

Wang Jia, Huang Yi, Li Bing and Other Partnership Disputes Case Study Report

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Abstract: Partnership has a long history and lasting vitality. The earliest partnership is the product of capitalism and the result of modern commercial trade development. With the development of human society, partnership continues to improve and improve, with the advantages of simple operation, high credit, flexible forms, etc. Today, partnership has become an extremely important form of economic organization in the market economy, widely existing in free industries such as lawyers and accountants. Because of the advantages of partnership, it is widely used, so that the form of development is gradually complicated, and the disputes involving partnership in economic activities are not uncommon. How to protect their own interests and solve disputes legally and effectively has become a problem widely discussed by many scholars and judicial practitioners.

Keywords: Partnership dispute, Join a partnership, Withdraw from a partnership, Distribution of property.

1. Introduction

Under the conditions of modern market economy, as an enterprise form, partnership is adopted because of its simple form, flexible fund-raising, simple start-up procedures and low cost, close internal relationship, stable members, strong internal cohesion and other advantages, and is widely distributed in agriculture, forestry, freelance (lawyers, accountants, doctors), small processing, commodity retail and other industries. Therefore, economic activities involving partnerships or internal disputes are not uncommon. In this paper, the author uses the case analysis to tell how to protect their own interests and settle disputes legally.

2. Case Review

2.1. Brief introduction

Wang Jia, Huang Yi, and Li Bing reached an agreement in October 1996 to raise 80,000 yuan to jointly open a store, of which Wang Jia contributed 20,000 yuan, Huang Yi contributed 25,000 yuan, and Li Bing contributed 35,000 yuan, and the three agreed to share profits and losses according to the proportion of investment. The three parties paid all the investment in the same month and obtained the business license after examination and registration. Due to proper operation, the year-end settlement profit of 5,000 yuan, the three people were distributed according to the agreement.

In February 1997, the three began to disagree. In September 1997, Wang Jia took out a personal loan to buy a car to engage in the sale of fresh commodities. The seafood he transported was rotten and the loss was 40,000 yuan. Wang Jia sold his car to pay off the debt and repay the loan, but he still owed 20,000 yuan to the fishery. In November 1997, Wang Jia privately discussed with Chang Ding to transfer his share of 20,000 yuan of property in the store to Chang Ding, but Huang Yi and Li Bing did not agree. In the case of Huang Yi and Li Bing did not agree, Wang Jia secretly withdrew his own investment of 20,000 yuan. At the end of the same year, the partnership store lost a total of 60,000 yuan. At this time, Li Ping also asked to withdraw from the partnership, the partnership is difficult to maintain. Huang Yi and Li Bing

agreed to obtain goods worth 15,000 yuan and 20,000 yuan respectively according to the purchase price, but did not deal with the partnership debt. Huang Yi and Li Bing asked Wang Jia to share the loss of the store, but Wang Jia refused to share it on the grounds that he had retired and should be shared by Changding.

At the beginning of 1998, the creditor company A, which had business dealings with the store, learned the news of the dissolution of the store, and asked Wang Jia to pay off the 60,000 yuan loan owed by the partnership in 1996. Wang Jia said he had already quit the partnership shop, partnership debt by Changding is responsible, he is not responsible. Company A approached Li Bing, who believed that he would only assume 44% of the debt under the agreement. A company and find Huang Yi, Huang Yi thinks that the debt three people have a share, he does not return, I do not return, to return only to the commodity discount repayment. At this point, Company A sued the people's Court. At the same time, because Wang Jia owed a fishing farm 20,000 yuan debt for a long time, the fishing farm also appealed to the court, requiring Wang Jia to repay the debt [1].

2.2. Focus of dispute in this case

(1) Is it valid for Wang Jia to withdraw from the partnership and Chang Ding to join the partnership?

In the case of Huang Yi and Li Bing did not agree, Wang Jia privately negotiated with Chang Ding and transferred his property share of 20,000 yuan in the store to Chang Ding, resulting in Wang Jia's "withdrawal from the partnership", whether the fact that Chang Ding "joined the partnership" has legal effect is one of the most controversial focuses of the case.

(2) In this case, how should the property be liquidated and the liability for debt repayment be shared?

