

Guiding Case No. 67: Tang Changlong v. Zhou Shihai for Dispute over Equity Transfer 指导案例 67 号：汤长龙诉周士海股权转让纠纷案

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(Issued on September 19, 2016, as deliberated and adopted by the Judicial Committee of the Supreme People's Court)

(最高人民法院审判委员会讨论通过
2016 年 9 月 19 日发布)

Keywords civil; equity transfer; payment in installments; rescission of contract

关键词 民事 股权转让 分期付款 合同解除

Key Points of Judgment

【裁判要点】

Where the transferee delays or refuses the payment of the transfer price in installments for equities in a limited liability company or otherwise defaults, and the transferor requires rescission of the equity transfer contract between them, the provision of Article 167 of the Contract Law of the People's Republic of China that the seller under a sales contract with payment in installments may rescind the sales contract if the amount of installments past due reaches one fifth of the total price should not apply.

有限责任公司的股权分期支付转让款中发生股权受让人延迟或者拒付等违约情形，股权转让人要求解除双方签订的股权转让合同的，不适用《中华人民共和国合同法》第一百六十七条关于分期付款买卖中出卖人在买受人未支付到期价款的金额达到合同全部价款的五分之一时即可解除合同的规定。

Legal Provisions

【相关法条】

Articles 94 and 167 of the Contract Law of the People's Republic of China

《中华人民共和国合同法》第 94 条、第 167 条

Basic Facts

【基本案情】

On April 3, 2013, plaintiff Tang Changlong and defendant Zhou Shihai concluded an Agreement on Equity Transfer and an Agreement on Payment in Installments of Equity Transfer Price, under which they agreed that: Zhou Shihai should transfer 6.35% of the equities of Chengdu Shuangxing Electronic Appliance Co., Ltd. of Qingdao Transformer Group held by him to Tang Changlong, for a total price of 7.1 million yuan to be paid in four installments: paying 1.5 million yuan on April 3, 2013, 1.5 million yuan on August 2, 2013, 2 million yuan on December 2, 2013, and 2.1 million yuan on April 2, 2014. The agreements

原告汤长龙与被告周士海于 2013 年 4 月 3 日签订《股权转让协议》及《股权转让资金分期付款协议》。双方约定：周士海将其持有的青岛变压器集团成都双星电器有限公司 6.35% 股权转让给汤长龙。股权合计 710 万元，分四期付清，即 2013 年 4 月 3 日付 150 万元；2013 年 8 月 2 日付 150 万元；2013 年 12 月 2 日付 200 万元；2014 年 4 月 2 日付

should take effect upon signatures of both parties, and they would never regret. After the conclusion of the agreements, Tang Changlong paid Zhou Shihai the first installment of 1.5 million yuan on April 3, 2013, as agreed on. Since Tang Changlong failed to pay the second installment within the prescribed time limit as agreed on, on October 11 of the same year, Zhou Shihai served a Notice of Rescinding Agreement upon Tang Changlong by notarization to rescind the Agreement on Payment in Installments of Equity Transfer Price on the ground that Tang Changlong committed a fundamental breach of contract. On the following day, Tang Changlong paid Zhou Shihai the second installment of 1.5 million yuan by wire transfer, and performed his obligations of paying the third and fourth installments as scheduled in the agreed amounts. Zhou Shihai refunded the four equity transfer payments made by Tang Changlong on the ground that the Agreement had been rescinded. Tang Changlong filed a lawsuit with the people's court, requesting the court to confirm that the Notice of Rescinding Agreement issued by Zhou Shihai was invalid and order Zhou Shihai to continue performance of the Agreement.

It was also found that on November 7, 2013, in the modification registration (or recordation) of Chengdu Shuangxing Electric Appliance Co., Ltd. of Qingdao Transformer Group, the 6.35% equities formerly held by Zhou Shihai were registered under the name of Tang Changlong.

