

Research on the Contract for the Benefit of Third Parties

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Received 12 November 2018; accepted 25 January 2019

Published online 26 February 2019

Abstract

The relativity of contract has been one of the most important basic principles in the contract law. With the development of social economy, however, the relativity of contract is facing more and more challenges—the complexity of business transactions makes the execution of many contracts related to the third parties, and trying to use contracts to benefit the third parties has become especially common. In that case, several questions are aroused in theory such as whether the contract for the benefit of third parties is rational, and how to build the institution of the contract for the benefit of third parties and so on. Given this situation, this paper explained the rationality and legitimacy of the contract for the benefit of third parties. After comparing the legislative examples in many countries, the paper tried to establish the right system related to the contract for the benefit of third parties, and provided advice on Article 64 of Chinese Contract Law.

Key words: Contract for the benefit of third parties; Rationality and legitimacy; Right system

Li, R. Y. (2019). Research on the Contract for the Benefit of Third Parties. *Canadian Social Science*, 15(2), 73-81. Available from: <http://www.cscanada.net/index.php/css/article/view/10951> DOI: <http://dx.doi.org/10.3968/10951>

INTRODUCTION

A contract for the benefit of third parties, also known as a purely altruistic contract, refers to a contract in which contracting parties agree on payment from one contracting party to a third party, leading to a right of a direct request of payment for the third party. In a contract for the benefit of third parties, the contracting party who should make payment to the third party is regarded as a debtor and acceptor; the contracting party who can ask payment from the other contracting party to a third party is a creditor and offeror; the party who can ask for payment from one contracting party is the third party and beneficiary. The core characteristic of contracts for the benefit of third parties is a right of a direct request of payment for the third party. However, the third party is not a party of the contract.

Medicus summarized two types that really broke through the relativity of contract in his book: “1. The whole debt relationship or any financial claim can come into effect to any third party; 2. A debt relationship or a financial claim can come into effect to a third party in special respect” (Medicus, 2004, p.25). Contracts for the benefit of third parties belong to the second type, where a financial claim comes into effect to a special third party. As we all know, the relativity of contract has been a basic principle in the contract law since modern times. However, what’s the legitimacy of contracts for the benefit of third parties breaking through relativity of contract; is it necessary to establish a system of contracts for the benefit of third parties; in order to realize value of the system, how to design it? This paper includes three parts: legitimacy and necessity of a system of contracts for the benefit of third parties; the right system related to contracts for the benefit of third parties; and analysis of Article 64 of China’s contract law and proposal for its perfection. By historical and comparative analysis, this paper intended to provide a basis for the system of contracts for the benefit of third parties in China.

1. LEGITIMACY AND NECESSITY OF A SYSTEM OF CONTRACTS FOR THE BENEFIT OF THIRD PARTIES

1.1 Legitimacy of a System of Contracts for the Benefit of Third Parties

In Roman law, a debt is called “obligare” meaning “a state of rigid control among parties”. In other words, a debt can and only can come into force of constraint for creditor and debtor. Mottos in Roman law, such as “no person is allowed to sign a contract for other people”, “a contract is independent of a third party” and “people beyond parties in action should not be given interest or non-interest”, also show the relativity of contract, which, in fact, are the initial model of the contract relativity principle. The relativity of contract means that a contract relation only occurs between specific subjects and comes into force for specific subjects. In other words, only parties of a contract can enjoy rights and undertake obligations; mutually request or institute legal proceedings on the basis of the contract. A third party beyond the contract cannot request or institute legal proceedings against parties of the contract according to the contract. This is the most basic difference between the contract relations and other legal relations. It can be seen that in times of unshakable contract relativity principle, contracts for the benefit of third parties featured by a right of a direct request of payment for the third party cannot survive. To acknowledge contracts for the benefit of third parties, the principle of relativity of contract must be broken through. Hence, before acknowledging contracts for the benefit of third parties, it is necessary to state the legitimacy of breaking through the contract relativity principle, which is key to the establishment of a system of contracts for the benefit of third parties in most countries.