After the loss of the partnership shop, the partnership is difficult to maintain, and the dissolution of the partnership shall be carried out property liquidation and debt repayment. In this case, after the dissolution of the partnership shop, only the partnership property was divided, but the partnership property was not liquidated, and the partnership debt was paid off. In addition, due to the possible disputes over the

determination of partners, the property was liquidated and the liability for debt repayment was disputed in this case.

3. Case Analysis

3.1. Interpretation of basic concepts

3.1.1. The concept of partnership

Partnership enterprises refer to general partnerships and limited partnerships established in China by natural persons, legal persons and other organizations according to law. A general partnership consists of the general partners, who bear unlimited joint and several liability for the debts of the partnership. A limited partnership consists of a general partner and a limited partner. The general partner shall bear unlimited joint and several liability for the debts of the partnership, and the limited partner shall bear liability for the debts of the partnership to the extent of the amount of capital subscribed by him [2].

3.1.2. Characteristics of partnership

(1) A partnership requires two or more partners to enter into a partnership agreement. A partner may be a natural person, legal person or other organization, but a wholly state-owned company, a state-owned enterprise, a listed company, a public welfare institution or a social organization may not be a general partner.

(2) The partnership shall be jointly funded by the partners. Investment in currency, physical goods, intellectual property rights, land use rights or other property rights may also be contributed by labor services. However, a limited partner may not contribute capital through labor services.

(3) A partnership is generally conducted by a general partner, and a limited partner shall not represent the limited partnership externally without conducting partnership affairs.

(4) Duality of partners' liability forms. The general partner shall bear unlimited joint and several liability for the debts of the partnership; A limited partner shall be liable for the debts of the partnership to the extent of its subscribed capital contribution.

3.1.3. Partnership property

(1) The extent of partnership property [3]

According to the Partnership Law, the property of a partnership consists of two parts: the partner's capital contribution, the income obtained in the name of the partnership and other property acquired in accordance with the law.

(2) Management of partnership property

The property of the partnership shall be jointly managed and used by all the partners; The possession, use, proceeds and disposition of partnership property shall be in accordance with the will of all the partners.

(3) Transfer of partnership property

According to the Partnership Enterprise Law, the external transfer of all or part of the property shares must be agreed by the other partners, and under the same conditions, the other partners have the first right to purchase. When partners transfer all or part of their share of property in the partnership, they shall notify the other partners.

The pledge of a partner's share of property in the partnership shall be subject to the unanimous consent of the other partners; Without the unanimous consent of the other partners, his act is invalid, thereby causing losses to a bona fide third party, the actor shall be liable for compensation according to law.

3.2. Case legal analysis

3.2.1. Determination of the partnership in the case

According to Article 8 of the Partnership Enterprise Law, the following conditions shall be met for the establishment of a partnership: (1) there are two or more partners, and they are all legally liable; (2) There is a written partnership agreement; (3) Capital contribution actually paid by each partner; (4) Having the name of the partnership; (5) There is a place of business and the necessary conditions for engaging in partnership business.

In this case, the defendants Wang Jia, Huang Yi, Li Bing three people in accordance with legal procedures to organize the operation of the partnership shop, in line with the partnership enterprise Law Article 8 of the provisions of the partnership, the three people are a partnership.

3.2.2. Partnership property

According to the provisions of Article 22 of the Partnership Enterprise Law, when a partner transfers all or part of his share of property in the partnership to a person other than a partner, the other partners must agree unanimously. In this case, Wang Jia transferred his 20,000 yuan property share in the partnership shop to Chang Ding without the consent of partners Huang Yi and Li Bing, so Wang Jia's private transfer of property clearly violated the express provisions of the law, and this act has no legal effect.

3.2.3. Admission and withdrawal

According to the provisions of Article 43 and Article 44 of the Partnership Enterprise Law, the admission of a partner shall be subject to the unanimous consent of all the partners, and a written admission agreement shall be concluded between the partner and the original partner, and the new partner shall bear unlimited joint and several liability for the debts of the partnership before the admission. In this case, Chang Ding joined the partnership without the consent of partners Huang Yi and Li Bing, nor did they sign any written partnership agreement, so Chang Ding did not join the partnership and did not have to assume responsibility for the debts of the partnership store.

