

Legal and Economic Analysis of the Exercise of Subrogation under the Perspective of the Civil Code

Take the Case of Subrogation Dispute of Tan Yonggang and Other Creditors of Heihe XinRuida Pawn Co., Ltd. as an Example

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ABSTRACT

This paper adopts the methods of standard analysis, data analysis, analysis of similar cases, visual analysis method, based on the subrogation right system under the perspective of the civil code, and studies the main dispute focus of the case. The dynamic game model and the cost-benefit analysis framework are mainly used to analyze the spontaneous behavior of the parties in the subrogation system. China should further strengthen the protection of creditor's rights, improve the litigation procedure of creditors to exercise the subrogation and cancellation right, improve the efficiency of resource utilization, strengthen the capacity building of judicial personnel, enhance the comprehensive quality of judicial personnel; implement the supervision and management responsibility, and strengthen the consciousness of debtors to protect the creditor's rights. Based on the interpretation theory of the Civil Code, the requirements of subrogation exercise still need to be improved; the uniformity of law application still needs to be strengthened; the incentive mechanism of the parties still needs to be improved.

KEYWORDS: *civil code; subrogation dispute; evidence proof standard; legal economics*

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I. INTRODUCTION

Subrogation refers to the right to exercise the debtor in order to protect the creditor's rights, which is an important part of the contract preservation system of the Civil Code of China. Subrogation system, broke through the traditional principle of relativity, allowing the creditor agent belongs to the rights of the debtor, directly to the debtor claims the debtor's creditor's rights, give creditors a new way of protecting their rights and means, to maintain the balance between the creditor transaction security and the debtor means freedom, to solve the real life actual "triangle debt", "serial debt", has positive significance. The system of subrogation is not the first in China, nor does it exist from ancient times. The traditional creditor and debt relationship only restricts the creditor and the debtor. With the continuous development of social and economic life, a lot of creditor and debt relations emerge, and the rights and interests of creditors are not guaranteed from time to time. Out of the protection of creditors, the preservation of debt, that

is, the creditor preservation of the debtor's property system emerged, the right of subrogation is one of the preservation of debt. It was the French civil code that first fixed the system of subrogation in the written law. Up to now, most of the civil law systems of mainland law countries stipulate the subrogation right system. China stipulated the system of subrogation in the contract Law in 1997, and then the Supreme People's Court issued relevant judicial interpretations to further stipulate the exercise of subrogation, thus establishing the system of subrogation in China. The formal implementation of the Civil Code in 2021 greatly changes the subrogation rules of creditors, which is conducive to giving full play to the preservation function of the rules and protecting the interests of creditors to a greater extent. In this paper, from the theoretical basis and basis of subrogation, combined with the legal provisions of subrogation, through the analysis of some empirical cases of subrogation litigation, the practice of the elements of

the necessary analysis, and combined with examples to perfect the system of subrogation in our country erection put forward some Suggestions.

II. THE BASIC CASE ANALYSIS

1. Brief introduction of the case

In March 2013, Heihe Xinruida Pawn Co., Ltd. (hereinafter referred to as Xinruida Company) signed a loan contract for real estate mortgage. By May 2014, Tan Shuhua had successively borrowed a total of 10 million yuan from Xinruida Company, and the principal had been repaid of 3 million yuan. Tan Shuhua and Han Yanyu respectively transferred the equity of Hongxing Goose Company and Hongxing Flour Company to Hongxing Investment Company, but the equity transfer was not agreed upon and the equity transfer price was not paid. Later, Tan Shuhua free allocation of Hongxing investment company investment amount to Han Yanyu. In August 2016, Tan Shuhua and Xinruida Company signed a renewal agreement to extend the loan term, and the mortgage

