

Research on the Protection of Lessor's Rights in Lessee Bankruptcy Case

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Abstract

My country's current bankruptcy law handles unfulfilled contracts, ignoring the protection of the lessor's rights and interests in the lessee's bankruptcy cases, which is likely to cause the lessor to adopt excessive self-reliance measures. In the bankruptcy law, the lessor's exemption rights and deposit guarantee systems are established. The former is guaranteed by the income obtained by the lessee from leasing the subject matter, and the latter is guaranteed by the lessee by paying part of the rent in advance as a deposit guarantee. It also provides special protection for the lessor's rental claims arising from the continued performance, which helps reduce the possibility of the lessor rescinding the lease contract and realizes effective protection for ordinary tenants and other sub-lessees.

Keywords

Long-term Rental Apartment; Tenant Bankruptcy; Exemption Rights; Security Deposit.

1. Introduction

Long-term rental apartments have been an emerging industry in the real estate market in recent years. However, since the outbreak of the new crown epidemic, Long-term rental apartments have experienced frequent "thunder-burst" incidents, which have aroused widespread concern from all walks of life. The so-called "explosive thunder" of Long-term rental apartments is mainly because the current Long-term rental apartments generally adopt the business philosophy of "high income and low payment" and "long income and short payment". However, the outbreak of the new crown epidemic in early 2020 has caused a large number of ordinary tenants to find it difficult to one-time Paying rent, which led to the shortage of funds for Long-term rental apartments also unable to pay rent and other expenses to the landlord on time, eventually leading to large-scale bankruptcy of Long-term rental apartments. According to my country's current bankruptcy law and relevant judicial interpretations, the provisions of the lease contract in the bankruptcy proceedings concerning unfulfilled contracts are applicable, and the bankruptcy administrator has the option to decide to continue to perform or terminate the contract. For the lease contract between the Long-term apartment and the landlord, the bankruptcy administrator of the Long-term rental apartment as the lessee exercises the option. The current research on lease contracts in bankruptcy proceedings in our country mainly focuses on the case of the lessor's bankruptcy, and there is relatively little discussion on the case of the lessee's bankruptcy. The general opinion of related scholars is that my country's current law does not provide special provisions for lease contracts that are still in a state of performance in bankruptcy procedures [1]. With reference to the legislation of other countries or regions, when the lessee goes bankrupt, the lessor's right to terminate the contract should be restricted., Give the manager the option to decide whether to terminate the lease contract. After the contract is terminated, the lessor has the right to retrieve the leased property and claim for damages arising from the termination [2]. However, the "explosion" incident of Long-term rental apartments shows that in the case of the lessee's bankruptcy, if the lessor's interests are not fully protected, the creditor's rights it enjoys cannot be fully realized in the

bankruptcy proceedings, and the lessor often does not choose to apply for initiation in bankruptcy proceedings, methods that seriously damage the interests of third parties are adopted, such as forced repossession of houses that have been leased by subletters. It can be seen that for lease contracts in which the lessee is bankrupt, if the general provisions of the current bankruptcy law are simply applied and the special protection of the legal rights and interests of the lessor is ignored, it will be difficult to set up the right to choose the manager to fairly protect the rights and interests of the creditors and safeguard the society as a whole. The ultimate goal of interest. Based on the purpose of protecting the interests of the lessor in the unfulfilled lease contract, this article draws on relevant extraterritorial legislation, and attempts to construct a special system related to the unfulfilled lease contract in the bankruptcy process, in order to protect the legal rights of the lessor and avoid the lessor from taking Excessive self-reliance measures to further realize the effective protection of the interests of related third parties (such as the sub-tenant in the "Long-term rental apartment" case).