Judgment

On April 15, 2014, the Intermediate People's Court of Chengdu City, Sichuan Province entered a civil judgment (No. 1815 [2013], First, Civil Division, IPC, Chengdu) to dismiss the claims of Tang Changlong. Tang Changlong appealed. On December 19, 2014, the Higher People's Court of Sichuan Province entered a civil judgment (No. 432 [2014], Final, Civil Division, HPC, Sichuan) that: (1) the original judgment should be revoked; (2) Zhou Shihai's unilateral rescission of the Agreement on Payment in Installments of Equity Transfer Price between both parties should be held invalid; and (3) Tang Changlong should, within ten days after this judgment took effect, pay Zhou Shihai the equity transfer price of 7.1 million yuan. Against the judgment of the Higher People's Court of Sichuan Province, Zhou Shihai filed a petition for retrial with the Supreme People's Court on the ground that the application of law by the court of second instance was erroneous. On October 26, 2015, the Supreme People's Court entered a civil ruling (No. 2532 [2015], Civil Retrial Petition, SPC) to dismiss Zhou Shihai's retrial petition.

Judgment's Reasoning

In the effective judgment, the court considered that the dispute in this

210 万元。此协议双方签字生效，永不反悔。协议签订后，汤长龙于 2013 年 4 月 3 日依约向周士海支付第一期股权转让款 150 万元。因汤长龙逾期未支付约定的第二期股权转让款，周士海于同年 10 月 11 日，以公证方式向汤长龙送达了《关于解除协议的通知》，以汤长龙根本违约为由，提出解除双方签订的《股权转让资金分期付款协议》。次日，汤长龙即向周士海转账支付了第二期 150 万元股权转让款，并按照约定的时间和数额履行了后续第三、四期股权转让款的支付义务。周士海以其已经解除合同为由，如数退回汤长龙支付的 4 笔股权转让款。汤长龙遂向人民法院提起诉讼，要求确认周士海发出的解除协议通知无效，并责令其继续履行合同。

另查明，2013 年 11 月 7 日，青岛变压器集团成都双星电器有限公司的变更（备案）登记中，周士海所持有的 6.35% 股权已经变更登记至汤长龙名下。

【裁判结果】

四川省成都市中级人民法院于 2014 年 4 月 15 日作出（2013）成民初字第 1815 号民事判决：驳回原告汤长龙的诉讼请求。汤长龙不服，提起上诉。四川省高级人民法院于 2014 年 12 月 19 日作出（2014）川民终字第 432 号民事判决：一、撤销原审判决；二、确认周士海要求解除双方签订的《股权转让资金分期付款协议》行为无效；三、汤长龙于本判决生效后十日内向周士海支付股权转让款 710 万元。周士海不服四川省高级人民法院的判决，以二审法院适用法律错误为由，向最高人民法院申请再审。最高人民法院于 2015 年 10 月 26 日作出（2015）民申字第 2532 号民事裁定，驳回周士海的再审申请。

【裁判理由】

法院生效判决认为：本案争议的焦点问

case focused on whether Zhou Shihai was entitled to rescind a contract under Article 167 of the Contract Law of the People's Republic of China (hereinafter referred to as the "Contract Law").

1. Paragraph 1 of Article 167 of the Contract Law provided that: "Where, under a sales contract with payment in installments, the buyer fails to make payments due, if the delinquent amount has reached one fifth of the total price, the seller may require the buyer to pay the total price or rescind the contract." Paragraph 2 thereof provided that: "If the seller rescinds the contract, it may require the buyer to pay a fee for use of the subject matter." Article 38 of the Interpretation of the Supreme People's Court on Issues concerning the Application of Law in the Trial of Sales Contract Dispute Cases provided that: "The term 'payment in installments' as mentioned in paragraph 1 of Article 167 of the Contract Law means that the buyer pays the total price to the seller in at least three installments within a certain period. Where any provision of a sales contract with payment in installments violates paragraph 1 of Article 167 of the Contract Law, causing damage to the interests of the buyer, if the buyer claims that the provision of the contract is void, the people's court shall support such a claim." In accordance with the provisions of the aforesaid law and judicial interpretation, a sale in the manner of payment in installments had the following major characteristics: (1) The buyer paid the total price to the seller in at least three installments, and after the delivery of the subject matter by the seller, the buyer paid the price to the seller in at least two installments. (2) Payment in installments often occurred between merchants and consumers, generally in transactions where the buyers were consumers to meet demands in life consumption. (3) The seller granted a certain credit to the buyer, and thus assumed a certain risk in recovering the price. To guarantee the recovery of the remaining payments, under certain conditions, the seller may exercise a right to rescind the contract.