and pawn loan contract and the renewal agreement did not go through the mortgage registration procedures. In October 2017, Tan Shuhua and Tan Yonggang signed the "Investment Transfer Agreement" to transfer the equity of Yongfa Coal Mine to Tan Yonggang. From June 2017 to October 2022, Xinruida Company filed three appeals against the loan contract and subrogation dispute with Tan Shuhua. In November 2020, the Supreme Court presented the case in November 2020 and issued a final judgment in July 2021. The dispute points of the three cases are mainly focused on: (1) whether Tan Shuhua enjoys the due creditor's rights to Hongxing Investment Company and Tan Yonggang; (2) Tan Shuhua whether he is negligent in exercising the creditor's rights and thus affecting the realization of the creditor's rights of Xinruida Company, that is, the establishment requirements of the right of subrogation.

2. The judgment result

This case is compiled according to Judgment No.50 of the Supreme People's Court of the People's Republic of China (2021 No.20), Judgment No.543 of Heilongjiang Higher People's Court (2019), and Judgment No.24 of the Intermediate People's Court of Heilongjiang Province, Intermediate People's Court of Heihe City (2017).

The judgment results of the third-level courts are shown in Table - 1:

Table 1: The Dings of the Three Courts

First Instance	Second Instance	Examine Again
1. Tan Yonggang paid Xinruida Company RMB 5 million for the price of the transfer of Yongfa Coal Mine between Heihe City and Tan Shuhua.	1. Cancel the first-instance judgment and do not support Xinruida's claim of subrogation to Tan Yonggang.	1. Cancel the judgment of the second instance and support Xinruida Company's claim that Tan Yonggang should exercise the subrogation right.
2. The case acceptance fee is 101,658 yuan, 38,190 yuan borne by Tan Yonggang and 63,468 yuan borne by Xinruida Company.	2. The acceptance fee of the first and second instance is 218425.56 yuan, which shall be borne by Xinruida Company.	2. The acceptance fee of the first and second instance cases is 218,425.56 yuan, 84,990 yuan by Tan Yonggang and 133,435.56 yuan by Heihe XinRuida Pawn Co., LTD.

Source: Official Website of Chinese Judgment Documents

III. THE MAIN FOCUS OF DISPUTE AND THE REFLECTION OF THE CASE

A. Disputes over the fact-determination of the case

1. Fact-finding analysis of third-level courts

According to article 535-537 of the preservation of the contract of the Civil Code, there is no big difference in the facts determined by the court of first instance, second instance and retrial. The main difference lies in the difference in the fact determination and relevant evidence of the maturing debt between Tan Yonggang and Tan Shuhua. During the retrial, the court screened the validity of the bank electronic receipt submitted by Tan Yonggang in the second instance, and found that one of the duplicate receipt was invalid, and did not question the evidence receipt in the second instance. Moreover, after the new round of proof, the court recognized the financial confusion between Tan Shuhua and Tan Yonggang. See Table - 2 for the details of the opinions of the third-level courts:

Table 2: Statistical Table of Fact-Finding of The Third-Level Courts

The Similarities and Differences in the Opinions of the Court Hearing	Focus of Dispute	First Instance	Second Instance	Examine Again
Same	Xinruida company claims that the exercise of subrogation of Hongxing Investment company can be established.	Tan Shuhua transferred the equity of his two companies to Hongye Investment Company for free, without agreeing on the equity transfer price. The two parties had an equity investment relationship, and then Tan Shuhua gave most of the shares to Han Yanyu for free. Xinruida Company cannot provide evidence to prove that Tan Shuhua enjoys the due debt and the amount of the Hongxing Investment Company based on the two agreements.		
Same	Whether Han Yanyu should bear the liability for supplementary compensation.	Under the mode of Tan Shuhua's equity transfer and investment to Hongxing Investment Company, and the focus of dispute. 1 Xinruida's claim of subrogation to Hongxing Investment Company cannot be established, Xinruida's claim for Han Yanyu to assume the liability for supplementary compensation has no basis, and the court did not support it.		
Different	Xinruida company claims that the exercise of subrogation to Tan Yonggang can be established.	Due to the unclear correlation of evidence, the inconsistent time, the inconsistent total amount and the unclear source of loan, it cannot prove that Tan Yonggang has paid the transfer consideration of Yongfa Coal Mine. Therefore, Xinruida Company enjoys the due creditor's rights to Tan Yonggang, and can exercise the creditor's rights to Tan Yonggang on behalf of Tan Shuhua.	Tan Yonggang has fulfilled the obligation to pay the coal transfer price to Tan Shuhua. The evidence provided by Xinruida Company is not enough to prove that Tan Shuhua enjoys 5 million yuan of claims against Tan Yonggang. Therefore, Tan Yonggang's subrogation is not established.	There is a high possibility of confusion between Tan Yonggang and Tan Shuhua's account, and the amount of evidence submitted is inconsistent with the agreement. It is impossible to prove the real existence of the external arrears to Tan Shuhua to fulfill the transfer price obligation, and the lack of evidence to prove it. Tan Shuhua enjoys the due debt to Tan Yonggang based on the case.
Same	Whether Tan Shuhua is idle in exercising the creditor's rights to Tan Yonggang and thus affecting the realization of the creditor's rights of Xinruida Company.	Tan Shuhua did not claim the due debt to Tan Yonggang by litigation or arbitration, and did not repay the debt to Xinruida Company in accordance with the effective judgment; and there is an unenforceable property to terminate the court execution, it can be deemed that Tan Shuhua's delay in claiming the claims affected the realization of the due debt of Xinruida Company.		

Source: Official Website of Chinese Judgment Documents

2. Analysis of the evidence proof standard for determining the existence or not of the due creditor's right

The identification and proof standard of evidence directly affect the key dispute of the case whether Xinruida company's subrogation right of Tan Yonggang is established. This court has great differences, the second

instance court only by Tan Yonggang for electronic banking receipt and Tan Shuhua Tan Yonggang interests directly related personnel inquiry confession confirm its payment obligations, the judgment is obviously not persuasive, does not conform to the Supreme People's Court of the Supreme People's Republic of China civil procedure law interpretation of article 104, article 105 of the evidence, the evidence of logic. Both the first instance and retrial courts found that the evidence was insufficient to prove that they had paid the coal mine transfer money. One of the focus of the disputes in this case is whether the due debt of Tan Shuhua and Tan Yonggang exists, and Tan Yonggang bears the burden of proving that the debt between the two has been completed.

According to the interpretation of the Supreme Court on the Civil Procedure Law and the establishment of the Civil Code, the following aspects shall provide relevant evidence to exclude the association; specify the time of debt payment and the agreed time (specific problems can be verified separately, but corresponding evidence shall be provided); determine the specific payer; provide material evidence such as material evidence and electronic data, and pay attention to the correlation between the evidence material and the case during the review; if offset, it can prove that the relevant offset is other material evidence used for the payment of debt. According to the preceding evidence, the court cross-examines the authenticity, legality and the relevance of the facts to be proved, and at the same time makes logical reasoning and the rules of daily life, and then makes a judgment on whether the relative debtor has completed the payment according to the evidence chain. In this case, the association relationship between Tan Yonggang and Tan Shuhua cannot be excluded, and the relevant certification materials provided are not stipulated at the time agreed in the agreement, and the existence of the specific payer cannot be determined and proved. The offset act cannot provide supporting materials, the amount transferred is different from the amount agreed upon, and the payment occurs early or late, which cannot form an effective logical chain for the occurrence of the event. Therefore, it was determined that it lacked evidence to prove that it had performed the debt to Tan Shuhua, and ruled that Xinruida Company enjoyed the due debt to Tan Yonggang. The same applies to the confirmation of the existence of the due debt.

