

Legal and Economic Analysis of Compulsory Performance of Contract Law

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Abstract: Compulsory performance is one of the main remedies for breach of contract, which has the same status as the remedies for damages. Law and economics argue that the choice of compulsory performance should focus on its efficiency. Compulsory performance has obvious efficiency in promoting contract investment and maximizing the benefits of the parties. Compared with other remedies for breach of contract, it is more conducive to achieving the purpose of the contract in specific cases. The provisions on compulsory performance in China's contract law reflect the principle of freedom of contract and fully respect the right of choice of the parties.

Keywords: Compulsory performance; Remedies for breach of contract; Economic efficiency; Law and Economics

Introduction

Compulsory performance is one of the main economic measures for breach of contract in both civil law system and common law system. Article 107 of the Contract Law of the People's Republic of China stipulates that if a party fails to perform its contractual obligations or fails to perform its contractual obligations in accordance with the agreement, it shall bear the liability for breach of contract such as continuing to perform, taking remedial measures or compensating for losses. In the case of breach of contract or damage caused by contract, one of the injured parties can take the following actions: refuse to perform its contractual obligations; Claim for damages Or according to the remedy means in the law of abrogation, the compulsory performance of the contract or the issuance of an injunction are required, that is, many scholars believe that China should pay attention to the application of actual performance, and advocate that the purpose of obtaining the contract should be realized by actual performance, in order to maintain the performance interests of the parties, the security of the transaction and the stable development of the economy. However, many scholars have also proposed that compulsory performance as a remedy for breach of contract does not have the primary status, nor must it be adopted. At the same time, the application of compulsory performance must meet a series of conditions. This paper uses the economic analysis method to analyze the efficiency of compulsory performance. Combining the actual application of compulsory performance and the provisions of China's contract law, it further shows the economic efficiency, selectivity and applicability of the remedy measures for compulsory performance.

1. Understanding of Compulsory Performance Provisions in China's Contract Law

In the literal order, Article 107 of the Contract Law of China seems to regard compulsory performance (continued performance) as the primary remedy for breach of contract, but in the linguistic sense, continued performance, remedial measures or compensation for losses are of equal importance. That is, the remedy measures such as continuing to perform, taking remedial measures or compensating for losses are equally applicable. The basis of the choice is the choice of the parties or the provisions of the law. In addition, the court needs to consider the actual situation of the contract. In the Anglo-American law system, compulsory performance is one of the methods of compensation for the victims of breach of contract in equity. The court must decide whether it is necessary to take this relief, and this relief is the exercise of the exclusive discretion of the equity court, That is, when the compensation for damages is not "sufficient compensation", the remedy can be obtained. It is obvious that the compulsory performance in China's contract law is based on respect for the freedom of contract, and the parties are given the right to choose the remedy, which is not entirely the result of the court's discretion, and is different from the compulsory performance in the Anglo-American law system.

The provision of Article 110 of the Contract Law highlights this idea, and requires that the issue of cost and benefit must be considered while giving the court discretion. This article stipulates that if a party fails to perform a non-monetary obligation or the performance of a non-monetary obligation does not conform to the agreement, the other party may demand performance, except in one of the following circumstances: it is unable to perform in law or in fact; The subject matter of the obligation is not suitable for compulsory performance or the cost of performance is too high; The creditor does not require performance within a reasonable time. That is, in the case of non-monetary debt breach, because of the poor substitutability of the subject matter, that is, the uniqueness emphasized by the Anglo-American law system, the non-breaching party can demand performance, that is, the non-breaching party can choose to perform compulsorily or not, from the perspective of legal provisions, the breaching party can be required to perform compulsorily or apply to the court for compulsory performance. The exception of this proviso is the specific provisions from the perspective of economic efficiency. If the contract cannot be performed legally or in fact, if the compulsory performance will inevitably bring extreme performance costs, and the performance costs exceed the performance benefits, the contract purpose cannot be achieved at all, which is contrary to the original intention of the remedy for breach of contract; The subject matter of the obligation is not suitable for compulsory performance or the cost of performance is too high, which is also the uneconomic situation under the consideration of cost and benefit. The subject matter is not suitable for compulsory performance, which will inevitably lead to high cost of performance. The cost of performance is higher than the benefit of performance, and the efficiency target of compulsory performance relief will be lost; The creditor's failure to request performance within a reasonable period of time is due to the full consideration of the time cost and opportunity loss, and the provision of the creditor's contractual obligations, which reflects the obligation requirements of both parties to maximize the common profits of the contract.

