

Analysis of Normalized Construction of Major Misunderstandings in Compilation of Civil Code

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Abstract. Major misunderstandings have a direct impact on the effectiveness of the exercise of court power and social justice. As the core issue in the system of legal acts and the autonomy of private law, in the actual process of compiling the *General Provisions of Civil Law*, the major misunderstandings should be treated correctly and the disputes among major misunderstandings should be effectively resolved. In this paper, the connotation of major misunderstandings will be analyzed, and through the typical cases heard by the Supreme People's Court on the "major misunderstanding", the judgment standards for major misunderstandings in the current Civil Code will be drawn forth, and the potential limitations will be explained. Through summary and references, the new standard contents of perfecting the judgment standards of the current major misunderstanding are put forward, so as to promote the perfection of the Civil Code.

Keywords: Civil Code; Major Misunderstanding; Normative Standards

1. Introduction

Under the rule of law in China, all the activities of citizens should be carried out strictly in accordance with the requirements of the Constitution and the Law. In the actual exercise of power and the trial of cases, the Supreme People's Court of China shall carry out a comprehensive trial to major misunderstandings and all kinds of risk allocation affairs on the basis of the Constitution and the Law. Under the background of the compilation of the Civil Code, it is necessary to take into account the formulation standards of each volume of the Civil Code on the basis of the interpretation and construction of major misunderstandings. From the perspective of legislative theory, whether the provisions of the General Provisions of Civil Law concerning major misunderstandings can be effectively applied to common mistakes is discussed. In the context of the compilation of the Civil Code, it is very necessary to explore the relevant contents of the "major misunderstanding" in the Civil Code, and improve the limitations of the "major misunderstanding" to ensure the fairness, unity and legality of the Civil Code.

2. Connotations of Major Misunderstandings

The so-called major misunderstandings are the contracts drawn up by the parties due to misunderstanding of the contents of the contracts due to their own faults. Under the great misunderstandings, it will inevitably lead to the damage of the interests of the parties to the contract, which directly affects the rights and obligations that the parties should enjoy. Objectively speaking, the

major misunderstandings can be either unilateral or bilateral. The major misunderstandings belong to the scope of civil law, and the determination of major misunderstandings in law must be carried out without the intention of the parties; if the parties intend to do so, it is classified as a fraud^[1]. The major misunderstandings must be inconsistencies in the understanding of the content of the contract, as the law does not care about the misunderstanding of the ineffective meaning of "motivation". However, to a certain extent, the "motivation" can be transformed into the "effect", which constitutes the scope of consideration at the legal level. First, under external intervention, motivation is transformed into the actual effect. Second, it is generally recognized that it can become the element of legal act is that the recognized motivation has the legal act, and the motivation becomes the effect.

The major misunderstandings, as the revocable act at the legal level, are also the legal causes of the revocation of civil acts. In Article 59 of the *General Provisions of Civil Law of the People's Republic of China*, it is clearly stipulated that the "major misunderstanding, apparent injustice, fraud, coercion" and other acts are revocable in the expression of will in civil law. In general, for the parties who have major misunderstandings, they have the right of revocation in accordance with the Law, and because the parties withdraw, so the project does not have legal effect. The legal effects of revocation caused by major misunderstandings are as follows: (1) The parties to a serious misunderstanding may cancel the legal act they have done, but they shall not cancel the legal act voluntarily in case of gross negligence^[2]. For example, if the parties do not sell the shares in accordance with the contents of the *Articles of Association of Enterprise Legal Person*, they can't revoke the law on their own. (2) The major misunderstandings arising from the rapid and large number of transactions should be revoked in strict accordance with the provisions and restrictions, otherwise, it will cause transaction security problems. For example, there are major misunderstandings in securities trading. (3) The legal revocation of major misunderstandings is only applicable to the revocation at the economic and property level. If it involves personal rights and interests, it is necessary to respect the true wishes of the signer. If the signer does not intend to revoke the contract and insists on pursuing responsibility, Then the provisions of *Article 59 of the General Provisions of the Civil Law of the People's Republic of China* are invalid^[3]. (4) There are major misunderstandings between the two parties, which need not be revoked in principle, because at the level of intention, it has lost its legal effect. (5) If the exercise period of the right of revocation of major misunderstandings is in the period of exclusion, not the period of limitation, the events that exceed the legal period and do not exercise the right of revocation shall not be exercised again inside or outside the lawsuit and advocate revocation.