By studying the history of origins of contracts for the benefit of third parties in civil law and common law, it was found that breakthroughs of the principle of relativity of contract were different in the two legal systems. Stylization of contract behavior was an initially basic principle of Roman law, a source of civil law. The force of a contracting debt came from “speech and action with to a ceremony”. “The ceremony is not only as important as the contract, but even more important than the contract” (Maine, 1959, p.177). The will of parties is not the basis of the effect of a contract. Hence, the third party who didn’t join contract signing cannot obtain rights from the contract naturally. In *jus gentium*, separation between consensus behavior of *mancipatio* and transfer of rights in *rem* resulted in consensual contracts and the thought of free contracts. In addition, in the 18th century, French civil law was affected by individual-based thought and held that people’s will was the basis of origin and occurrence of rights and obligations. At this time, there formed a solid theoretical basis for acknowledging that a third party

could also benefit from a contract (Wang, 2003). Thus, it can be seen that the principle was broken through from a perspective of autonomy of will in civil law. As common law is also known as judge-made law, it broke through the principle from the angle of justice.

From the perspective of autonomy of will, parties of a contract usually hope that legal effects from the contract belong to them. However, it is not improper to transfer the legal effects to a third party in especially social or economic condition on the principle of autonomy of private law (freedom of contract). Moreover, theoretically, as law accepts transfer of contracts, it’s not reasonable to lay an embargo on contracts for the benefit of third parties on the principle of relativity of contract. Since law permits a party to transfer his or her rights to a third party, there’s no excuse for rejection of original creation of rights for the third party. Creation of rights for the third party is the same as that for the contracting parties (Corbin, 1998, p.197).

From the angle of justice, it can be found that, to acknowledge rights of third parties won’t impair function and effects of the contract relativity principle (the principle of relativity of contract aims at ensuring freedom of civil subjects, avoiding restrictions by obligations that subjects don’t agree to and prevent impairment of benefits of contracting parties and the third party). Instead, it avoids injustice caused by strict application of the principle of relativity of contract, guarantees the will of contracting parties and expands space of autonomy of will of contracting parties. Corbin, the most reputable expert of contract law in the USA in the 20th century, thought, “Thousands of case studies on third-party relief showed that there were no injustice against defendants. On the contrary, the research showed that rejection of relief might go against common concepts of justice and convenience. What’s more, cases of rejection of relief were often regarded as events that strikingly went against existing morality” (p.177).

To sum up, the contract for the benefit of third parties breaking through the principle of relativity of contract is a result of value measurement and its existence is reasonable.

1.2 Necessity of a System of Contracts for the Benefit of Third Parties

Theoretically, there are several systems whose legal effects are similar to those of the system of contracts for the benefit of third parties: contracts for asking a third party to undertake the debt, contracts for transfer of creditor’s rights, contracts with an effect of third-party protection, and contracts giving payment to a third party via the instructed. Basically, these systems adhere to the principle of relativity of contract with an effect of benefiting third parties. In that case, is building a system of contracts for the benefit of third parties necessary?

By comparison between these systems and the system of contracts for the benefit of third parties, the author

gave the following statement to confirm the necessity of a system of contracts for the benefit of third parties:

First, in the occasions such as a contract for asking a third party to undertake the debt, a contract with an effect of third-party protection, and a contract giving payment to a third party via the instructed, though all of these contracts have an effect of benefiting third parties, these beneficiaries don't enjoy a right of claim to ask performing the contract. It means that the third parties can only wait for the fulfillment of the contract by the two contracting parties. Once a promisor doesn't fulfil the contract or fulfil it at variance with its stipulations, the promisor is only responsible for the promisee. The third party can only set up a claim to the promisor via the promisee. Though it doesn't deny the protection of third parties, third parties cannot reach their legitimate interests directly, leading to high costs for litigation. That third parties could enjoy the benefits mainly bases on the following fact: a contract will create some reasonable expectations for a third party and lead the third party to change his or her behaviors (Corbin, 1998, p.183). When a third party does not enjoy a right of claim, the possibility of changing his or her behaviors can be ignored easily. Once the promisee is slack to exercise his or her rights, benefits of the third party cannot be ensured, which goes against the protection of the third party. However, in a contract for the benefit of third parties, the beneficiary can ask the promisor to take the liability for breach of contract directly if the promisor break the contract. It can protect the reliance interest of the third party, according with the basic aim of contract law.¹ In terms of economic significance, the contract for the benefit of third parties can avoid the service charge paid by the third party to the promisee, which is of increasingly important significance for it enhances transactional efficiency and saves costs for fulfilment. To seek maximization of economic value is an important goal for Contract law and even private law.

