

Study on the Recognition of Reservation Contracts and Liability for Breach of Contract

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ABSTRACT

The reservation contract is a contract signed by both parties before the signing of the present contract, which is aimed at the preliminary confirmation of matters related to the transaction, and then the present contract will be signed in the future when the conditions are fulfilled. Reservation contract and the contract is the appointment and the relationship between the contract, its contract purpose, contract content, rights and obligations, liability for breach of contract and other aspects of the big difference. But in practice, the contract is a reservation or the contract is a common focus of controversy and difficulties, the nature of the contract of different determinations, will lead to different results. This paper combines "chengdu xunjie communication chain co., ltd and sichuan shudu industry limited liability company, sichuan youli investment holding co., ltd house purchase and sale contract dispute re-examination case",¹ the reservation contract analysis, and according to the actual case on the breach of contract liability issues for analysis and research, and the reservation contract and the contract of contract boundaries. It also analysed and studied the issue of liability for breach of contract in the light of the actual case, distinguishing between the reservation contract and the contract, and clarifying the liability for breach of reservation contract.

KEYWORDS

reservation contract; determination; appointment vs. principal contract; breach of duty

1 Reflections on the case of Chengdu Xunjie Communication Chain Co., Ltd. and Sichuan Shudu Industry Co., Ltd. and Sichuan Youli investment Holding co..Ltd.

This case is a retrial case handled by the Supreme People's Court in 2013, this case is a judgement on the contract for the sale of commodity houses, the buyer and the seller signed the Agreement on the Purchase of a House, the buyer has paid part of the money, the seller delivered the house, the agreement on the purchase of the house agreed on the vast majority of the contents of the contract for the sale of housing, including: the house, the price of the contents of the house, etc., but there is a sentence expressing that "the two sides will sign a formal house sale contract". Now the buyer asked the seller to handle the transfer procedures, the seller refused. The buyer filed a lawsuit to require the seller to fulfil the contract. The courts of first and second instance upheld the buyer's request, holding that the purchase agreement was a contract for the sale of a house and that the seller should handle the transfer procedures for the buyer. The seller applied for retrial and the Supreme Court rejected the buyer's request. The reason is: the buyer and seller of the purchase agreement even if more detailed, clear, contains almost all of the main content of the housing sales contract, but as long as in the agreement mentioned the two parties to the future to sign a formal contract for the sale of housing, then the contract is an appointment, as the appointment of the party can only request the other party to enter into a formal contract, and can not be based on the content of the contract for the sale of housing to fulfil the obligations of the contract for the sale of housing.

After an in-depth analysis of the judgement of the Supreme People's Court, we can conclude that the nature of the "Agreement on the Purchase of a House" in question is not a contract but an appointment. Appointment is a kind of agreement signed in advance in order to be able to reach some kind of contract in the future. Appointment form is rich and varied, some terms may only briefly express the intention of the parties in the future to further negotiations and enter into a formal contract; while others are so detailed as to cover almost all the content of the future formal contract. From the point of view of substance, although the latter may not yet be exhaustive in certain details, their certainty is close to being equivalent to that of a formal contract. Any unspecified aspects can also be further supplemented and clarified by means of contractual interpretation. Therefore, it is not sufficiently accurate to judge whether a contract is an appointment or a principal contract solely on the basis of its level of detail. In fact, in defining whether a contract is an appointment or a formal contract, the most central consideration lies in the true intention of the contracting parties. This requires us to scrutinise whether the parties plan to enter into a more informative and detailed agreement in the future, based on the framework of the current agreement, so as to clarify the rights and obligations between the contracting parties. Therefore, in assessing the nature of the Purchase Agreement, we need to take into account the wishes of the parties as well as the specific terms of the agreement to ensure that its legal status is accurately judged. Despite the fact

¹ See: The Supreme People's Court (2013) Mintizi No. 90 retrial civil judgment.

that there is a high degree of similarity between the contents of the reservation contract and the present contract, and to a certain extent, some or all of the contents of the present contract can even be deduced by means of contractual interpretation, when both parties to the contract expressly state that they will enter into the present contract in the future, we should fully respect and follow the true intention and expression of both parties.