3. Analysis of the distribution of the burden of proof

According to the provisions of Article 2, paragraph 2, of the Provisions of the Supreme People's Court on Evidence in Civil Procedure, the parties have the responsibility to provide evidence to prove the facts on which their claim is based. Where there is no evidence or the evidence is insufficient to prove the factual claims of the parties, the party bearing the burden of proof shall bear the adverse consequences. There are great differences in the distribution of burden of proof in different trial courts.

The reason for the error of the error of the court of second instance is the unclear understanding of who claims the boundary of the burden of proof in civil litigation. The party claiming the right should only bear the burden of proof for the facts of the right, not the burden of proof for the claim. In this case, when the court of second instance judged whether Tan Yonggang had fulfilled the obligation to pay the coal mine transfer price to Tan Shuhua, it incorrectly assigned all the responsibility of proving the facts to Xinruida Company, which was beyond the scope of proof required by its application right. Xinruida company only needs to prove the debt of Tan Shuhua according to its own claims, and Tan Yonggang needs to prove the claim that it has fulfilled the obligation to pay the coal mine transfer money. The distribution of the burden of proof in the first-instance and retrial courts shall conform to the legal provisions.

B. Problem reflection

1. Reflections on whether Hongxing Investment Company can exercise the cancellation right to be established

Xinruida Company filed three lawsuits to the court, and the first trial and the second instance were very different; in the final judgment of the Supreme Court, the judgment upheld the original judgment, and there was a debt relationship between Tan Shuhua and Tan Yonggang, and the subrogation right of creditors claimed by Xinruida Company was established. However, the subrogation right of creditors of Hongxing Investment Company claimed by Xinruida Company is not established. The trial reason is that there is no debt relationship between Tan Shuhua and Hongxing Investment Company, which shows that Xinruida as a creditor cannot be relieved through the subrogation right of creditors. However, Tan Shuhua infringed on the creditor's rights. She transferred her assets to Hongxing Investment Company free of charge when the lawsuit and the claims were about to expire. At the same time, she donated the shares of Hongxing Investment Company and her son Han Yanyu, so as to reduce her responsibility and property.

Tan Shuhua's behavior is obviously unfavorable to the realization of the creditor's rights of Xinruida Company. At this time, creditors need to rely on the cancellation right to protect their rights, that is, the exercise of the revocation right according to Article 538 of the Civil Code. Therefore, it is feasible for Xinruida company to apply for the execution of the relevant equity or exercise the cancellation right for relief separately.

2. Reflection on the substantive and full review of the evidence

The first instance, the second instance and the retrial are very different from the confirmation of Tan Yonggang's subrogation right, which involves the fact evidence collection of the creditor's right and the discretionary judgment of the judge. This reminds us that we should fully obtain evidence in the judicial judgment, and substantially review the content of the evidence, rather than staying on the surface, so as to make a judgment on the true rights and obligations of creditors and debtors. In the first instance, the second instance and the retrial of this case, due to the different grasp and understanding of the evidence, the different understanding of the creditor and debt relationship between Xinruida and Tan Yonggang directly affects the fairness of the trial result, which should be paid attention to.

IV. ANALYSIS OF TYPICAL CASES OF SUBROGATION DISPUTES

A. Data analysis of the typical type of cases

Through the big data retrieval of the judicial judgment documents of the creditors' subrogation dispute, the relevant data are counted based on the public documents of the China Judicial Documents Network, and the unpublic documents of the judgment contents are not included in the statistics. In this part, the retrieval results of subrogation disputes are visually presented on the distribution of case trial level, case court level distribution, and the top five dispute focus of the debtor subrogation disputes, as shown in the figure below. It is not difficult to find that the dispute focus of subrogation dispute has been focused on the dispute of whether to enjoy the due debt. This case is a typical example of such cases, which is of great significance for judicial trial.