3. Typical Cases Heard by Supreme People's Court on "Major Misunderstandings"

In view of the major misunderstandings, the author retrieved the keywords of "major misunderstandings" on the Internet and obtained more than 200 results, which involved all aspects of social and civil cases. Among the civil "major misunderstanding" cases, the author selected several representative typical cases, and analyzed the risk distribution agreements, the medium-large judgments and the causes of responsibilities of the relative persons in several cases.

3.1. Case of "Major Misunderstandings" of Auction Bid

In view of the case of "major misunderstandings" of the auction bid, in this paper, the "Rizhao Zhongrui Property Co., Ltd. V. Zhejiang Product Yuantong Automobile Group Co., Ltd." and the "Spontaneous Combustion Case of Yongzhou Underground Coal Seam" were taken as cases. The two cases of "major misunderstandings" in the auction bids were analyzed in detail

(1) In view of the auction contract dispute case of the "Rizhao Zhongrui Property Co., Ltd. V. Zhejiang Product Yuantong Automobile Group Co., Ltd.", and the problem of "the content of nickel in nickel ore does not conform to the description of the contract" which is the most important dispute in this case, the Buyer, Zhongrui Company, wanted to revoke the contract between the two parties on the grounds of fraud and major misunderstandings^[4]. In the course of hearing the case, the Supreme Court held that because the auction company had made a corresponding statement of defect guarantee, and Zhongrui Company, which had participated in the bidding, had given corresponding approval to the

statement. Therefore, the major misunderstanding of "auction quality" from the Buyer, Zhongrui Company, is not valid.

(2) In view of the "Spontaneous Combustion Case of Yongzhou Underground Coal Seam", what has caused controversy is that the spontaneous combustion of the underground coal seam should have occurred before the auction of the mine involved in the case, but the phenomenon of spontaneous combustion has not been completely eliminated. The Seller only set up a closed wall to deal with the problem of spontaneous combustion. In addition, the Seller did not disclose the spontaneous combustion problem in the mine, resulting in the Assignee not knowing that the spontaneous combustion problem occurred in the coal seam^[5]. In view of this problem, the Buyer asked the Seller to cancel the contract on the grounds of fraud and major misunderstandings. In view of this case, the Supreme Court held that in this case, although the bidder carried out a preliminary survey of the situation of the mine before buying the mine, because of the closed wall, the Buyer did not detect the spontaneous combustion problem in the mine. Although, in the "Bid Application", the Buyer did not object to the current situation of the mine, because the Seller did not really put forward the current situation of the mine, so this case had the right to revoke the contract between the two parties on the basis of major misunderstandings.

In view of the two cases of the auction contract dispute case of the "Rizhao Zhongrui Property Co., Ltd. V. Zhejiang Product Yuanlong Automobile Group Co., Ltd." and "Spontaneous Combustion Case of Yongzhou Underground Coal Seam", the buyers sued and demanded the revocation of the contracts one after another. The reason why the trial results of the two cases are different is to be determined by combining the agreements of risk distribution and the trading habits between the parties, the faults of the parties and so on.

3.2. *"Major Misunderstanding" Case on Signing A Settlement Contract.*

In view of the "major misunderstanding" case of signing a settlement contract, the author selected the case of Yantai Huihe Silk Co., Ltd. V Yantai Xinqiao Group Co., Ltd., as an example, and made a detailed analysis of the case. In view of this case, the biggest problem is that Qiu, the responsible person of Huihe Silk Company, made the corresponding commitment in view of his own breach of contract. Qiu said that "within the time limit to perform the contract task and no longer claiming the residual debts on the ground of its breach of contract." When Qiu realized that although he delayed fulfilling his obligations, but did not commit a crime, he applied to revoke the above commitment on the grounds of "major misunderstandings" and asked Xinqiao Group to repay the residual debts.