In this case, although the buyer and the seller signed the Agreement on the Purchase of a House is very similar to the formal contract of sale and purchase in terms of actual content, and even covers the key elements, such as the area of the house, the price and the location of the house, and so on, the appearance of even need not be in the conclusion of a formal contract and the direct implementation of the agreement. However, the parties expressly agreed in the agreement that "the parties will negotiate further under the framework of this agreement on the contract of sale and purchase of the house, as well as on the mode of payment. This agreement will automatically expire when the parties sign the contract for the purchase and sale of the house." As can be seen, although the parties to the contract made an agreement on key elements such as the price, location and area of the house, they also made it clear that they would negotiate further in the future on the payment method and the content of the contract. In addition, the parties in the agreement also have in the future to conclude a formal contract to further determine the specific content of the legal relationship between the two sides of the house sale. From this, we can judge the nature of the "house purchase agreement" is a reservation contract, the first and second instance judgement that the nature of the "house purchase agreement" for this contract is wrong.

Therefore, as we know from this case, the courts of first and second instance found that the Agreement to Purchase a House was an appointment, and found it to be a contract for the purchase and sale of a house, thus requiring the seller to register the transfer of the house for the buyer. The Supreme People's Court ultimately held that the agreement was an appointment and that the seller should not be required to fulfil its obligations under this contract to register the transfer of the house for the buyer. It is not difficult to see, the subscription agreement of the contract dispute, the subscription agreement is a reservation or the contract there is a certain dispute, but also a common difficulty and focus of the issue. And subscription agreement of different nature, will lead to different results. According to the case, different judgement results will also lead to different performance of the agreement or contractual obligations, and even for the breach of contract party will often produce different liability. This article combines the case, the reservation contract for the determination and its liability for breach of contract analysis and research.

2 Definition of the concept of a reservation contract

(i) The concept of a reservation contract

In China, the development of the reservation contract clearly reflects the phenomenon that practice precedes legislation. With the rapid growth of the market economy and the prosperity of the real estate industry, a series of practical problems prompted the emergence of the reservation contract as an innovative form of contract. Since then, the reservation contract has been widely used not only in the real estate industry, but also gradually played an important role in other industry sectors. However, it is worth noting that although the reservation contract has been widely recognised in its practical application, its legal status will not be clearly legally recognised and regulated until the official implementation of the Civil Code in 2020.

Article 495 of the Civil Code clearly defines the form of the reservation contract², including the subscription, order, reservation, etc., which are essentially embodiments of the reservation contract. Although the article does not directly define a reservation contract, it makes clear the core element of a reservation contract: an agreement between the parties to enter into a formal contract at a future point in time. This legal definition has been widely recognised in legal and academic circles. Famous jurists Mr Shi Shangkuan and Professor Wang Zejian both believe that a reservation contract is essentially an agreement between the parties, the core of which is to set the basis for a new contract in the future. This view emphasises the contractual nature of the reservation contract, i.e. it is a kind of pre-planning and promise for a future contract³. Professor Wang Liming further elaborated the connotation of reservation contract, he emphasised that reservation contract is not only limited to the written agreement, but also can be expressed as the promise or agreement between the parties⁴, this interpretation of Professor Wang Liming deepened our understanding of the reservation contract, indicating that whether it is a written agreement or verbal promise, as long as it conforms to the substantive

² Article 495 of the Civil Code : the subscription book, order book, reservation book, etc., which the parties agree to conclude within a certain period of time in the future, constitute an appointment contract. If one party fails to fulfill the contractual obligation agreed in the pre-contract, the other party may request it to bear the liability for breach of the pre-contract.

³ Shi Shangkuan : ' Preface to the Law of Obligation ', China University of Political Science and Law Press, 2000 Edition, p. 13. Wang Zejian : ' Principles of Law of Obligation (Vol.1) ', China University of Political Science and Law Press, 2001 Edition, p. 147.