In this case, a shareholder of a limited liability company transferred the equities held by him to another person who was not a shareholder of the company. Although the transfer was also in the form of payment in installments, since the subject matter of purchase and sale was equities, it differed from ordinary purchase and sale for consumption purposes: (1) Tang Changlong as the transferee acquired the equities for the purposes of participating in the company's business management and seeking economic benefits, rather than satisfying his needs in life consumption. (2) Since the equities held by Zhou Shihai continued to exist in the target company, the risk of recovering the equity transfer price paid in installments assumed by Zhou Shihai as the transferor of equities of a limited liability company was not equal to that assumed by a seller in a sale with payment in installments for general consumption purposes. (3) The rescission of the Agreement on Equity Transfer between both parties

题是周士海是否享有《中华人民共和国合同法》（以下简称《合同法》）第一百六十七条规定的合同解除权。

一、《合同法》第一百六十七条第一款规定，“分期付款的买受人未支付到期价款的金额达到全部价款的五分之一的，出卖人可以要求买受人支付全部价款或解除合同”。第二款规定，“出卖人解除合同的，可以向买受人要求支付该标物的使用费。”最高人民法院《关于审理买卖合同纠纷案件适用法律问题的解释》第三十八条规定，“合同法第一百六十七条第一款规定的'分期付款'，系指买受人将应付的总价款在一定期间内至少分三次向出卖人支付。分期付款买卖合同的约定违反合同法第一百六十七条第一款的规定，损害买受人利益，买受人主张该约定无效的，人民法院应予支持”。依据上述法律和司法解释的规定，分期付款买卖的主要特征为：一是买受人向出卖人支付总价款分三次以上，出卖人交付标的物之后买受人分两次以上向出卖人支付价款；二是多发、常见在经营者和消费者之间，一般是买受人作为消费者为满足生活消费而发生的交易；三是出卖人向买受人授予了一定信用，而作为授信人的出卖人在价款回收上存在一定风险，为保障出卖人剩余价款的回收，出卖人在一定条件下可以行使解除合同的权利。

本案系有限责任公司股东将股权转让给公司股东之外的其他人。尽管案涉股权的转让形式也是分期付款，但由于本案买卖的标的物是股权，因此具有与以消费为目的的一般买卖不同的特点：一是汤长龙受让股权是为参与公司经营管理并获取经济利益，并非满足生活消费；二是周士海作为有限责任公司的股权出让人，基于其所持股权一直存在于目标公司中的特点，其因分期回收股权转让款而承担的风险，与一般以消费为目的的分期付款买卖中出卖人收回价款的风险并不同等；三是双方解除股权转让合同，也不存在向受让人要求支付标的物

would not lead to the circumstance that the transferee was required to pay fees for using the subject matter. Based on the above characteristics, an agreement on equity transfer with payment in installments was substantially different from a sales contract with payment in installments for general consumption purposes. It was inappropriate to apply Article 167 of the Contract Law to the Agreement on Payment in Installments of Equity Transfer Price to allow a right to rescind a contract.

2. In this case, the purpose of the Agreement on Payment in Installments of Equity Transfer Price concluded by both parties could be fulfilled. Tang Changlong and Zhou Shihai concluded it for the purpose of transferring 6.35% of the equities of Chengdu Shuangxing Electric Appliance Co., Ltd. of Qingdao Transformer Group held by Zhou Shihai to Tang Changlong. According to Tang Changlong's performance of payment of the equity transfer price, except that Tang Changlong paid the second installment of 1.5 million two months past due, he paid the other three installments as agreed on. Considering that Tang Changlong's late payment constituted a breach of contract, Zhou Shihai required rescission of the Agreement, and returned the payment of 7.1 million yuan made by Tang Changlong, which, however, did not affect the fact that Tang Changlong paid three instalments as agreed on. In addition, in both the original and the appellate trials, Tang Changlong clearly stated that he was willing to perform the obligation of payment. Therefore, the purpose of the Agreement on Payment in Installments of Equity Transfer Price signed by Zhou Shihai could be fulfilled. It was also found that on November 7, 2013, in the modification (or recordation) registration of Chengdu Shuangxing Electric Appliance Co., Ltd. of Qingdao Transformer Group, the 6.35% equities formerly held by Zhou Shihai were registered under the name of Tang Changlong.