Second, in respect of cession of the obligatory right, there is no difference of effects on third parties between these contracts and contracts for the benefit of third parties, where all third parties have a right of claim. In terms of effect of contract, they mainly have two differences: 1. They are different in whether a promisor has a right to ask a promisee to pay a third party. This right is of important value in practice. If fulfilment of the promisor for the third party directly involves interests of the promisee, when interests of the promisee are impaired because of refusal of payment to the third party by the promisor: in a contract for cession of the obligatory right, the promisee naturally has no right to ask the promisor for compensation for damages, because the after

transferring the obligatory right, the promise is no longer one of the contracting parties; whereas, in a contract for the benefit of third parties, the promisee can still ask for compensation for damages because of the right of claim. 2. Conditions for beneficiaries to obtain rights are different in the two types of contracts. A contract of cession of the obligatory right cannot come into effect for the debtor until the assignor should inform the debtor of the agreement between the assignor and assignee, which is quite strict. If the debtor refuses to perform the contract on the excuse of no notification by colluding with the assignor, it's difficult for the assignee to defend rights. However, in a contract for the benefit of third parties, as long as an agreement is reached between a promisor and a promisee, the third party can obtain rights, which is in favor of protecting legitimate interests of the third party (Yin, 2001).

In conclusion, these systems with similar legal effects above cannot replace contracts for the benefit of third parties. Contracts for the benefit of third parties have its independent value and function. Due to actual needs, various countries acknowledge contracts for the benefit of third parties.

2. THE RIGHT SYSTEM OF CONTRACTS FOR THE BENEFIT OF THIRD PARTIES

As it is necessary to establish a system of contracts for the benefit of third parties, what a sound system of contracts for the benefit of third parties is like and how to create a system of contracts for the benefit of third parties? Though most countries acknowledge contracts for the benefit of third parties, they have different regulations.²

In section three of Chapter Two: Debt Relations Caused by Contracts of *Allgemeiner Teil des BGB*, it stipulates "promises of payment to third parties" and contracts for the benefit of third parties in detail with 8 articles. According to its Article 328, Clause one, "one party can agree on payment to a third party by a contract, where the third party has a right to ask for payment directly. Whether a third party can have the right; when the third party can obtain the right; and reserved authority for the contracting parties depends on the condition, especially the objective of the contract, if there's no special regulation". In Articles 330-332, rights of third parties are defined in condition of a contract of life insurance, a contract of lifelong regular payment and payment after death respectively. Articles 334 and 335 define the right of defense for promisors and right of claim for promisees. According to Clause one of Articles 537 of Japanese Civil Code, "according to the contract, when a contracting party is asked to pay for a

1 Corbin held that the basic objective of contract law was to realize rational expectation caused by a fulfilled promise (Arthur Linton Corbin (America). Corbin on Contracts. Beijing, Encyclopedia of China Publishing House. 1998, Page 5).

2 As China is mainly influenced by the continental law system, examples in the following paper are relevant regulations in countries and areas of the continental law system.

third party, the third party has the right to ask the debtor for payment directly”. According to Article 1411 of Italian Civil Code, “a contract for a third party is valid, if it is in favor of the contracting parties. The third party has a right opposing the promisor on the basis of force of the contract unless there’s an opposite regulation. However, this contract can be canceled or modified by the contracting parties before the third party express an expectation for interests of the contract”. According to Articles 269 of Civil Code of Taiwan, “if a contract is signed for payment to a third party, the third party has a right to directly ask for payment. This contract can be canceled or modified by the contracting parties before the third party express an expectation for interests of the contract. If the third party tell one of the contracting parties that he or she gives up interests of the contract, it is regarded that the third party has never obtained the right”.

Regardless of different means of expression, it was found that the difference of most countries on contracts for the benefit of third parties mainly focuses on arrangement of rights. The concept of rights is a core concept for civil law and civil law is featured by a huge system of rights. As one of the adjustment objects of civil law, the contract for the benefit of third parties is also based on rights. Next, the paper described a sound system of contracts for the benefit of third parties from a perspective of right systems relating to contracts for the benefit of third parties.