In view of this case, the Supreme People's Court believed that the reason for Qiu's issuance of the "Letter of Commitment" was that Qiu lacked the corresponding legal consciousness and believed that he abandoned the huge interests in the "Letter of Commitment.", which could make up for his responsibility for delaying his obligations. Because of the misjudgment caused by the lack of correct legal awareness, the "Letter of Commitment" was issued, and it was considered that the letter of commitment could reduce or waive criminal liability^[6]. Because the "Letter of Commitment" issued by Qiu was a promise made on the basis of his own wrong cognition, the "Letter of Commitment" belonged to the category of major misunderstandings and could be revoked.

The reason why the Supreme Court ruled the case "major misunderstandings" was that the "Letter of Commitment" was evaluated as within the scope of the change contract, because Qiu signed the change contract on the basis of misperception. Therefore, its nature was of major misunderstandings^[7]. However, in this case, it needs to be clear whether Qiu himself has criminal responsibility and whether the misunderstandings are caused by his assumption of criminal responsibility.

4. Judgment Standards of "Major Misunderstandings"

4.1. *Existing Standards for Judging "Major Misunderstandings"*

In view of the judgment standards of "major misunderstandings", there are mainly three levels of

standards for the analysis of its judgment elements in the field of academic and legal practice in China.

(1) Wrong Objects and Significant Adverse Consequences.

Its main content is that the "major misunderstandings" should be analyzed from the two levels of the specific situation of the misunderstanding objects and the significant adverse consequences caused by misunderstandings.

(2) Subjective and Objective Standards

The so-called subjective standard is that if there is no major misunderstanding, the signor will not sign a contract with the partner, will not make an expression of that meaning, and will not agree to the content of the agreement. For the objective standard, that is, the signor of the same status, on the basis of no major misunderstandings, will not make a decision of consent at the rational level.

(3) Objective Standard.

As far as the objective standard is concerned, the standard thinks that it should be judged on the basis of the economic purpose of contracting and the objective standard of transaction.

4.2. Limitations of "Major misunderstandings" in Current Civil Code

Through a lot of practice and academic research, the above two major misunderstanding judgment standards are recognized in the academic field. However, in the Civil Code, there are still some limitations and problems in view of the above judgment standards.

(1) Limitations of "Wrong Objects and Major Adverse Consequences"

In view of "wrong object and major adverse consequences", there are some limitations in the interpretation based on Article 71 of the *Opinions on Several Issues in the General Provisions of the Civil Law of the People's Republic of China*. Article 71 of the *Opinions on Several Issues in the General Provisions of the Civil Law of the People's Republic of China* does not clearly subdivide the nature of relevant behaviors, the other party, the type of contract goods, the quality of goods, the specifications of goods, the quantity of goods and other aspects, so that in the judgment process of major misunderstandings, there is a sense of ambiguity that hinders the judgment of major misunderstandings^[8]. In view of the limitations of "wrong objects and major adverse consequences" in the Civil Code, we can explore them from the following levels. (1) The control of the type of error should be dealt with by the "error result" as a specific judgment element, not by the medium and large elements.

(2) In view of the "major adverse consequences", although this specific standard has been expounded in the Civil Code, it does not accurately reveal the essential connotation and abstract characteristics of materiality, resulting in the errors in the judgment of "major adverse consequences"^[9].

(3) The juxtaposition of important elements and causality in the Civil Code is easy to cause the problem of overlap between the elements.

(4) Limitations of "Subjective and Objective Standards"

In view of subjective and objective standards, they are abstract standards to judge major misunderstandings. The key difference between the two lies in whether or not to recognize the independent causal elements in addition to the important elements. Mr. Shi Shangkuan, a famous civil jurist in China, once put forward that "the errors, whether they are errors in content, behaviors or content, whether subjective or objective, should be measured as serious misunderstandings." Another jurist, Mr. Wang Zejian, believed that "if the error is limited to the transaction level, it is listed as an important misunderstanding, and there is a causal relationship between the error and the expression of will." There is a certain difference in the judgment of "importance misunderstanding" between the two jurists. One jurist believed that "severity already contains subjective standard," while another believed that "the level of the transaction can only be classified as an important misjudgment.", and recognized causality^[10]. Therefore, on this basis, both subjective and objective standards are indispensable in the actual judgment of "major misunderstandings". The subjective and objective standards cannot be carried out independently, and it is necessary to carry out the measurement of subjective and objective standards scientifically and reasonably on the basis of objective standards. The causal relationship

between the error of the wrong party and the expression of the will needs to be independent.