Figure 1 shows the changing trend of the top five controversial disputes from 2016 to 2019; Figure 2,3 and 4 show the regional distribution of trial, court level and trial level of sub trial disputes in 2022. Through visual analysis, it is found that the dispute focus of subrogation cases is mainly focused on the dispute over whether the parties enjoy the due creditor's rights, which is tried and solved by multiple basic courts. Most of the cases occur in economically developed areas such as Shanghai and Beijing and densely populated provinces such as Henan and Shandong.

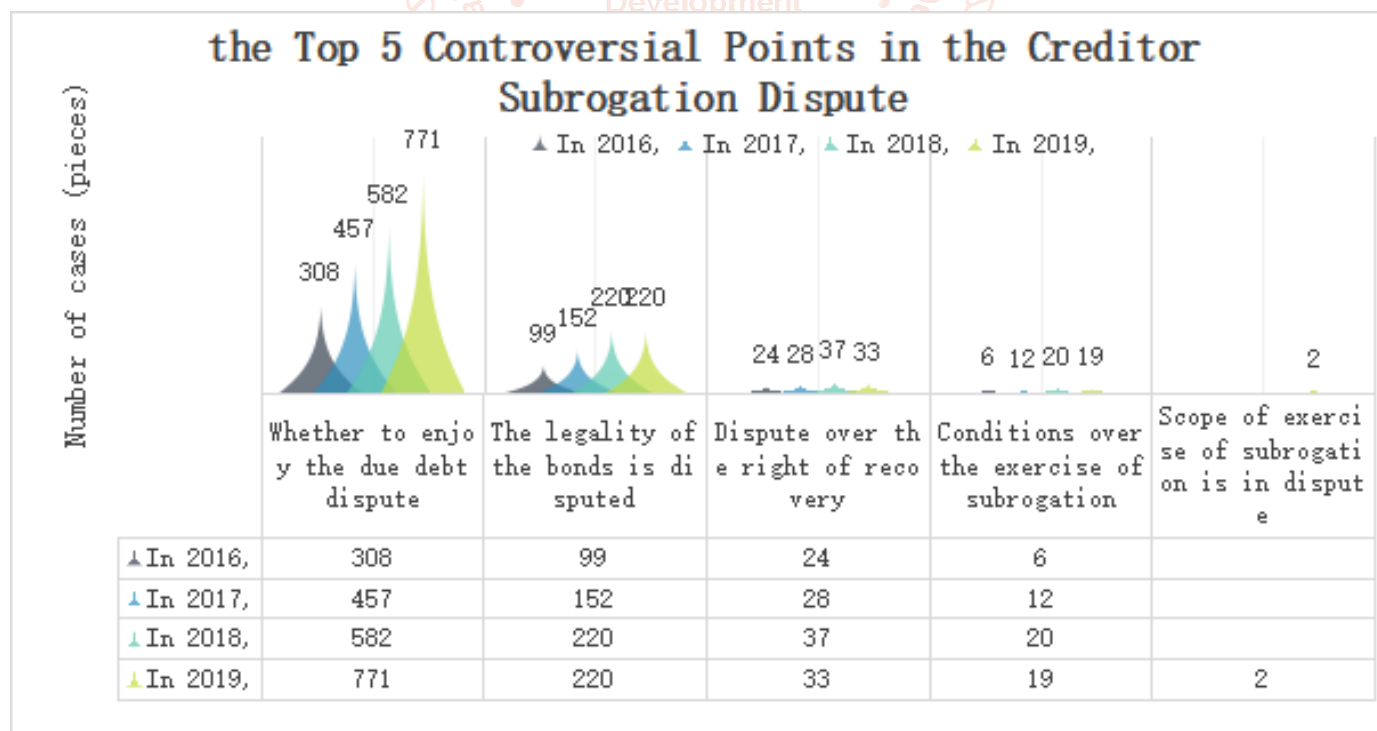


Figure 1: Trend Chart of the Number of the Top Five Controversial Cases in Creditors' Subrogation Disputes