In academic circles, it is controversial that whether a contract for the benefit of third parties refers to a contract with terms relating to interests of third parties or terms relating to interests of third parties in a contract. Prof. Shi Shangkuan and Prof. Huang Li hold that a contract for the benefit of third parties is a contract including terms relating to interests of third parties; Prof. Wang Zejian and Prof. Yin Tian think that a contract for the benefit of third parties only refers to terms relating to interests of third parties in a contract. In Prof. Han Shiyuan’s opinion, “the term ‘contract for the benefit of third parties’ can be used in two conditions and refer to both a contract with terms relating to interests of third parties and terms relating to interests of third parties” (Han, 2004). To avoid mixed application of the term, this paper adopted the first opinion if there’s no special explanation.³ Thus, a contract for the

3 In science of civil law, all “contracts for the benefit of third parties” include contracts of terms relating to third-party interests since the Roman law (See Wang Yi. Rights of the third party beneficiary of the contract of the third party’s interests. A master’s thesis of China University of Political science and Law, May, 2003). In addition, it makes no sense to separate terms relating to third-party interests from basic behavior artificially. On the contrary, it may lead to some disorders. For example, it cannot explain the promisor’s right of defense, based on basic behavior, against third parties. However, we should determine contents of third-party rights in combination with contracts for the benefit of third parties, namely basic behavior. To maintain integrity of demonstration, the first opinion was adopted.

benefit of third parties refers to an ordinary contract that add a third-party term during signing of the contract to change the receiver of payment. The ordinary contract is called basic behavior and the legal relation relating to basic behavior is called a compensation relation. A term relating to interests of third parties has an adjunctive feature and is added into the contract behavior as a type of accessory act.⁴ The contract for the benefit of third parties is not an independent type of contract. It involves three parties: a promisor, a promisee and a third party. It involves rights including a right of performing claim, a right of action for the recovery of damages, a right of rescission, a right of cancellation and a right of defense.

2.1 Right of Performing Claim

The right of performing claim means that the obligee has a right to ask the party with a duty of performance for payment. A contract for the benefit of third parties is formed by an ordinary contract and a term relating to interests of third parties. Hence the contract is to benefit third parties, the creditor (of an ordinary contract—the basic behavior) and the third party should enjoy the right of performing claim in a contract for the benefit of third parties.

2.1.1 Right of Performing Claim for Third Parties

2.1.1.1 Time of Obtaining the Right of Performing Claim for Third Parties

The right of performing claim for third parties is generated when the contract for the benefit of third parties comes into effect, and determined when the third party expresses to either contracting party that he or she is willing to enjoy interests of the contract.⁵ It means that the right of

4 Cause relations involved in contracts for the benefit of third parties: Specifically, there are two cause relations for payment from a promisor to a third party: 1. The relation between a promisor and a promisee (a relation of compensation), which can be of compensation or not. It is the cause relation why a promisor is willing to pay to a third party by contracting with a promisee. The second one is the relation between a promisee and a third party (a relation of consideration). It is the cause relation why a promisee wants a promisor to pay to a third party. Generally speaking, there are two cause relations in a contract for the benefit of third parties. The relation of compensation is a content of contracts for the benefit of third parties and its defects and flaws can affect force of a contract. However, the relation of consideration is not a content of contracts for the benefit of third parties and its defects and flaws won’t affect force of a contract.

5 There’s no unified legislation on the relation between occurrence of rights of third parties and expression of third parties in contracts for the benefit of third parties. Japanese civil law stipulates that rights occur when the beneficiary expresses. Before the expression, there’s no influence on rights of third parties, so contracting parties have a right to modify or cancel the contract (Article 538 of Japanese civil law). In addition, it’s not necessary to come into special force when a third party expresses to refuse the interest. According to German civil law, rights of third parties occur naturally since a valid contract and contracting parties have no right to modify or cancel the contract in principle (see Clause two of Article 328 and Article 331 of German civil law). The author holds that, according to the principle of freedom of contract, it is appropriate that a third party should obtain his or her rights directly since the execution of contract.

performing claim can be obtained directly. In other words, obtaining the right of performing claim requires no pattern of affirmation (Medicus, 2004, p.585).

