly borne by the debtor and the guarantor. At the same time, the debtor and the guarantor are jointly and severally liable. If the bondman knew or should have known in advance, he will not be jointly and severally liable.

3. Characteristics of Joint Liability in Civil and Commercial Law

In our country's civil and commercial law legal system, the joint and several system includes legal joint and several system and agreed joint and several system. Under normal circumstances, there are two or more relevant specific responsible persons, and there are joint and several relationships among the relevant responsible persons. If there are responsibilities among the public welfare persons, then all responsible persons need to bear joint and several responsibilities. If one of the joint and several liable persons has completed all the debts, the remaining liable persons can no longer bear the debts. In addition, in the trial, the biggest dispute over joint infringement is the result of infringement caused by more than two people, but the two people are not intentional, but also the case of joint negligence. From the main point of view, joint and several liability must have multiple rights holders, that is, two or more people jointly bear the liability for compensation for infringement or breach of contract [4]. It can be seen from this that in the case of many responsible persons, a single responsible person not only needs to bear his own responsibilities, but also needs to bear some hidden responsibilities. However, assuming that any responsible person has assumed the responsibility, other responsible persons are also aware of the responsibility. The court can confirm whether the defendant constitutes infringement and how much damage the infringement has caused to the plaintiff, but will not investigate the burden sharing between the sued infringer and the non-sued infringer, and will only examine it when there is a claim between the infringers.

4. The Existing Problems of Joint Liability in Civil Law and Commercial Law

4.1 The Relationship between Civil and Commercial Law and Procedural Law is Not Close Enough

In the concrete application process of civil law and commercial law, changes in their rules will lead to actual changes in joint and several liability. If the debtor wants to let the parties pay the debts in accordance with the relevant provisions of the contract, and the parties are unable to make the repayment, the guarantor is required to undertake the relevant responsibilities and assume joint and several liabilities; Once the debtor performs the relevant provisions in the contract and requires the parties to repay the debt on time, if the parties cannot repay, the guarantor must bear the corresponding repayment responsibility and joint liability [5]; Therefore, if the judgment basis is civil and commercial law, we must pay attention to the reasonable integration of the intrinsic value of substantive law, otherwise the judgment process and results will surely lack rationality. According to the provisions of the law or the agreement of the parties, their common debts need to be fully or partially borne by the parties, and at the same time, they also bring out a kind of civil liability arising from their internal debt relationship. Even there is a serious disconnect between the two. If only the civil and commercial laws are operated, the final judgment of joint and several liability and the actual operation will only stay on the surface, and the relevant liability cannot be implemented well. At this stage, civil and commercial law is not closely linked with procedural law. If only civil and commercial law procedures are used, the determination and implementation of joint and several liability will become a mere formality. The selection method of priority should be adopted, and substantive law should be superior to procedural law, thus ensuring the concrete implementation of substantive law [6].

4.2 The Division of Creditors' Responsibilities is Not Clear Enough

In actual economic cases, although each debtor has joint and several liabilities, each debtor has different faults and responsibilities in actual economic disputes. Therefore, the agent still chooses to act as an agent when he knows that the agency affairs are illegal or the principal will not stop the agent from developing when he knows that the agent is using his agency rights to engage in some illegal activities. From the perspective of judicial practice, even if the tortfeasors have not been fully prosecuted, the court can still clarify their joint tortious liability and determine the scope of compensation. When the plaintiff is only suing some tortfeasors, the plaintiff also needs to

determine the facts of the infringement and all the losses caused by the infringement. As for the number of tortfeasors, the respective wrongs committed by these tortfeasors and whether all the tortfeasors can come to the lawsuit, the plaintiff will no longer ask. However, the related infringers who have not been prosecuted will not be investigated for their responsibilities. In the trial of joint infringement cases, the court needs to judge and investigate the tort liability according to the relevant evidence submitted by the plaintiff, but will not investigate the distribution of liability between the sued and non-sued infringers [7]. If creditors suffer losses, they need to bear them together with the guarantor, and the debtor and the guarantor need to bear joint and several liabilities. However, there is no need to assume joint and several liability if the creditor already knows it.

