



Discussion on the Existing Problems and Improvement Countermeasures of Joint and Several Liability in Civil and Commercial Law

Junyu Zhou

Changzhou University, Changzhou, 213159, Jiangsu, China

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Abstract: This paper discusses the related issues of joint and several liability in civil and commercial law. Joint and several liability plays an indispensable role in ensuring transaction security and maintaining fairness and justice. However, some problems have emerged in practice, such as the lack of close connection between civil and commercial law and substantive law, unclear definition of responsible persons, and ambiguous division of the debtor's responsibility. To address these issues, the paper proposes countermeasures such as strengthening the connection between civil and commercial law and substantive law, improving the litigation procedure of joint and several liability, and clarifying the division of the debtor's responsibility, in order to promote the development and improvement of joint and several liability in civil and commercial law and contribute to the stable development of society.

Keywords: civil and commercial law, joint and several liability, problems, countermeasures

1. Introduction

Joint and several liability, as an important system in civil and commercial law, plays an essential role in ensuring transaction security and upholding fairness and justice. However, with the rapid development of the social economy and the continuous deepening of legal practice, the application of joint and several liability in civil and commercial law has gradually exposed some problems. In the complex and changeable business environment and diverse civil disputes, the ambiguity in the definition of joint and several liability, the lack of clarity in the scope of application, and the rationality of responsibility sharing have become increasingly prominent, which not only brings troubles to the parties, but also affects the fairness and authority of the judiciary to a certain extent.

In order to better give full play to the advantages of the joint and several liability system and ensure the stability and harmony of civil and commercial legal relations, it is necessary to conduct an in-depth analysis of its existing problems and actively explore improvement countermeasures. Through a comprehensive examination of the joint and several liability in civil and commercial law, we seek a more scientific and reasonable system design to meet the development needs of modern society and achieve the value goal of the law to ensure fairness and efficiency. This article aims to systematically sort out the existing problems of joint and several liability in civil and commercial law and put forward targeted and operable improvement suggestions, in order to contribute to the development and improvement of China's civil and commercial law.

2. Overview of joint and several liability

Joint and several liability is also known as "joint and several debts". It is a kind of civil liability in which, according to legal provisions or the agreement of the parties, two or more parties bear all or part of their joint debts, and thus cause an internal debt relationship. When there are multiple debtors, each debtor is obliged to pay off all the debts, and the creditor can request any one debtor to perform all or part of the debt. The debtor who has performed the debt has the right to request other debtors with joint and several liabilities to reimburse the share he should bear.

The main characteristics of joint and several liability include:

(1) Each debtor in the joint and several liability is obliged to bear all the debts, regardless of the size of his fault or share in the generation of the debt.

(2) The creditor has the right to choose to claim the creditor's rights from any one or more joint and several liable persons.

(3) The joint and several liable person who has assumed the debt beyond his share has the right to recover from other joint and several liable persons.

Joint and several liability is commonly seen in some specific situations stipulated by law, such as joint tort, partnership debt, guarantee relationship, etc. Its purpose is to protect the legitimate rights and interests of creditors and ensure that the

debts can be fully paid off.

3. Application of joint and several liability in civil and commercial law

In order to strengthen the constraint of legal liability and maintain social fairness and security, China has widely applied joint and several liability in civil and commercial law. In the "Contract Law", joint and several liability is commonly seen in the consortium contracting in construction engineering contracts. Multiple contracting units form a consortium to jointly contract the project and bear joint and several liability to the employer for issues such as the quality of the project. And subleasing in the lease contract. If the lessee subleases the leased object to a third party with the consent of the lessor, the lessee and the sublessee shall bear joint and several liability to the lessor.

In the "Tort Liability Law", the application of joint and several liability is also relatively extensive. For example, if the network service provider fails to take necessary measures for the infringement committed by the network user using the network service, it shall bear joint and several liability with the network user. In the case of joint dangerous acts, if the specific infringer cannot be determined, the actor shall bear joint and several liability.

In the "Securities Law", when securities service institutions produce and issue audit reports, asset evaluation reports, financial advisor's reports, credit rating reports or legal opinions and other documents for the securities business activities such as the issuance, listing and trading of securities, they shall be diligent and responsible, and verify and validate the authenticity, accuracy and completeness of the contents of the documents and materials based on. If the documents produced and issued by them have false records, misleading statements or major omissions, causing losses to others, they shall bear joint and several liability for compensation with the issuer and the listed company.