2. Application of Compulsory Performance

Although some people believe that the remedy of compulsory performance can produce balanced investment incentives for both parties, and advocate the application of compulsory performance in more commercial relations, they also believe that compulsory performance has few requirements for the court, and only requires the court to supervise the performance. However, some scholars pointed out that, in fact, due to the high administrative execution costs, compulsory performance is rarely used as a relief measure in Denmark, Germany, France and the United Nations Convention on Contracts for the International Sale of Goods (CISG) of the civil law system. As Kurt and Yulun said, in practice, because different legal systems follow the same economic logic, each law will provide for the choice of compensation for damages in some cases and compulsory performance in other cases. This is fully reflected in China's contract law. As for the application of compulsory performance, there is basically agreement in theory. Schwartz believes that the feasibility of compulsory performance stems from three reasons. First, in many cases, compensation for damages is insufficient; second, the way in which the promisor requests compulsory performance to show that compensation for damages is inadequate; third, the promisor has more information than the court on the appropriateness of compensation and the difficulty of compulsory performance, The court should respect the choice of the parties. In summary, when the damages are not enough to compensate the losses of the breaching party, or the non-breaching party requests compulsory performance, or the compulsory performance is more reasonable economically, or the subject matter of performance is unique, the compulsory performance is applicable. According to the provisions of China's contract law, contracts that can be attributed to the transfer of property or the provision of remuneration, namely, monetary contracts, can be applied to compulsory performance, while non-monetary contracts can be applied conditionally. In short, compulsory performance is the right of creditors of monetary debts. Creditors can request performance or waive this right. However, in non-monetary debts, creditors' right to request compulsory performance is restricted by legal conditions.

2.1 Monetary Debt

Article 109 of the Contract Law stipulates that if one party fails to pay the price or remuneration, the other party may require it to pay the price or remuneration. According to this provision and in combination with Article 110, the non-breaching party here is the party providing goods or services, or the seller. At this time, it has performed its contractual obligations, and the buyer breaches the contract. At this time, the contract can be simply regarded as a sales contract, and the delivery has been completed, but the price or remuneration has not been paid. At this time, the economic significance of applying compulsory performance lies in: 1) low transaction cost. The parties are well aware of their rights and obligations and the other party has sufficient information, and the cost of renegotiation will be very low. Even if both parties negotiate the transaction of the right of performance, it is also conducive to achieving the purpose of the contract and achieving efficiency, because at this time, the benefits of each party are not cost constraints,

but depend on the negotiation ability of both parties. 2) Low supervision cost. The court can impose compulsory performance on such breach of contract, which can be implemented by paying little supervision cost. Because the performance can be completed at one time, even if the payment is made by installments, the court can implement the performance with the help of banks or other financial institutions. 3) The damages may not be sufficient to compensate the non-breaching party. In addition to the liquidated damages, the amount of damages should be calculated by the court, but for the court, the information is seriously asymmetric. The court cannot accurately estimate the value of performance and the psychological expectations of the parties, and may underestimate the loss of the breach, so the purpose of the remedy for breach of contract will not be achieved. Therefore, in the case of such a contract, allowing the non-breaching party to apply for compulsory performance is conducive to achieving the goal of contract efficiency and remedy for breach of contract.

3. Conclusion

Compulsory performance is one of the options of the parties to the contract for remedy for breach of contract. It shows outstanding economic efficiency in specific contracts and plays an irreplaceable role in promoting contract investment, allocating contract risks and maximizing the common benefits of the parties. Because of the renegotiation after default, when the transaction cost is very low and the supervision cost is not high, especially in monetary debt, the application of compulsory performance will be more conducive to the realization of relief purposes. In non-monetary debt, due to the impact of rip-off and other issues, its application is subject to the cost-benefit rules. The provisions on compulsory performance in China's contract law reflect the idea of freedom of contract, show high respect for the choice of the parties, and reflect the consistency and unity of law and economic theory. The paper shows that there is no applicable ranking of compulsory performance and compensation for damages in both theoretical and legislative fields. It is proposed that the application of compulsory performance should be treated differently on the basis of respecting the choice of the parties, according to the specific conditions of the contract, taking into account the efficiency of the contract, and after cost-benefit analysis.

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