4.3 The Use of Options is Not Rigorous

In some commercial law cases or civil law cases, there are often cases of infringement, and for this behavior, in general, in order to have higher work efficiency and make the trial of the case more convenient, the court will often bring the responsible person and the plaintiff together. At present, in order to improve work efficiency, some courts often require plaintiffs to bring together all the people involved in joint torts and conduct lawsuits when dealing with related civil and commercial law infringement cases. When the interests of creditors are damaged, the joint and several liable persons shall jointly bear the responsibility. Any person who is jointly and severally liable has the obligation to bear all the liabilities of the creditor [8]. At the same time, it also stipulates that creditors are not allowed to accept compensation from multiple joint and several persons. Then each responsible person can only repay a specific part of the debt and cannot hand over his own part of the responsibility to others. When plaintiffs sue some tortfeasors in joint torts, they can rationally choose and deal with their litigation rights and substantive rights as plaintiffs according to the provisions on joint and several liability. The plaintiff sued some infringers, which is the plaintiff's right to rationally deal with its own entities and procedures according to the joint and several liability rule. However, the third party and the agent must be jointly and severally liable for any act that causes damage to the interests of others due to their acts of agency.

5. Countermeasures for Improvement of Joint Liability in Civil Law and Commercial Law

5.1 Perfect the Litigation Procedure

At present, the coordination between procedural law and substantive law is not an important part of the joint and several liability of civil and commercial law in our country, which requires civil and commercial law to spend more energy on the design of litigation procedures in order to realize the diversification of litigation procedures and meet the litigation requirements of different civil subjects. Clarify the legitimate rights and interests of the defendant and other joint and several liable persons, determine the plaintiff's litigation rights, and formulate regulations to protect these legitimate rights and interests. Scientific and reasonable use of joint and several liability can make victims get legal protection when they are persecuted, and can promote social harmony. Secondly, we should refer to the formulation principles of relevant regulations, and carefully mark and explain the litigation methods and contents of joint and several liability. All participants shall jointly bear joint and several liability to the victim. This joint and several liability emphasizes common subjectivity, that is to say, both of them are conscious. If the mortgaged property, bonds and other non-cash assets cannot meet the establishment requirements after the company is legally established, all the company sponsors shall make up for the lack of funds and other company sponsors shall also bear the responsibility. In brief, that is to say, according to the litigation standard, we can try to bring a lawsuit separately or jointly to solve specific situations. At the same time, the sued parties can also be sued independently and jointly.

5.2 Balance the Relationship between Civil and Commercial Subjects

In the process of balancing civil and commercial subject relations, corresponding adjustments

must be made according to the current level of economic and technological development, so as to promote the efficiency of civil and commercial proceedings. Formal agency behavior does not need to bear any joint and several liability. Only illegal agency behavior that is not protected by law should bear joint and several liability. In the face of this situation, it is impossible to coordinate and stipulate all the subjects. Only the court can redefine the subjects of civil and commercial acts according to the actual situation so that the subjects of civil and commercial acts and rights can adapt to each other. In addition, the joint and several liability in the field of corporate law is also embodied in the theory of negation of independent personality. On the other hand, procedural law can also provide certain guarantees for the implementation of substantive law. Therefore, in the process of dividing the forms of joint and several liability, attention should be paid to the introduction of substantive law and procedural law so as to jointly try the case. Once the shareholders of the company abuse the independent status of the company as a legal person and the limited liability of shareholders to evade debts, thus damaging the interests of creditors, they should bear the debts of the company and be jointly and severally liable. When only one litigation object exists between the majority of the parties and the other party, if the parties want to exercise their litigation rights and obligations, several people must jointly sue or respond to the lawsuit. There is no law stipulating how to deal with this situation. The court will make a reasonable judgment according to the specific situation based on the specific analysis of specific problems. It is even more necessary for the society to step up the research and improvement of joint and several liability.