According to the provisions of Article 45 and Article 46 of the Partnership Enterprise Law, a partner's withdrawal from a partnership requires the unanimous consent of all the partners and shall notify the other partners 30 days in advance. In this case, Wang Jia did not fulfill the obligation of notifying the other partners 30 days in advance, nor did he win the unanimous consent of all partners. At the same time, Article 47 provides that where a partner withdraws from the partnership in violation of the provisions of Articles 45 and 46 of this Law, he shall compensate for the losses thus caused to the partnership. In the case of Huang Yi and Li Bing disagree, Wang Jia privately withdrew his own investment of 20,000 yuan, which is in line with the provisions of Article 47, Wang Jia shall be liable for compensation for the loss caused to the partnership shop.

3.2.4. Dissolution of the partnership and repayment of debts

Article 85 of the Partnership Enterprise Law provides the following reasons for the dissolution of a partnership: (1) When the term of the partnership expires, the partners decide to cease operations; (2) the cause of dissolution agreed upon in the partnership agreement occurs; (3) All the partners decide to dissolve; (4) the partners have not had a quorum for 30 days; (5) The purpose of the partnership agreed upon in the partnership agreement has been achieved or cannot be

achieved; (6) The business license is revoked, ordered to close down or revoked according to law; (7) Other reasons stipulated by laws and administrative regulations.

If the partnership is dissolved, it shall be liquidated by the liquidator. According to the provisions of the Partnership Enterprise Law, the liquidator shall carry out the following affairs during the liquidation period: (1) liquidate the partnership property, prepare the balance sheet and the property list respectively; (2) dealing with the outstanding affairs of the partnership in connection with the liquidation; (3) to settle the taxes owed; (4) to settle claims and debts; (5) dispose of the remaining property of the partnership after the repayment of debts; (6) Participating in litigation or arbitration on behalf of the partnership. In addition, the liquidator shall notify the creditors of the dissolution of the partnership within ten days from the date of its determination, and shall make a public announcement in a newspaper within sixty days.

Regarding the repayment of partnership debts, the Partnership Enterprise Law has the following provisions: (1) The partnership shall first pay off its debts with all its property; 2. If the partnership fails to repay the debts due, the partners shall bear unlimited joint and several liability.

In this case, the partners' decision to disband conforms to the provisions of Article 85 of the Partnership Enterprise Law on the causes of dissolution of the partnership, but the partners' decision to disband only divides the property of the partnership and does not deal with the debts of the partnership. In fact, in this case, the partnership store property of 80,000 yuan, excluding the loss of 60,000 yuan, there is still 20,000 yuan, in accordance with the law, the 20,000 yuan should be used first for the settlement of partnership debts. In 1996, the partnership shop owed A loan of 60,000 yuan to creditor Company A. According to the calculation of time, the debt should be jointly borne by the three partners. For this debt, after the remaining 20,000 yuan of the partnership shop is repaid, the other 40,000 yuan shall be borne by Wang Jia, Huang Yi and Li Bing according to the proportion of investment and personal property. The three partners shall bear unlimited joint and several liability for the debts of 40,000 yuan. As for the debts of 20,000 yuan owed to a

fishing farm by Wang Jia who engaged in the sale of fresh commodities, it is Wang Jia's private behavior and has nothing to do with the partnership. Wang Jia shall bear the liability with his own property.

4. Conclusion

In economic activities, economic disputes and property disputes caused by partnerships are not uncommon, especially in the period of epidemic disease. Due to the restrictions of objective conditions, many micro and small partnerships are faced with difficulties in maintaining income and expenditure, so they choose to break up and have disputes. From the perspective of long-term economic development, properly resolving these disputes and balancing the interests of the parties to the disputes will have great benefits for reigniting entrepreneurial confidence, standardizing the order of the market economy, and promoting the coordinated development of the social economy.

However, in fact, the partnership disputes faced in the real judicial practice are many times more complicated than the above cases, no matter how complicated the case is, in essence, because of the imbalance of interests between the parties, so the role of the law is to stand on the objective point of view, try to adjust and coordinate the imbalance of interests, and promote the development of China's economy after the end of the epidemic.

Acknowledgment

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References

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