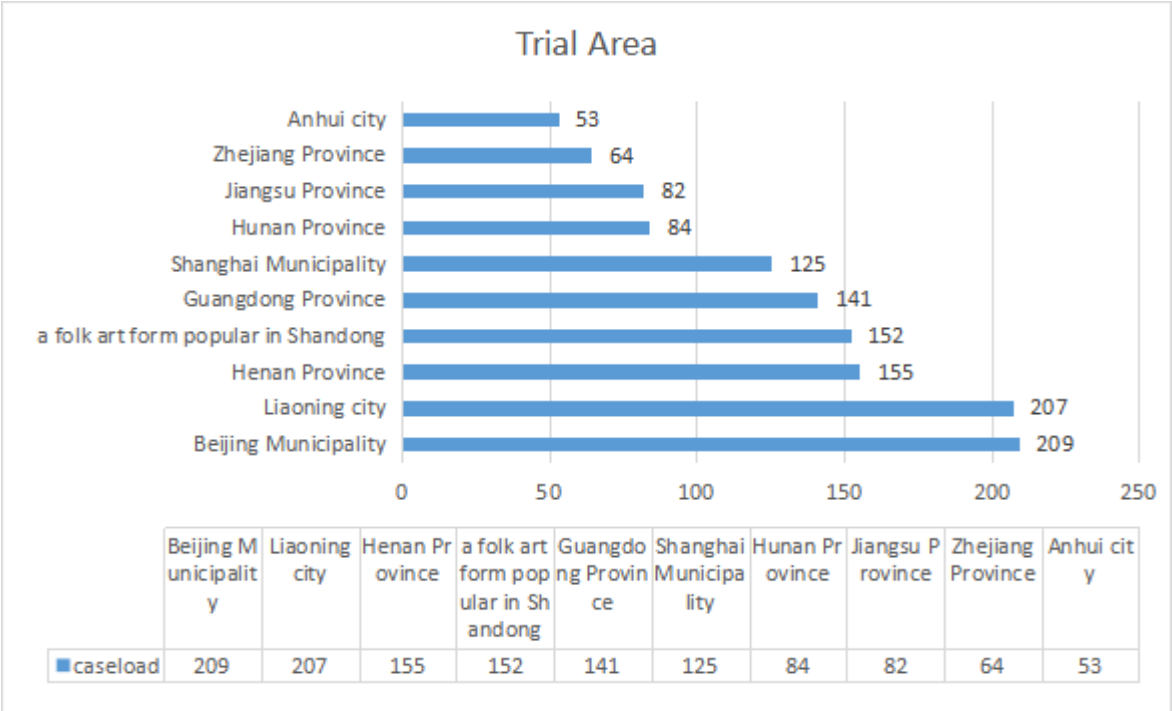


Figure 2: Regional Distribution of the Top Ten Trials of Creditor Subrogation Disputes in 2022