⁴ Wang Liming : ' Research on Several Issues of Precontract - Commentary on Relevant Provisions of Judicial Interpretation in China ', ' Legal Business Research ' No.1,2014, p. 60.

elements of the reservation contract, that is, it constitutes a binding reservation contract. This understanding is of great significance to legal practice, as it ensures the versatility and flexibility of the reservation contract and enables it to better adapt to various complex business scenarios.

Based on the above viewpoints, it can be considered that the reservation contract is a contract with the nature of reservation that the parties, in order to ensure the smooth progress of the transaction, agree by way of agreement or promise to sign a formal contract when the time is ripe in the future. Its main purpose is to achieve the transaction goals initially set by the parties and to ensure the final conclusion of the contract.⁵

(ii) Characteristics of reservation contracts

The reservation contract, as an atypical contract, does not have the nature of a typed form of transaction; it is the contracting procedure associated with all typical contracts. In the system of the Civil Code, the reservation contract is placed in the general rules of the Contracts Chapter, an arrangement that shows that it still belongs to the category of contracts by nature. Therefore, we should still follow the basic provisions and principles of the general contract in the application of the norms of the reservation contract.

The main features of the reservation contract are as follows: First, the reservation contract is independent. Although the main purpose of the reservation contract is to reach a formal contract, i.e., the principal contract, at some point in the future, the reservation contract itself is not subsidiary to the formal contract, but exists as an independent contract. Appointment is only a means, and the contract is the ultimate goal. Second, the reservation contract embodies the two parties have the consent. Consensual means that the reservation contract must be based on the establishment of the two sides of the same intention, unilateral intention can only constitute an offer and can not constitute an appointment. As a form of contract, the reservation contract must comply with the will of the parties, should respect the consent of the parties, and unilateral offer to make a distinction. Third, the reservation contract has a promissory, promissory contract is in the two sides on the transaction conditions to reach a unanimous agreement, that is established and legally binding form of contract. Reservation contractand need to actually deliver the subject matter of the practical contract has the essential difference. The characteristic of the promise contract is that it can produce legal effect even without the actual performance of the act. For the reservation contract, it usually appears in the process of negotiation between the parties on the transaction matters, due to certain conditions have not matured, the parties can not immediately reach a complete formal contract. In this situation, based on the equality, voluntariness and true consent of both parties, the parties will reach an agreement on the future signing of a formal contract. The establishment of the reservation contract is centred on the consent of the parties, rather than the actual delivery of the subject matter. This feature enables the reservation contract to provide legal security for the signing of a formal contract, rather than directly involving the delivery of property in the transaction. Therefore, as long as the parties have reached a true and consistent agreement, the reservation contract is established, without relying on the actual delivery of the subject matter. Fourth, the reservation contract is obligatory. The main goal of the reservation contract between the parties is to provide a legal guarantee for the future conclusion of this contract. Therefore, they usually expressly agree in the reservation contract that a new formal contract will be concluded in the future. Here, the object of the reservation contract is actually a positive obligation to act, i. e. the parties to the contract undertake to actively fulfil their obligation to conclude the present contract at a predetermined point in time or period in the future. If any party fails to fulfil this obligation, it is regarded as a breach of contract, need to bear the corresponding liability for breach of contract. V. The content of the reservation contract is clear. Since the ultimate goal of the reservation contract is to reach a formal contract, its content must contain sufficiently clear information to facilitate the formation of a formal contract. If the content of the reservation contract is ambiguous, may lead to the parties in the subsequent negotiations need more consultation, thus losing the significance of the reservation contract. Sixth, the reservation contract is of a limited duration. When entering into a contract, efficiency is the common goal pursued by both parties. If there is no clear agreement in the reservation contract that a formal contract will be reached within a certain period of time, this will not only harm the time interests of both parties, but may also lead to disputes and difficulties in the period of performance.