The provisions of joint and several liability are helpful to maintain the fairness and justice of civil and commercial activities, and its application in civil and commercial law is of great significance for protecting the legitimate rights and interests of the parties, promoting the health of the market economy and improving the efficiency of law enforcement.

4. Existing problems of joint and several liability in civil and commercial law

4.1 The lack of close connection between civil and commercial law and substantive law

From the perspective of legal concepts and categories, at present, civil and commercial law mainly adjusts the property relations and personal relations between equal subjects, while substantive law covers a wider range, including criminal law, administrative law and other fields. There are significant differences in the legislative purposes, principles and normative focuses of substantive laws in different fields. Taking specific legal rules as an example, in some cases involving economic crimes, the qualitative and penalty standards of certain commercial acts in criminal law may conflict with the relevant provisions in civil and commercial law. For example, in the crime of contract fraud, the provisions of criminal law on the conditions for constituting a crime and the sentencing standards may not be completely consistent with the judgment of the validity of the contract and the rules for assuming liability for breach of contract in civil and commercial law.

In terms of the application of the law, due to the lack of a unified coordination mechanism among different legal departments, in actual cases, there may be differences in the application of civil and commercial law and other substantive laws to the same legal fact. For example, in environmental pollution cases, the administrative law's administrative penalties for enterprises and the civil and commercial law's determination of the civil compensation liability for the victims may differ due to issues such as the order of application of the law and the standard of evidence.

From the perspective of the speed of updating and development of the law, civil and commercial law is often affected by changes in the market economy and is updated more frequently. While some other substantive laws, such as criminal law, have relatively strict procedures for modification and improvement, and the update speed is relatively slow. This may lead to the situation that in some emerging economic fields or social relations, civil and commercial law has corresponding provisions, while the relevant substantive laws fail to keep up in time, resulting in a gap in the connection.

4.2 Unclear definition of responsible persons

The definition of responsible persons for joint and several liability in civil and commercial law has not been perfected. First of all, the joint and several liability system is to some extent separated from the procedural law. In the entire legal system, various laws should promote and complement each other, but the legal content of civil and commercial law will be adjusted according to market changes and social situations, which may lead to changes in the joint and several liability system and rules, and then cause it to be out of touch or contradictory with the procedural law.

Secondly, there is a lack of clear regulations on the clarification of the relationship between the litigation subjects. The civil and commercial joint and several liability system only clarifies the situation of suing one responsible person and all

responsible persons, but in the case of complex litigation subject relationships and only suing some responsible persons, there is no clear regulation on whether other responsible persons need to bear legal responsibility, which makes it difficult to judge the specific responsible subject in this situation, affecting the implementation effect of civil and commercial law, and leading to some responsible persons may evade legal sanctions.

4.3 Unclear division of debtor's responsibility

The existing joint and several liability in civil and commercial law is not clear enough in the division of the debtor's responsibility. In some cases, there are differences in the degree of fault and the size of responsibility that different debtors should bear, but the joint and several liability system fails to fully consider these differences, resulting in a general division of responsibility. For example, in an economic case, there may be multiple debtors, some of whom are the leaders, and some only simply participate in or execute the infringement. However, the joint and several liability system may not make clear and specific arrangements for the responsibilities of each debtor in this case, making the determination of the responsibility for the creditor rather vague.

When resolving economic disputes, there may be an uneven phenomenon of financial compensation. For example, in the case of some responsible persons having no compensation ability, the remaining responsible persons may need to repay all the funds, resulting in the main responsible person bearing less debt, while other responsible persons bearing excessive debt. This law enforcement result may be difficult to be accepted by the creditor and even lead to further disputes.

5. Improvement countermeasures for the existing problems of joint and several liability

5.1 Strengthen the connection between civil and commercial law and substantive law

To strengthen the connection between civil and commercial law and substantive law, it is first necessary to improve the legislative system, systematically sort out civil and commercial law and related substantive laws, find out existing loopholes, contradictions and inconsistencies, and ensure the consistency and coherence of legal norms through legislative revision and supplementation. At the same time, pay attention to strengthening legal interpretation. The Supreme People's Court and other judicial organs should timely issue authoritative judicial interpretations to clarify the ambiguous areas in the application of the law and provide unified guidance for judicial practice to promote the coordination between civil and commercial law and substantive law in interpretation. At the basic level, strengthen legal education. In legal education, we should focus on cultivating students' comprehensive understanding and application ability of civil and commercial law and substantive law, and offer interdisciplinary courses so that future legal practitioners can better grasp the connection between the two.