3. From the standpoint of good faith, Article 60 of the Contract Law provided that: "Each party shall fully perform its obligations as agreed upon. The parties shall, under the principle of good faith, perform the obligations of notification, assistance, and confidentiality, among others, in accordance with the contract's nature and purpose and transaction practices." It was specified in the equity transfer agreement between both parties that: "This Agreement is made in duplicate, and takes effect upon signatures of both parties, who shall never regret." Therefore, even though Zhou Shihai invoked Article 167 of the Contract Law, he should first require Tang Changlong to pay the total price rather than rescind the contract.

4. From the standpoint of maintaining transaction safety, a transaction of equities of a limited liability company required various considerations, for example, the acceptance of and confidence in Tang Changlong from other shareholders (more than 50% of all shareholders consented to the

使用费的情况。综上特点，股权转让分期付款合同，与一般以消费为目的分期付款买卖合同有较大区别。对案涉《股权转让资金分期付款协议》不宜简单适用《合同法》第一百六十七条规定的合同解除权。

二、本案中，双方订立《股权转让资金分期付款协议》的合同目的能够实现。汤长龙和周士海订立《股权转让资金分期付款协议》的目的是转让周士海所持青岛变压器集团成都双星电器有限公司6.35%股权给汤长龙。根据汤长龙履行股权转让款的情况，除第2笔股权转让款150万元逾期支付两个月，其余3笔股权转让款均按约支付，周士海认为汤长龙逾期付款构成违约要求解除合同，退回了汤长龙所付710万元，不影响汤长龙按约支付剩余3笔股权转让款的事实成立，且本案一、二审审理过程中，汤长龙明确表示愿意履行付款义务。因此，周士海签订案涉《股权转让资金分期付款协议》的合同目的能够得以实现。另查明，2013年11月7日，青岛变压器集团成都双星电器有限公司的变更（备案）登记中，周士海所持有的6.35%股权已经变更登记至汤长龙名下。

三、从诚实信用的角度，《合同法》第六十条规定，“当事人应当按照约定全面履行自己的义务。当事人应当遵循诚实信用原则，根据合同的性质、目的和交易习惯履行通知、协助、保密等义务”。鉴于双方在股权转让合同上明确约定“此协议一式两份，双方签字生效，永不反悔”，因此周士海即使依据《合同法》第一百六十七条的规定，也应当首先选择要求汤长龙支付全部价款，而不是解除合同。

四、从维护交易安全的角度，一项有限责任公司的股权交易，关涉诸多方面，如其他股东对受让人汤长龙的接受和信任（过半数同意股权转让），记载到股

equity transfer), the recording of Tang Changlong in the register of shareholders, and the equity registration with the administrative department for industry and commerce. Social costs and influences had occurred. In this case, after acquiring the equities, Tang Changlong had actually participated in the business management of the company, and the equities had undergone transfer registration to his name. In the absence of any fundamental breach of contract by Tang Changlong, the unilateral rescission of the contract may adversely impact the stable operation and management of the company.

In conclusion, Tang Changlong's argument that Zhou Shihai's unilateral rescission of the contract under Article 167 of the Contract Law lacked basis was well-founded in law and should be upheld.

(Judges rendering the effective judgment: Liang Hongya, Wang Yue, and Li Li)

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东名册和在工商部门登记股权，社会成本和影响已经倾注其中。本案中，汤长龙受让股权后已实际参与公司经营管理、股权也已过户登记到其名下，如果不是汤长龙有根本违约行为，动辄撤销合同可能对公司经营管理的稳定产生不利影响。

综上所述，本案中，汤长龙主张的周士海依据《合同法》第一百六十七条之规定要求解除合同依据不足的理由，于法有据，应当予以支持。

（生效裁判审判人员：梁红亚、王玥、李莉）