5.3 Fully Guarantee the Importance of the Right to Choose

Under normal circumstances, the agency behavior will not bear the relevant joint and several liability unless there are defects in the agency law. In order to protect the plaintiff's litigation rights, the defendant's and other joint and several liable persons' legitimate rights and interests, our country should include the joint infringement and joint and several liability litigation into the corresponding necessary joint litigation, and should not include it into the inherent necessary joint litigation. However, judging from the actual operation of civil and commercial law and procedural law, there are problems in the coordination between the two, and the relationship is not close enough, which directly leads to the loss of legal effect of many provisions of joint and several liability system in civil and commercial law. The principle of protection of substantive rights in procedural law should be taken as the basis for the division of rights, and the legitimate rights and interests of the defendant and the joint and several liable persons and the litigation rights of the plaintiff should be clearly defined so as to formulate reasonable provisions that can better protect these rights and interests. The related litigation of joint tort and joint liability should be integrated into the related necessary joint litigation as soon as possible, instead of dividing it into inherent necessary joint litigation. In a joint venture, all the joint venture partners have the corresponding power to distribute the assets, and all the joint venture partners corresponding to this must share all the risks encountered in the course of operation. In this link, specific plans need to be drawn up for those professional and technical work, so as to ensure a correct division of joint and several liability in terms of rights and obligations.

6. Conclusion

Joint and several liability, as an important system in China's civil and commercial legislation, is mainly to compensate for relief and further increase the legal liability of the parties in civil and commercial legal relations, thus effectively protecting the legitimate rights and interests of creditors. The main purpose of joint and several liability included in civil and commercial law is to protect the legitimate rights and interests of citizens, but also to protect the rights and interests of those responsible. Relevant personnel should pay attention to the judgment of litigation subject and the attribution of joint and several liability, and follow the principles of concrete analysis of specific issues, fairness and justice to realize the effectiveness of the joint and several liability system. Only by truly strengthening the problems existing in the joint and several liability in the civil and commercial law of our country and finding effective solutions can joint and several liability in the

civil and commercial law of our country be well promoted to be more authoritative, effective and perfect.

References

- [1] Duan Jiawei. (2016). Problems and Countermeasures in Joint Liability of Civil and Commercial Law. *Scientific Chinese*, no. 26, pp. 131-132.
- [2] Li Jing. (2016). Problems and Countermeasures in Joint Liability of Civil and Commercial Law. *Staff Legal World*, vol. 000, no. 020, pp. 165-165.
- [3] Jiang Xi. (2015). On Joint Liability in Chinese Civil and Commercial Law. *Journal of Ezhou University*, vol. 000, no. 011, pp. 15-17.
- [4] Zhang Li, Zheng Zhifeng. (2015). Infringement by a third party in the Tort Liability Law: Discussion with Professor Yang Lixin. *Modern Law*, vol. 37, no. 1, pp. 32-46.
- [5] Qi Jian. (2015). the theory of civil liability for environmental pollution of several people--Also on the deletion of Article 67 of the Tort Liability Law. *Journal of Chongqing Jiaotong University: Social Science Edition*, vol. 15, no. 3, pp. 34-38.
- [6] Zhang Meng. (2016). on the countermeasures of the three major relationships in the teaching of civil and commercial law. *Asia Pacific Education*, no. 7, pp. 58-59.
- [7] Lai Xionghui, Zhou Qianfeng, Li Yanxia. (2016). Current problems and countermeasures of college volunteer organization management--Taking Chongqing college volunteer organization as an example. *Science Chinese*, no. 15, pp. 104-110.
- [8] Li Shan, Yang Feng. (2016). Basic Analysis of Joint Liability in Tourism Disputes--From the Perspective of Specific Identity Association Theory. *Academic Exploration*, no. 6, pp. 52-58.