4.3. Normalized Construction of Major Misunderstandings

(1) Constructing the Standard of "Honest and Trustworthy Rational Person"

In order to judge the "major misunderstanding" standard more clearly, the rational person standard and the relative person identifiability standard should be closely combined, and the relative person identifiability standard requirements should be attached to the rational person standard. Drawing lessons from the first clause of Article 119 of the *German Civil Code*, it is clear that "according to reasonable judgment", it is judged by the standard of rational person who is "uninfluenced by obstinacy, subjective emotion and foolish ideas". In view of the second article of Article 119 of the *German Civil Code*, the "important nature of the transaction" of the person or thing is to judge the "major misunderstandings" from the objective level, indicating the economy of the "major misunderstandings" ^[11]. Therefore, in order to improve the standards for judging "major misunderstandings" in our civil code, we can actively learn from the excellent legal provisions and regulations of other countries. From the objective level of "economic transactions.", and aiming at the subjective level of "honesty and credit, fairness and justice", the standards of "major misunderstandings" are analyzed.

The standard of "honest and trustworthy rational person" should be adopted, and the "relative person identifiability standard" should not be adopted or attached. From the subjective and objective levels, and rational and objective identification cases, the rational person standard also reveals the connotation essence of objective importance more profoundly, and is generally recognized in the process of the actual transaction. In addition, honesty and trustworthiness are also consistent with the moral standards of our society, which can not only show the good nature of human beings, but emphasize the honesty of human beings. From the rational and perceptual, objective and subjective levels, major misunderstandings are judged comprehensively ^[12]. In the process of actual judgment, the following aspects should be analyzed and expounded on the basis of the standard of "honest and trustworthy rational person". The main results are as follows: (1) whether the actual situation deviates from the content of the contract shall be analyzed, and on the basis of ensuring the honesty and trustworthiness of the parties, the objective importance of the mistake shall be paid attention to. (2) it is clear whether the error is the factor that leads to the unrealizability of the contract, and whether the purpose of the contract is to realize the common interests of both parties. In addition, the attention should be paid to whether the two parties uphold the moral basis of "honesty and trustworthiness" when signing the contract. (3) all the wrong things have caused the imbalance of the contract, and when there is a major mistake again, whether there is an imbalance of interests between the two parties of the transaction. In the construction of "honest and trustworthy rational person" standard, and in the actual development of standard judgment, we should really seek truth from facts, fairness and justice.

(2) Clarifying Responsibilities of the Parties Involved.

After the occurrence of major misunderstandings, the civil law should judge the responsibilities of both parties involved in the judgment. For the motive errors caused by the relative person, the imputation of major misunderstandings should be combined with the thinking mode of "dynamic system theory", the important mistakes and the persons involved in different cases, and carry out targeted imputation. After judging whether the person concerned meets the standard of "honest and trustworthy rational person", the reasonable consideration shall be given to the content of the error, the form of transaction, the specific case and the seriousness of the error. When the important elements meet the higher conditions, the attribution of the relative person cannot be considered; in the low coincidence degree of the important elements, the relative person should be supplemented by the rules and causes. If there is no objective causal relationship between error and expression of will, then even if the liability of the relative person is very strong, it does not constitute a major misunderstanding. If the accountability of the relative person is continuously enhanced, and even leads to malicious fraud, then the interaction between the importance of the error and the accountability of the relative person forms a qualitative change, and the opponent should make financial compensation to the fraudulent

party.

5. Conclusions

In short, in order to ensure the clarity of the compilation of the Civil Code and avoid major misunderstandings, we should not only analyze the "major misunderstandings" existing in the current judicial practice. Moreover, we should also draw lessons from the thinking mode of "dynamic system theory" and strictly carry out the adjustment of *General Provisions of Civil Law*. The excessive abstract content is clearly defined, the hierarchical constitutive elements are constructed, and the risks existing in the practice are comprehensively assessed in the *General Provisions of Civil Law*. In time, we should find out the limitations of the standards of "major misunderstanding" in the current Civil Code, construct the standard of "honest and trustworthy rational person", clarify the responsibilities that both parties involved should bear, constantly improve the content of our Civil Code, and use legal weapons to ensure social fairness and justice.

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