2. Establishment of Lessor-specific Ex-rights after Bankruptcy Commencement

According to Article 42 of the Enterprise Bankruptcy Law, the scope of CCP debts for unfulfilled contracts is limited to the debts arising from the bankruptcy administrator's choice to continue to perform the contract. On the contrary, the debts incurred before the administrator exercises the option are not in its scope. Inside. Therefore, in the case of the lessee's bankruptcy, regardless of whether the bankruptcy administrator chooses to terminate the contract or continue to perform the contract, the lessor's rights to the rent due before the commencement of the bankruptcy proceedings are all ordinary bankruptcy claims and require the administrator to claim Declaration, and other ordinary claims will be paid equally in the liquidation process. The creditor's rights arising from the unfulfilled contract before the initiation of bankruptcy have no special features in principle compared to the general maturity creditor's rights, so they can be regarded as ordinary bankruptcy credits without additional protection. However, the rent claims in the lease contract are indeed different from other outstanding contract claims, because the rent claims are essentially the consideration of the lease right with the property of property rights, and the lease right is the use of the lessor's transfer of the subject matter and the right to income. That is to say, the lessee enjoys the use and income value of the subject matter that belongs to the owner. Although the income belongs to the lessee's use results to a certain extent, its ownership should belong to the lessee, but it is undeniable The value of the income also depends on the subject matter itself, so the lessor also enjoys part of the value of the income, which is reflected in the form of an agreed rent. Therefore, unlike general claims based on the debtor's liability property, rent claims are based on the use and income value obtained by the lessee's lease of the subject matter. The use and income value should be used as a guarantee for the realization of the rent claim. When the person's other property is not enough to pay off the rent claims, the use of the leased property and the value of the proceeds as the debtor's property can only be used to pay off the rent claims first. In this sense, the use of the leased property and the value of the proceeds can be understood as guaranteeing the realization of the rent claims. Collateral. If it is certain that the lessor's rental claims are secured using the leased property and the value of the proceeds, according to the principle of Ex-rights in the bankruptcy law, the rental claims have the right to be paid independently of the liquidation process and have individual priority after the commencement of the bankruptcy proceeding. The scope is the use and income value of the leased property before the initiation of the bankruptcy proceeding. The establishment of Lessor-specific Ex-rights in the bankruptcy proceedings can provide the lessor's rental claims with greater protection compared to general claims, thereby encouraging the lessor to apply to the court for

initiation of the bankruptcy proceedings as a creditor, because it serves as the basis for the exclusion. The security right should be the mortgage right in the security real right in nature. However, since the establishment of a general mortgage right requires the expression of the intentions of both parties, there is no legal fact that the lessor has the security right before the application for bankruptcy proceedings. Only based on the event that the court accepts the bankruptcy application and the corresponding legislative provisions in the bankruptcy law can the security right be established in the form of a legal mortgage [3]. Regarding the definition of the scope of collateral, it can be roughly divided into the following two categories: (1) Direct income value, that is, the income directly obtained by the lessee from using the leased property, such as the rent obtained by the lessee subletting the leased property. When the lessee is able to pay the rent to the lessor in accordance with the contract, the rent generated by the legal subletting belongs to the lessee, but once the lessee delays in paying the rent, the lessor shall be allowed to enjoy the priority right to be paid for the rent paid by the sub-lessee. Article 719 of my country's "Civil Code and Contracts" stipulates that if the lessee defaults on rent, the sub-lessee can pay the lessor on behalf of the lessor. This regulation actually shows that the rent of the sub-tenant and the rent of the lessee are essentially the same, is the value of the income generated by the leased property, which is only obtained by the lessee and the lessor respectively, and the two only exist in time order, so it is certain that the lessor uses the rent of the sub-lessee as a guarantee for the realization of its own claims. Due to the "Long-term receipt and short-term payment" operation method of Long-term rental apartments, ordinary tenants generally have already paid most of the rent when the sublease contract is established. The rent paid by ordinary tenants is removed from the bankruptcy property, so that they enjoy priority in repayment. This not only ensures that the landlord's rent claims can be realized, so that the landlord will not terminate the lease contract on the grounds of delay in performance, but also avoid the problem of claiming secondary settlement from ordinary tenants when directly applying the provisions of Article 719 of the "Contracts". (2) Indirect income value. This type of collateral mainly refers to the property added by the lessee to assist the use of the leased property, such as the decoration and movable property added by the lessee to the leased property. Article 562 of the German Civil Code stipulates that "the lessor shall, based on the rent creditor's rights, have a security real right to the lessee's additions" [4]. Article 1101 of Austria's "Common Civil Code" stipulates that "in order to guarantee rent, the lessor of real estate shall have a security right in the decoration and movable property added by the lessee and his co-resident family members" [5]. The reason why the property added by the lessee can become the value of income is because the use value of the property depends on the lease item itself. In other words, if there is no lease item provided by the lessor, the lessee's additional property has no independent use value, so it can be considered that based on the additional property, the lessor enjoys a certain rent creditor's right in return. When the creditor's right cannot be realized, the additional property becomes the guaranty of the rent creditor's right. For the lease contract concluded between the landlord and the Long-term rental apartment, the Long-term rental apartment is often obligated to renovate and renovate, so that ordinary tenants can move in directly after renting, and improve the market competitiveness of the rental housing. The ownership of the furniture and decorations added by the Long-term rental apartment belongs to the Long-term rental apartment. After the normal performance of the lease contract, the landlord may return the addition to the Long-term rental apartment when it retrieves the house, or pay additional beneficial expenses to obtain the ownership of the addition. However, when the Long-term rental apartment falls into bankruptcy, the addition can only be retrieved by the administrator as bankruptcy property and will be distributed at a discount during the liquidation process. If the lessor can exercise the exclusive right of exclusion of the addition, the property value is generally sufficient to pay off Rent claims and changes in the ownership of the added property will not affect the lessor's delivery of it to the