It is of practical significance to determine the right of performing claim for third parties as a direct claim. "1. As the third party obtain the claim directly, he or she shall obtain it since signing of the contract. Of course, when a third party refuses the claim, it is regarded that he or she has never obtained it. However, a positive reply from a third party is not the basis of generating the claim. 2. In a contract for the benefit of third parties, a successor of one contracting party has no right to reduce interests of beneficiaries or ask beneficiaries to return property. 3. In a contract for the benefit of third parties, a creditor of one contracting party has no right to share rights of beneficiaries. In other words, rights of third parties regulated in the contract don't belong to a part of property of the contracting parties" (Yin, 1995, p.283).

2.1.1.2 Bases of Obtaining a Right of Performing Claim for Third Parties

As a third party is not a contracting party, opinions on bases of obtaining a right of performing claim for third parties are divergent in theory circles.

There are three statements among French scholars. The statement of "transfer" holds that a contract for the benefit of third parties includes behavior of two stages, namely obtaining of a right by contracting parties through conclusion of contract and transfer of the right to the third party (beneficiary). Hence, the basis of obtaining a right of performing claim for third parties is a contract of right transfer between contracting parties and the third party. The statement of "management" thinks that to manage matters of a third party, contracting parties set up a right for the third party. Once the third party accepts the right, the management behavior is approved. The statement of "direct generating of rights" holds that though the third party is neither a contracting party nor the principal of any contracting party, he or she should obtain a right because of the contract. It is an exception of contract relativity and supported by most modern French scholars.

There are four different viewpoints in theories of German civil law. The first one is known as the promise theory and thinks that both contracting parties are offerors who promise the third party a right. The second one is the theory of agency and thinks that the right of third parties should be explained according to the theory of unauthorized agency. That is to say, contracting parties set up a right in the name of a third party and the third party can obtain the right via recognition. The third one holds that a third party obtains a right because of transfer of the right from the promisee. The fourth one is known as theory of direct obtaining, where a third party obtains a right directly because of a contract between the third party and contracting parties. As for reasons for obtaining the right, there are three explanations: 1. It is a unilateral

act of contracting parties for third parties; 2. It is contract behavior (which means that the relation between contracting parties is not opposite but parallel); and 3. The contract should ensure interests of third parties according to law (contract theory). Afterwards, the contract theory became common (Yin, 2001).

In fact, "those controversial doctrines in the past had to apply present legal concepts to subvert convention of the Roman law which is not necessary today" (Wagatsuma, 2008, p.107). According to present theories, the contract comes into effect because of the will of contracting parties, which is already an adequate reason. In other words, as long as contracting parties agree on a third-party beneficiary in the contract, the third party can obtain the right.

2.1.1.3 Expression of Will of Benefiting Third Parties

The expression of will of benefiting third parties is an important condition of determination in a contract for the benefit of third parties, instead of a condition of occurrence or of establishment of the contract. As the contract theory said, because the contract stipulates interests of third parties, the third parties should obtain a right of performing claim directly according to the contract. However, a third party surely has a right to give up the right. Obtaining of the right is not certain before a third party expresses his or her will. In that case, contracting parties can cancel or modify the contract. Once the third party obtains the claim after expression, contracting parties shall not cancel or modify the contract. Similarly, if a third party is not willing to enjoy the right, he or she can express to give it up. As the third party gives it up, it is regarded that the third party has never obtained the right. According to Clause one of Article 255 of Civil Law of the Netherlands, case law of French courts and Clause two of Article 1411 of Italian Civil Law, if a third party refuse the claim,⁶ the claim should be transferred to contracting parties of the contract or other beneficiaries appointed.⁷

The expression of will is the same as that of an ordinary will⁸, which can be explicit or implied. A third party can express to either contracting party (Wagatsuma, 2008, p.114).

6 If a third party only expresses to refuse the payment, it's still possible that the promisor pays his or her debt. The impossibility of payment by the promisor exists only when the third party really refuse the payment. However, it cannot determine that the contract becomes invalid, for the promisee has a right to appoint another third party for the payment or receive the payment by himself or herself (see Discussion on Creditor's Rights. Page 118).