3 Recognition of reservation contracts

In the process of contractual transactions, the reservation contract and the contract of this contract play different roles, which are both independent and interrelated. In order to clearly define the two, we can refer to the guidelines provided by the Supreme People's Court in the Judicial Interpretation of the Contracts Section of the Civil Code. The Interpretation clearly states that when both parties have clearly expressed in the agreement their intention to enter into a specific contract at a specific time in the future, and have already determined the subject matter, subject matter and other key

⁵ Zhao Jingguang : ' On the liability for breach of contract of appointment contract ', master 's degree thesis of Shanxi University, 2024.

elements of the contract to be signed, such an agreement should be classified as an reservation contract. On the contrary, if the parties have not made a clear agreement on the signing of the future contract, or even if there is an agreement, but one party has already begun to substantially perform the contractual obligations and is recognised by the other party, and the main terms of the contract have been clearly defined, such an agreement should be regarded as the reservation contract. Such a definition helps us to understand and apply the relevant provisions of reservation contract and the present contract more accurately.

In practice, the distinction between a contract being a reservation or a principal contract is not always clear-cut. Although several common forms of reservation contracts are listed in Article 495(1) of the Civil Code, such as subscription, order, reservation, etc., we should avoid simply judging the name of the contract mechanically to determine whether it is a reservation contract. However, it is denied that the book of purchase, book of order, booking book necessarily constitutes a reservation contract, we should avoid simply by the name of the contract to judge its nature mechanically, but should be in-depth investigation of the contract content whether it is in line with the essence of the reservation contract characteristics. This requires us to carefully analyse the terms and conditions of the contract and explore the real intention of the parties when entering into the contract, so as to accurately judge whether the contract constitutes a reservation contract. In the above case, when both parties signed the Purchase Agreement, although the key elements of the house, such as location, area and price, etc., were agreed upon, there was still a clear intention to express that further negotiation would be carried out in the mode of payment and so on. In addition, both parties also have a clear intention to sign a formal contract in the future to further clarify the specific content of the housing business relationship. From this it is easy to see, the case of "purchase agreement" is not the contract, the nature of the contract should be appointment. Therefore, in this case, the parties can only request the other party to enter into a formal contract, but can not be based on the contract for the sale of housing to fulfil the obligations of the formal contract.

4 Liability for breach of reservation contract

(i) Overview of liability for breach of reservation contract

As a kind of contract, when the parties to the contract fail to fulfil their agreed obligations, they should naturally bear the corresponding liability for breach of contract. However, when such a breach of contract refers specifically to the failure to conclude the main contract in accordance with the requirements of the reservation contract, the nature of its liability is different from the general contract breach. Liability for breach of contract refers to the unfavourable legal consequences of a party's breach of its obligations under the contract. Article 495, paragraph 2, of the Civil Code clearly states that if one party fails to fulfil its obligation to conclude the contract under the reservation contract, the other party has the right to demand that it be held liable for breach of contract under the reservation contract. This provision reflects the legal importance of the reservation contract, which, by clarifying the liability for breach of contract, incentivises the parties to the contract to engage in sufficient amicable negotiation prior to the conclusion of the main contract and to actively perform their obligations to conclude the main contract, thus realising the legal value of the reservation contract.⁶

(ii) Boundary between liability for breach of the reservation contract and liability for breach of the principal contract

According to the foregoing, the reservation contract is independent, i.e., it is not subordinate to the present contract, but is a contract that is interrelated to the present contract but has a separate legal status. The differences between these two contracts in terms of liability for breach of contract will be discussed below from three different angles.

Firstly, there is a difference in the way in which liability for breach of contract is recognised in the reservation contract and the present contract. For the reservation contract, the breach of contract mainly focuses on the failure of one party to fulfil its obligation to enter into the contract in accordance with the agreement, and the liability for breach of contract at this time is more regarded as a way to seek legal remedies for the defending party. In contrast, the liability for breach of contract is more extensive, and both parties may be involved in a breach of contract for failure to perform on time or for defective performance. Unless there are force majeure and other legal exemptions, both parties to the contract shall bear the corresponding legal liability for their respective breaches. This difference reflects the different emphasis on the determination of breach of contract and the assumption of liability between reservation contract and the present contract.