sub-lessee for continued use, so that the normal life of ordinary tenants will not be affected by the bankruptcy of the Long-term rental apartment while the lease contract is maintained. Influence.

3. Establishment of Lessor's Deposit Guarantee in Bankruptcy Proceedings

As mentioned in the previous article, after the bankruptcy administrator chooses to continue to perform the contract, the lessor's right to rescind is limited only to the lessee's delayed performance of newly generated rental claims. The creditor's rights generated after the administrator decides to continue the performance belong to the common-benefit claims. Since the common-benefit claims and the bankruptcy expenses are paid at any time, the realization of the common-benefit claims is relatively safe under the circumstances of the existence of the debtor. The difference is that when the bankruptcy property is relatively insufficient, the lessor's rental claims are indeed in danger of not being realized. At this time, if the lessor is admitted to rescind the lease contract, the protection of the lessor's interests can be achieved, but it does not rule out that it will damage the contract. For the interests of the three persons, if the ordinary tenant as the sub-tenant may be terminated due to the termination of the lease contract, he may face the question of whether his sub-lease contract continues to be valid. In order to reduce the possibility that the lessor may terminate the contract due to the unfulfilled rental claim, the bankruptcy law generally provides for the protection of the lessor's shared creditor's rights. Article 18 of my country's "Corporate Bankruptcy Law" stipulates that when the contract continues to be performed, the counterparty can request the administrator The provision of corresponding guarantees can be regarded as the protection of the common-benefit claims of the counterparties of the contract. However, my country's bankruptcy law does not specify the types of guarantees provided by the administrator. Therefore, it can be considered that the guarantees are in principle existing guarantees, including guarantees, deposits, deposits and other guarantees and money guarantees. As mentioned above, the guaranty for the creation of the lessor's common-benefit creditor's rights will separate the collateral from the bankruptcy property due to the ex-rights. Even if there is a balance after the rent is paid off, other creditors cannot receive the guaranty on an equal basis with the lessor. Compensation. If it is believed that the lessor's common-benefit claims have priority over ordinary creditors in the order of repayment, so it can enjoy the priority of the security real right for repayment, then what is the legitimacy of the lessor's right to preferential repayment compared to other common-benefit creditors. The guarantee provided by a third party outside the lease contract is generally the safest guarantee method for the lessor, but there are also certain risks in judicial practice, mainly because the most widely used guarantee method in practice is the group company and the subsidiary. Guarantee guarantees provided by companies or between parallel affiliated companies, and such guarantees are often reciprocal or one-person multi-guarantee. Because of the problem of information asymmetry [6], it is difficult for creditors to know the guarantor's property status and the relationship with the debtor. If the guarantor's liability property is insufficient, its creditor's rights may not be realized normally. Compared with guarantees and collateral rights, money guarantees such as deposits have certain special advantages. (1) Deposits can be deposited in a separate account of the lessor, which can keep the collateral under the control of the creditor and prevent the debtor from concealing and transferring the property It can also avoid the danger of mixing the deposit with other properties of the lessor. If the lessor goes bankrupt, the lessee has the right to withdraw the deposit. (2) The deposit is divided in advance and supplemented afterwards. It is different from the division of the subject matter of the security property at a variable price. As the subject matter of currency, the division of the deposit is easier. Under the premise of