7 Zheng Yubo thinks that if a third party expresses to refuse the payment, it can be regarded that the third party has never obtained the claim, leading to an invalid contract. The promisee also cannot ask for payment. However, if there's a legal relation of basic behavior between the promisee and the promisor, the promisee can ask for payment according to this relation.

8 It is a conclusion drawn according to Clauses two and three of Article 269 of Civil Law of ROC.

2.1.1.4 Content of the Right of Performing Claim for Third Parties

The content of the right of performing claim for third parties is that third parties ask promisors for payment.

2.1.1.5 Nature of the Right of Performing Claim for Third Parties

According to the common theories in civil law systems, the right of performing claim that is obtained by a third party directly should only be the obligatory right.⁹ The right of performing claim has the same legal effect as a general obligatory right. For example, it involves a request of payment, executive power of the claim¹⁰, power of compulsory execution¹¹ and power of acceptance maintaining. Scholars only have different opinions on its possibility of disposition. Most Japanese scholars regard the performing claim for third parties as an exclusive right, for they think the will of contracting parties should be respected. Prof. Wagatsuma Sakae holds that as the right is highly similar to a kind of property, it can be regarded as an object of inheritance as long as wills of successors are respected (Wagatsuma, 2008, p.115). Article 1412 of Italian Civil Law has a similar regulation. The author holds that whether the claim is exclusive should be determined by contracting parties. In addition, if contracting parties appoint that the right must not be transferred, it amounts to a kind of bestowal with obligations for the third party. In the author's opinion, if the third party violates the contract to transfer the right, contracting parties can follow regulations relating to bestowal with obligations. That is to say, though the third party expresses the will to obtain the right, contracting parties can cancel the right.

A contract for the benefit of third parties not only allows a third party to obtain the claim directly, but also add conditional burdens to the right. Generally speaking, a third party only enjoy the right without any obligation, but it's still possible that the third party has to undertake an obligation according to an ancillary agreement. However, the obligation is usually related to obtaining of rights and

9 According to the Pandect of Civil Law by Zheng Yubo, "A contract of ownership cannot be regarded as a valid contract according to our civil law, for delivery (movable property) and registration (real estate) are important elements for transfer of interest in our civil law. The interest cannot be obtained because of the will of contracting parties. However, a request for payment by a third party on the basis of creditor's rights is another issue", which is quite convincing.

10 If impairment of a third party is caused by nonperformance of a contract for the benefit of third parties, the third party can ask for compensation for it without evidence (the first civil court of the Supreme Judicial Court of France, July 18, 2000).

11 Though the state power cannot be applied to forcible realization of a moral request, but can be used to forcibly execute rights of individuals. In addition, after an individual approved, the use is legal. This is the basis of legitimacy for forcible compensation for breach of contract. A promisee enjoys a right to receive compensation and the promisor acknowledges compelling force since execution of the contract.

interests. Especially, the obligation undertaken by a third party shall not impair the interests of contracting parties. Thus, third parties can only broadly express the will to accept the interest, but cannot refuse the conditional obligation.

2.1.2 The Right of Performing Claim Enjoyed by Promisees

There are two types of right of performing claim for promisees: 1. A right of performing claim generated on the basis of basic behavior (compensation relationship) of a contract for the benefit of third parties, where the promisee should be asked for payment in line with basic behavior; 2. A right of performing claim generated on the basis of a term relating to interests of third parties where the promisee should be asked for payment in accordance with the term relating to interests of third parties.

As the first type of right is common that can be generated in any common contract, this section focused on the second type of right.

Though a third party can obtain a direct right of performing claim in accordance with the term relating to interests of third parties, the right of performing claim for the promisee does not change. If there's no special condition, the promisee and the third party have a right of performing claim at the same time. Similar regulations can be seen in Article 335 of German Civil Law and Law of Liabilities of Switzerland.

After a promisor fulfils the payment, the right of performing claim for the promisee becomes invalid (because of the achievement of its goal).

2.2 Right of Action for the Recovery of Damages

As this right is a right of relief when the right of performing claim cannot be realized, it is enjoyed by both promisees and third parties.