Secondly, when exploring the scope of damages, there is a clear difference between reservation contract and the present contract. In the case of the original contract, both the theoretical and practical circles generally agree that the breaching party is liable for the loss of actual performance benefits caused by the breaching party. However, in the context of the reservation contract, the academic community has not yet formed a unified view on the basis of damages.

⁶ Guo Zhensheng : ' Research on the application of liability for breach of precontract ', master 's thesis of Shanxi University of Finance and Economics, 2024.

Some argue that compensation should be based on reliance interests; while another school of thought favours performance interests as the measure of damages. This divergence reflects the complexity and diversity of the issue of damages in the context of reservation contracts.

Finally, there are significant differences between reservation contract and principal contracts when discussing the forms of liability for breach of contract. In the case of the present contract, the form of liability for breach of contract usually covers a variety of ways such as continuation of performance, remedial measures (e.g., repair, replacement, reworking, etc.), and compensation for damages. However, due to the unique contractual nature of the reservation contract, it does not directly apply to all forms of liability for breach of contract in the contract. For example, remedies such as repair, replacement and reworking are not common in the case of a breach of the reservation contract. In addition, there is also some controversy and disagreement between academics and practitioners as to whether compulsory performance as a form of liability applies to reservation contract. This difference emphasises the uniqueness and complexity of the reservation contract in terms of the form of liability for breach of contract.

(iii) Manner of application of liability for breach of reservation contract

Continued fulfilment

Continuing performance means that when one of the parties fails to perform a contractual obligation or when there exists an obligation the performance of which is not in accordance with the agreement, the other party may request performance. As a possible measure, the effectiveness and immediacy of continuation of performance has attracted much attention in protecting the fulfilment of the purpose of the contract. However, in the academic world, there are different academic views on whether the continuation of performance should be applied as a form of assumption of responsibility after the default of the reservation contract. On the one hand, some scholars propose that it is not appropriate to take the continuation of performance as the form of liability for breach of the reservation contract for the following reasons: firstly, the essence of the reservation contract is the act of agreeing to enter into the present contract in the future, and forcing a party to enter into the present contract may be in violation of the principle of contractual voluntariness; secondly, if the defaulting party is forced to enter into the present contract, it may lead to more contractual disputes, and instead exacerbate the negative impact of the breach of the contract; and lastly, the reservation contract's obligations are non-pecuniary in nature and their continued performance is subject to certain limitations that may make them unsuitable for enforcement.

The view was also expressed that it was reasonable to support the continuation of performance as a form of liability for breach of the reservation contract. Firstly, the reservation contract itself is founded on the principles of voluntariness and good faith of both parties, and the parties should fulfil their promises; secondly, some international countries, such as Germany, also support the continuation of performance for the breach of the reservation contract, and compel the parties to reach the contract of this reservation through the court's judgement; and lastly, taking into account that the purpose of the reservation contract is to conclude the present contract, if the continuation of performance is completely excluded as a form of liability, it will weaken the practical significance of the reservation contract.

The application of continuing performance should be determined on a case-by-case basis and should not be generalised. Where the reservation contract has specified the key terms of the present contract, such as subject matter and quantity, the court may decide to establish the present contract directly. For other non-critical elements, it can be resolved through the rule of filling contractual loopholes. Therefore, in the absence of special provisions in the Civil Code on the liability for breach of reservation contract, the continuation of performance, as a general form of liability for breach of contract, has its own space and reasonableness for application in the breach of reservation contract.⁷

Compensation for losses

Damages for breach of contract means that the party in breach of contract shall be liable for damages in accordance with the law or according to the provisions of the contract for losses caused to the other party as a result of the non-performance or incomplete performance of the contractual obligations of the party in breach of contract. When one party fails to fulfil its obligations under the reservation contract, the non-defaulting party has the right to request damages. On the scope of the reservation contract damages for breach of contract, there are different views in academia and practice. When the reservation contract has clearly agreed on the monetary compensation or the calculation method of damages in case of breach of contract, the court shall respect the intention of the parties and deal with it according to the agreement of both parties. If both parties believe that the actual loss is inconsistent with the agreed damages, the court may make appropriate adjustments with reference to the relevant adjustment rules for liquidated damages.

