



## Cases Studies: Real Estate Title Registration - Malicious Conspiracy

<p><b>Facts:</b> In early 1997, the plaintiff, Hong Kong investment company A, agreed with defendant B, a real estate company, to buy about one hundred housing units and a 50% share of a recreation center. Both parties signed the Shanghai export commercial housing trade contract. In the contract, the plaintiff agreed to pay the maintenance fund as described by the related governmental regulations, which were in fact cancelled only a few days later by the government. Defendant B agreed to “perform” his property transfer registration obligation within 2 months. After signing the contract, the plaintiff paid the price as agreed, and defendant B performed parts of the real estate title registration obligation, but the registration of the 50% share of the recreation center was never done. Therefore, the plaintiff continuously negotiated with defendant B about the pending obligation. In 2003, the plaintiff was notified that the property had been transferred to its shareholders, defendants C, D, E, pretending it to be part of a liquidation procedure. All defendants knew, though that the property had been sold to the plaintiff earlier. In July 2004, the plaintiff went to court and claimed (1) that the contract and the property transfer</p>	<p>registration of the 50% share of the recreation center between defendant B and defendants C, D, E was invalid; (2) that defendant B shall perform his obligation of real estate title registration of the 50% share of the recreation center to the plaintiff within 10 days; (3) that all defendants shall bear the collective liability to pay nearly RMB one million in damages to the plaintiff.</p> <p><b>Issues:</b></p> <ol style="list-style-type: none"> <li>1. Did the plaintiff exceed the period for filing an action?</li> <li>2. Was the contract between defendant B and defendants C, D, E of transferring the 50% share of the recreation center invalid?</li> </ol> <p><b>Sinotimes' Line of Argumentation</b></p> <p>In this case, Sinotimes represented the plaintiff in both, the first instance and the second instance and argued according to the following points:</p> <ol style="list-style-type: none"> <li>1. The obligation to pay the maintenance fund cannot be considered a surrogate for the 50% share of the recreation center, because the contract did only talk about a total price and did not divide it up into pieces. The plaintiff only had to pay the maintenance fund if it was due. Because the government</li> </ol>	<p>cancelled the maintenance fund, the plaintiff did not need to pay it anymore. This shall not be construed as a waiver of the 50% share of the recreation center.</p> <ol style="list-style-type: none"> <li>2. Defendant B transferred the property to defendants C, D and E pretending it to be part of a liquidation procedure, which was illegal and therefore invalid. Defendant B had transferred the property to defendants C, D, E before the period of creditors declaring their claims had expired. Also, defendant B did not list the property as liquidation property. The most important was that all defendants had transferred the property knowing that the property had been sold to the plaintiff. This was considered as a kind of malicious conspiracy.</li> <li>3. The article on real estate title registration was vague. The article only said defendant B should perform the transfer registration within 2 months. That meant defendant B should start to perform his obligation not to finish it within this period of time. Therefore, Sinotimes interpreted the article in the way that this obligation was not time-limited. In fact, at the time when the Shanghai export commercial housing trade contract was signed, this obligation could not be carried out due to restrictions in laws and regulations. But both parties had agreed</li> </ol>	<p>earlier that once the restrictions were cancelled, the defendant should perform the obligation. Consequently, the plaintiff did not exceed the period for filing an action.</p> <p><b>The result:</b></p> <p>Both, the first instance and the second instance court followed this argumentation and held that the contract of transferring the 50% share of the recreation center from defendant B to defendants C, D, E was invalid and that defendant B was obliged to perform the real estate title registration to the plaintiff within 10 days after the judgment was issued. Concerning damages due to the plaintiff the court did not rule favorably.</p> <p><b>Contact:</b> 中国上海中山西路999号华闻国际大厦1009室, 200051 Suite 1009, Huawen Plaza, 999 (W) Zhongshan Rd, Shanghai, 200051, China 联系人/Contact person: Leon Lee 电话/TEL.: (8621) 51095500 传真/FAX: (8621)32515010 电子邮件/Email: info@sinotimeslaw.com</p>
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