2.2.1 Right of action for the Recovery of Damages for Third Parties

When a promisor refuses to pay to a third party or makes payment not accorded with the contract, the third party can ask the promisor to take the liability for breach of contract in his or her own name. If the third party suffers from damages because of the breach above, he or she can ask for compensation.

2.2.2 Right of action for the Recovery of Damages for Promisees

Though both promisees and third parties enjoy a right of action for the recovery of damages, there's difference in contents of their rights. In order to adapt to the right of performing claim generated on the basis of a term relating to interests of third parties, when a promisor refuses to pay a debt to a third party, the promisee can only ask the promisor to compensate for the impairment caused by failure of the payment to the third party. In other words, in a contract for the benefit of third parties, a promisee generally does not enjoy a right of action for the recovery

of damages. This right can be acknowledged only when the promisee has a special interests on the payment to the third party.

2.3 Rights of Rescission and Cancellation

Rights of rescission and cancellation are closely related to interests of contracting parties, so they can only be enjoyed by contracting parties. As third parties are not contracting parties, they cannot enjoy these rights.

Rights of rescission and cancellation may go against the right of performing claim of third parties. For example, when a third party is asking the promisor for payment, both contracting parties may agree on cancellation of the contract, leading to disappearance of contractual obligations. Hence, it's necessary to explain whether the performing of rights of rescission and cancellation needs the agreement of third parties.

2.3.1 Rights of Rescission and Cancellation For Promisees

2.3.1.1 Right of Rescission

Contracting parties enjoy two types of right of rescission: a. Right of rescission of an ordinary contract (basic behavior); b. Right of canceling appointment of a third party by contracting parties.

The first type applies to conditions stipulated in Article 54 of Chinese Contract Law. As the right is caused by defective expression of will during basic behavior of contracting parties, it can be executed by a promisee regardless of the agreement of a third party. After rescission, both basic behavior and the term relating to interests of third parties attached to the basic behavior become invalid. If the payment has been made, contracting parties can ask the third party to return it. If the third party cannot return it, he or she should compensate for it. This right is a right of formation.

The second type will be no longer in force once the third party makes a positive reply. In other words, once the beneficiary expresses to accept the contract, his or her rights cannot be rescinded. To execute this right, the beneficiary can ask contracting parties to perform their obligations of the contract. This is an inevitable conclusion considering the protection of third-party's reliance interest. If contracting parties cancel the appointment of a third party before a positive reply from the third party, the right of rescission can be enjoyed by the contracting parties or another third party according to the will of the contracting parties.

2.3.1.2 Right of Cancellation

Execution of the right of cancellation is complex. Prof. Shi Shangkuan holds that it shall not be executed unless the third party agrees. In other words, there's no right of cancellation in principle. Prof. Wang Zejian divided rights of cancellation into two types: promissory right of cancellation and legal right of cancellation. A promissory

right of cancellation is caused by compensation relations and not restricted by terms relating to interests of third parties. Therefore, execution of the right by either contracting party does not require approval of the third party (Sun, 1998, p.162). After careful research, Prof. Wang holds that if a third party express to accept interests of a contract, an approval from the third party is necessary for promisees to cancel the contract. It aims at considering and protecting interests of third parties, which doesn't impair promisees as well. This paper also agreed with Prof. Wang's statement.

2.3.2 Rights of Rescission and Cancellation for Promisors

A promisor mainly plays a role of performing obligations in a contract for the benefit of third parties. According to the basic behavior, a promisor should pay to the promisee as requested by the promisee; According to terms relating to interests of third parties, a promisor should pay to the third party as requested by the promisee or the third party. If a promisor fails to pay the debt or pay at variance with regulations, he or she should take the liability for breach of contract to the third party. If the promisor causes impairment of the promisee, he or she should take the liability for breach of contract to the promisee. It seems that a promisor enjoys few rights (Yang, 2008, p.117), but he or she also enjoy rights of rescission and cancellation as a promisee does. During execution of rights of rescission and cancellation, a promisor and a promisee enjoy the same status. However, during execution of a right of cancellation, even a third party has given a positive reply, there's still no need for a promisor to seek approval of the third party. As a promisor is opposite to a third party, to seek approval of the third party may impair interests of the promisor (Wang, 1998, p.162).