When no damages clause has been expressly agreed upon in the reservation contract, liability should normally be determined on the basis of the principle of statutory damages. Statutory damages, i.e. the liability of the party in breach of the contract for all losses suffered by the injured party as a result of the breach of the contract, are provided for by law. According to article 584 of the Civil Code, such damages shall cover all losses suffered by the injured party as a result of

⁷ Zhu Guangxin : ' Appointment contract and its liability for breach of contract ' , ' Social science research ' 2024.

the breach of contract, including foreseeable benefits. However, the character of the reservation contract lies in the fact that its subject matter is primarily the act of entering into the contract of this reservation rather than the direct fulfilment of the content of the contract of this reservation. Therefore, there is a controversy in the academic community as to whether the scope of damages for the present contract should include the foreseeable benefits of the reservation contract. One view is that the reservation contract can be regarded as the contracting stage of the contract, and its liability for breach of contract should be mainly limited to the loss of benefits arising from the relationship of reliance, and it is not appropriate to extend to the possible benefits that may be expected from the contract. The view was expressed that there was a close connection between the reservation contract and the present contract, the fundamental purpose of which was to facilitate and ensure the successful conclusion and performance of the present contract. Therefore, in assessing the scope of damages for the reservation contract, reference could be made to the benefits that might arise from the performance of the reservation contract.

With regard to the first view, we agree that there is a significant difference in the nature of the reservation contract and the liability for negligence in contracting. Therefore, in assessing the liability for breach of contract under a reservation contract, we cannot simply equate the scope of damages with the scope of compensation under the liability for negligence in contracting. As a separate type of contract, the determination of liability for breach of contract and the scope of damages should be based on its own characteristics and contractual agreement. For the second view, we also recognise the uniqueness of the reservation contract and its close connection with the contract. Although a reservation contract is an independent contract, it often exists for the purpose of concluding the contract in the future. Therefore, in determining the scope of damages under the reservation contract, we need to make a judgement in conjunction with the specific content of the reservation contract. Specifically, if the content of the reservation contract is close to the reservation contract and the contract cannot be concluded only because certain conditions are not yet ripe, then the scope of damages can be moderately referred to the scope of damages of the reservation contract if it is not possible to continue to perform the reservation contract. However, if the reservation contract only involves the intention to conclude the contract in the future and does not involve the main content of the contract, then the scope of damages should be based mainly on the direct damage caused by the breach of the reservation contract, and should not be overly extended to the benefits that may be gained from the performance of the contract. In conclusion, the damages of the reservation contract should follow the general principles of contract law, namely, the principles of full compensation, foreseeability and compensation. In concrete operation, we should reasonably determine the scope of damages of the reservation contract according to its actual situation and contractual agreement, in order to safeguard the legitimate rights and interests of the parties to the contract.

In summary, in the case of Chengdu Xunjie Communication Chain Co., Ltd. and Sichuan Shudu Industry Co., Ltd. and Sichuan Youli Investment Holding Co., Ltd., the issue of the application of continued performance in the context of liability for breach of contract also existed. According to the facts of the case and the court judgement, "the purchase agreement" is a reservation contract, the seller does not perform the signing of the formal contract obligations of the breach of contract, the buyer can require it to continue to perform the reservation contract obligations, that is, the signing of the formal contract. And should not require the seller to fulfil the obligations of the contract for the sale of housing, that is, for the transfer of registration. Reservation contract and formal contract belong to each other independent contract, there is a breach of contract should be based on the specific circumstances of the breach of contract responsibility, and should not be confused with the two liability for breach of contract.

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