fully guaranteeing the lessor's common interest, non-deposit property Part of it can be directly used to pay off the debts of other common-benefit creditors. In addition, the lessor and the lessee can only agree on the maximum amount of the deposit. The lessee does not need to pay the entire deposit at one time. Instead, the lessor exercises the right to claim the deposit supplement based on the tenant's performance of the rent debt, thereby reducing the amount of deposit payment. The reduction of bankruptcy assets has adversely affected the rights and interests of other creditors. (3) The deposit can be directly used to pay off the debt when the lessee breaches the contract. The amount of the deposit agreed between the lessor and the lessee should be limited to the scope of one rent payment. When the lessee delays in the payment of the rent debt, the lessor controls The deposited deposit can directly offset the debt, and after the lessor legally terminates the lease contract, there will be no new delayed debt. The lessor will withdraw from the bankruptcy procedure if the interests are not damaged. Different from Article 18 of my country's "Corporate Bankruptcy Law", major civil law countries such as Germany and Japan do not provide for the guarantee system in unfulfilled contracts. When the person decides to continue to perform the contract, the contractual relationship between the non-insolvent party and the insolvent party will of course be governed by the general provisions of the contract law. The civil codes of Germany, Austria and other countries all stipulate the rent guarantee system, and its specific content is also reflected in the payment of part of the rent in advance to provide financial guarantees. Article 16b of the Austrian "House Rental Act" made this in a more direct way, "the lessor may agree to pay a deposit with the lessee for future claims based on the lease relationship" [7]. In addition, the long-existing deposit model in my country's housing leasing market also provides a practical basis for building a monetary guarantee system in bankruptcy procedures, but compared to my country's traditional civil legislation, the lease responsibility is more laissez-faire. Attitude, the bankruptcy law should proceed from the protection of social interests and the value of the stability of lease transactions, and make mandatory provisions on the establishment of financial guarantees, the maximum amount, and the liability for breach of contract. On the basis of protecting the lessor's rental claims, the lease should be maintained as far as possible. The continuation of the contract.

4. Conclusion

In the three-party lease relationship between the landlord, the Long-term rental apartment and the ordinary tenant, the most important thing is the validity of the lease contract between the lessor (landlord) and the tenant (Long-term rental apartment). It is willing to continue to maintain the lease contract relationship in order to better protect the ordinary tenant as the sub-tenant. This article is from the perspective of protecting the interests of the lessor, and on the basis of the relevant provisions of the current bankruptcy law on unfulfilled contracts, constructing two systems of the lessor's exemption rights and deposit guarantees in the house lessee's bankruptcy procedures. The establishment of the exemption rights provides special protection for the lessor's claims that is not available in the non-bankruptcy procedure, which is conducive to incentivizing the lessor to apply for initiation of bankruptcy and reducing the possibility of the debtor's "running". The establishment of a deposit guarantee provides a guarantee for the lessor's creditor's rights arising from the continued performance of the lease contract and avoids damage to the interests of other creditors to the greatest extent. Of course, there are still imperfections in the above two systems, which need to be further studied and explored and tested in practice in order to benefit the development of the housing leasing system.

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