It should be noted that, though civil law regulates that effects of ineffectiveness and cancellation cannot go against a kind third party sometimes, a promisor can resist any third party. This is because rights of third parties are generated from the contract directly. In other words, the third party doesn't obtain new relations because of invalid trust or canceled legal behavior (Wagatsuma, 2008, p.116).

2.4 Right of Defense

A right of defense can prevent the force of a right of claim and is opposite to a right of claim (Zhang, 2000, p.74). In a contract for the benefit of third parties, the promisor shall enjoy this right.

Specifically, though a third party obtains independent rights in a contract for the benefit of third parties, his or her rights are based on the contract between the contracting parties. The contract between the contracting parties is a basis of rights of third parties. Hence, a promisor shares the same status with an ordinary debtor when he or she executes a right of defense against third parties.

3. ANALYSIS ON ARTICLE 64 OF CONTRACT LAW OF CHINA AND SUGGESTIONS FOR ITS PERFECTION

According to Article 64 of Contract Law of China, “after contracting parties agreed on payment from a debtor to a third party, if the debtor fails to pay the debt or pay to the third party at variance with regulations, he or she should take the liability for breach of contract to the third party.” In this Article, the condition that the payment is made via the instructed is certain. Due to the concise description of the Article, it is still controversial that whether it involves contracts for the benefit of third parties. Lots of scholars think that this Article is based on the principle of relativity of contract and excludes a right of performing claim for third parties. Thus, there’s no general regulation relating to contracts for the benefit of third parties in general provisions of Contract Law of China. However, after interpretation in terms of texts, systems, legal meanings and comparison, Prof. Han Shiyuan holds that the Article doesn’t exclude a right of performing claim for third parties. In other words, it involves two conditions: payment via the instructed and contracts for the benefit of third parties (Han, 2004). Prof. Wang Liming agrees with this opinion. (Wang, 2003, p.55) However, it is a fact that this Article has no exact words about contracts for the benefit of third parties. Also, it doesn’t define how to sign a contract for the benefit of third parties and rules relating to the contract. Related rules in China is greatly different from those in foreign countries of civil law. In view of the fact that contracts for the benefit of third parties with multiple functions are common in industries of transportation and insurance etc. in China, it is necessary for China to draw lessons from foreign countries of civil law during civil legislation in combination with China’s national condition to define contracts for the benefit of third parties.

In order to perfect the system of contracts for the benefit of third parties, the author suggests:

First, revise or add judicial interpretation to Article 64 of *Contract Law of China* and make general provisions for contracts for the benefit of third parties:

After contracting parties agreed on payment from a debtor to a third party, the promisee can ask the promisor to pay to the third party; the third party directly enjoys a right of performing claim against the promisor when the contract comes into effect. If there’s no exact term relating to interests of third parties, the contract shall follow its nature and transaction practices.

Contracting parties can cancel or modify the contract before the third party express to accept his or her interests.

If a third party tells one of the contracting parties that he or she doesn’t want to enjoy interests of the contract, it is regarded that the third party has never obtained the claim. The promisee can ask the promisor for payment or

appoint another third party to receive the payment, unless there’s additional agreement.

If a promisor fails to pay the debt or pay at variance with regulations, the third party has a right to ask him or her to take the liability for breach of contract.

The promisor has a right of defense against beneficial third parties according to the contract.

In addition, specific contracts for the benefit of third parties, such as contracts of transportation, can be detailed in specific provisions or special law.

CONCLUSION

The principle of relativity of contract is an important principle for contract law and plays an important role in understanding of civil law and common law. However, with the development of social economy, the system of contracts for the benefit of third parties has broken the principle. By stating legitimacy and necessity of a system of contracts for the benefit of third parties, this paper holds that establishment of this system not only shows respect to contracting parties, but also provides an exact legal basis for protecting reliance interests of third parties, enhancing transactional efficiency and reducing costs for fulfilment. Though establishment of this system may impact the principle of relativity of contract, contracts for the benefit of third parties are only exceptions when the principle cannot meet some reality needs. However, the organic combination between contracts for the benefit of third parties and the principle of relativity of contract leads to present flexible application of the principle of relativity of contract to modern market economy and perfection of the system of contract law.

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