In addition, we should establish a case guidance system: screen typical and instructive cases to form a case database to provide a reference for judicial practice, and guide judges to follow the judgment ideas of similar cases in handling cases, so as to enhance the stability and consistency of the application of the law. At the same time, strengthen communication and collaboration among departments: the legislative, judicial, administrative organs and the legal practice community should establish a regular communication mechanism to jointly discuss and solve the problems in the connection of the law.

In short, strengthening the connection between civil and commercial law and substantive law requires the joint efforts and collaborative advancement of legislation, judicature, education, academia and other aspects.

5.2 Improve the litigation procedure of joint and several liability

Optimizing the rules for determining the litigation subject is crucial. Establish a strict review system for the litigation subject, and be able to accurately identify and add the subject that should bear joint and several liability at the stage of filing the case. In addition, clearly grant the parties the clear authority and procedures to apply for the addition or the court to add according to its functions and powers to ensure the integrity of the litigation subject.

Furthermore, the rational allocation of the burden of proof is a key link. For different types of joint and several liability cases, formulate differential and reasonable burden of proof rules. For some special circumstances that are difficult to prove, appropriately reduce the burden of proof on the victim, and at the same time require the responsible person to provide counter-evidence to achieve a balance between fairness and efficiency. At the same time, the system of joint litigation also needs to be improved. Actively encourage the adoption of necessary joint litigation, and include all joint and several liable persons in the same litigation procedure, which can not only improve the efficiency of litigation, but also effectively avoid repeated litigation. At the same time, clarify the rights and obligations of all parties in the joint litigation to ensure that they can fully and effectively participate in the litigation.

Establishing a diversified dispute resolution mechanism is also indispensable. Vigorously promote non-litigious

methods such as arbitration and mediation to resolve disputes of joint and several liability, and formulate corresponding rules and procedures. Establish a special mediation agency to build a platform for the parties to negotiate and resolve the dispute, and promote the peaceful resolution of the dispute.

In addition, the transparency of the litigation procedure cannot be ignored. The litigation process, evidentiary materials and reasons for the judgment should be made public in a timely manner to fully protect the parties' right to know. At the same time, strengthen judicial supervision to resolutely prevent the abuse of power and ensure judicial justice.

Additionally, it is of positive significance to strengthen the litigation guidance for the parties. During the litigation process, provide the parties with necessary and effective legal help and guidance so that they can correctly exercise their rights and safeguard their legitimate rights and interests.

Finally, the improvement of the rules for sharing litigation costs also needs to be paid attention to. According to the size of the responsibility and the proportion of the winning of the parties, reasonably determine the way of sharing litigation costs to avoid unnecessary burdens on the parties due to cost issues.

5.3 Clarify the division of the debtor's responsibility

First of all, the most basic thing is to improve the relevant legislation. The legislative organ should refine and clarify the provisions on the debtor's responsibility in civil and commercial law to reduce ambiguity and uncertainty. Specifically, the scope of responsibility, the way of undertaking and the reasons for exemption from liability for different types of debts should be clearly defined.

Secondly, strengthen the work of legal interpretation. The judicial organ should provide more operational guidance for the division of the debtor's responsibility through judicial interpretation in combination with specific cases. The interpretation should follow the principles of fairness, justice and reasonableness, and fully consider the trading habits and social public interests.

In addition, it is essential to attach importance to the contractual agreement. In civil and commercial activities, encourage the parties to clearly define the debtor's responsibility in the contract. The contract terms should be as detailed and accurate as possible, including the term, method and liability for breach of contract for the performance of the debt, to reduce potential disputes. At the same time, pay attention to strengthening the evidence rules. When determining the debtor's responsibility, strictly follow the evidence rules, and require the parties to provide sufficient and effective evidence to prove the existence of the debt relationship and the attribution of the responsibility. For the admissibility and judgment of evidence, there should be clear and unified standards.

6. Conclusion

In summary, with the rapid development of the social economy, civil and commercial law has a more and more extensive application rate in life. At present, joint and several liability has become an important standard for determining the civil liability of citizens, and it is also an important provision in China's modern law. However, in real life, there are still some defects in the relevant legal provisions of joint and several liability in civil and commercial law, and relevant departments are also actively exploring the root causes of the problems and trying to find solutions. On this basis, promote the gradual development and improvement of joint and several liability in civil and commercial law. I believe that through the efforts of relevant personnel to improve and repair, it can finally play the due role of civil and commercial law and provide a strong driving force for the stable development of society.

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