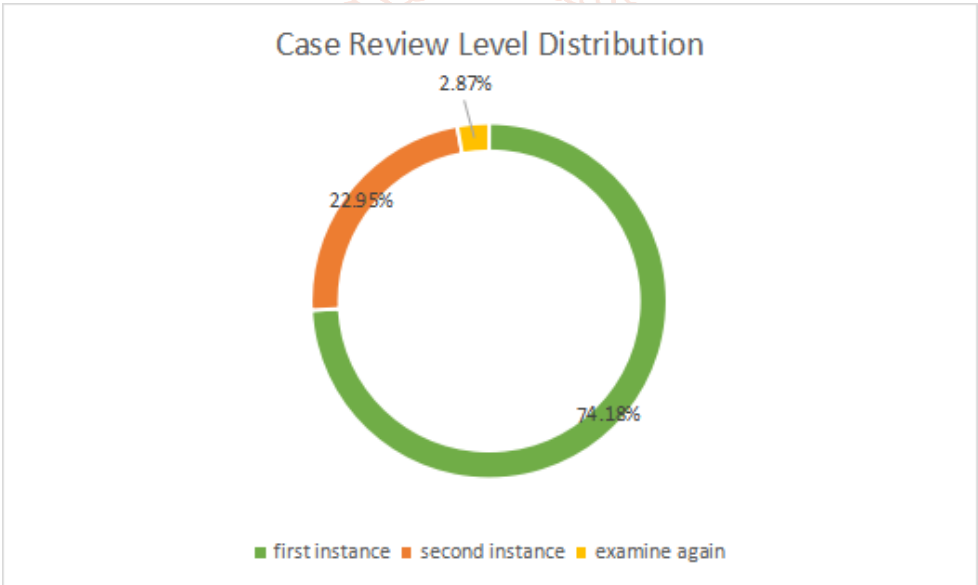


Figure 3: Distribution of Case Trial Level in 2022

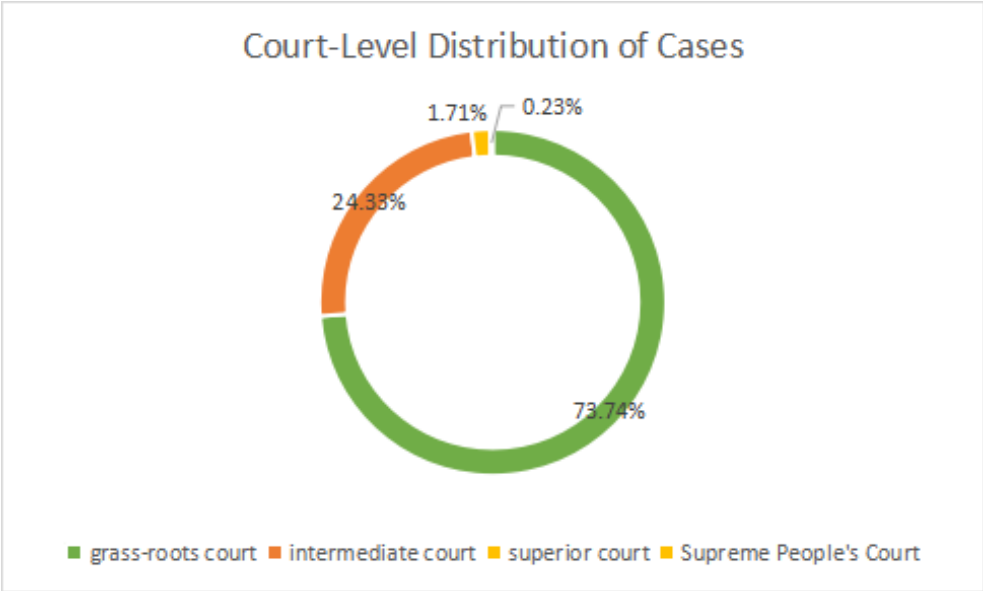


Figure 4: Court Level Distribution of Cases in 2022

B. Comparative analysis of typical class cases

Through comparative study chun-sheng jiang, Zeng Fusheng creditors subrogation dispute this typical case and Heihe xin rui da pawn co., LTD. Tan Yonggang creditors subrogation dispute, found that two creditors subrogation dispute focus are focused on the subrogation elements the debtor due creditor's rights established and evidence proof standard judgment, the court verdict based on the parties to prove that different differences. Case basic information and comparative analysis are shown in Table - 3:

2Table 3: Comparative Analysis Table of Typical Cases

Essential Information			The Case	Class Case
	Case Number		(2021) The Supreme Court again No.50	(2019) Supreme Court No.2939
	Case Name		Heihe Xinruida Pawn Co., Ltd. Tan Yonggang and other creditors subrogation right dispute	Jiang Chunsheng, Zeng Fusheng creditor subrogation right dispute
	Court of Justice		The Supreme Court	The Supreme Court
	Level of Trial		examine again	examine again
	Plaintiff / Appellant		Xinruida Company	Chun-sheng jiang
	For the Defendant / Appellee		Tan Yonggang, Hongxing Investment Company	Zeng Fusheng
	Focus of Dispute		(-) Xinruida company advocates whether the exercise of the right of subrogation can be established; (2) Yu Xinruida Company advocates that the exercise of the right of subrogation can be established	(1) Whether Jiang Chunsheng advocated the establishment of subrogation due to the prevalence of Zeng Fu; (2) Jiang Chunsheng advocated the application of evidence
	Same Point	The dispute is whether there are questions about the standard of proof	yes	yes
		Whether the court ultimately rationally distributes the burden of proof	Yes, Xinruida Company shall confirm the existence of the due debt with Tan Shuhua, and Tan Yonggang shall bear the burden of proof to prove that it has fulfilled the payment obligation to Tan Shuhua.	Yes, Zeng Fusheng bears the payment obligation to confirm the equity transfer payment of the ship involved in a travel case, and Jiang Chunsheng is responsible for proving the claim that Zeng Fusheng's remittance to Zeng Zhifeng has the possibility of evading debts and false transactions.
Different Point	If so, the court held that the appellee offered the evidence meets the standard		no	yes
	The Referee Reason		1. Tan Shuhua The account of Tan Yonggang is highly confused; 2. The amount of evidence is inconsistent to prove that the two parties have reached an offset agreement; 3. It cannot prove the real existence and transfer use of external debts.	1, Zeng Fusheng and HuiHai remittance between the company confirmed and exclusive, trading retained evidence time is closely related, a series of coherent transaction behavior is reasonable: 2, chun-sheng jiang claims Zeng Fusheng to Zeng Zhifeng remittance behavior has the possibility of escape debt, false transactions, but did not submit

			relevant evidence to prove: 3, case involved transfer bank electronic receipt and Zeng Fusheng during the transaction of bank water information.
		Apply the Law	Article 73 of the Contract Law of the People's Republic of China, Interpretation of the Supreme People's Court on the Application of Several Issues of the Contract Law of the People's Republic of China (-) Article 11, Article 13, Paragraph 1, Article 207, Article 170 of the Civil Procedure Law of the People's Republic of China
			The law of the People's Republic of China contract law, the Supreme People's Court about applicable (the law of the People's Republic of China contract law> interpretation of article 11, of the civil procedure law of the People's Republic of China article two hundred, the Supreme People's Court about the interpretation of the civil procedure law of the People's Republic of China> the two hundred and zero
		Class Case Referee Points	Tan Yonggang whether the evidence of bank debt is credible and confirms the establishment of subrogation requirements.
			Whether Zeng Fusheng has fulfilled the payment obligation of the equity transfer payment of the ship involved in the case lacks evidence to confirm the establishment of the requirements of the subrogation right.

Source: Official Website of Chinese Judgment Documents

V. LEGAL AND ECONOMIC ANALYSIS OF SUBROGATION DISPUTE CASES

A. Game theory analysis

1. The framework of the analysis

According to the loan relationship between creditor, debtor and secondary debtor, we can simplify the choice of actors into a dynamic game model under incomplete information. In this case, due to the existence of the correlation relationship between the counterpart and the debtor, which has the interest connection and the consistency of action, we can regard the debtor, the secondary debtor and the creditor as both parties involved in the game. At this point, the potential creditors in the market have two choices: borrow or not, and then the potential debtor has two options: obey the law or evade the debt. Referring to FIG. 8, the relative payoff dendrogram matrix of game parties made by rational people under the constraints of strategy variables is shown. The values in No.10 represent the interests of creditors and debtors respectively, so the sum of the two represents the sum of the interests of the two parties, namely the single creditor and the debtor, and to some extent, it can also represent the overall interests brought by the society based on the generation and termination of creditor's rights.

When the strategy variable is at a high state level, both the debtor and the creditor are at a relatively high income level. Therefore, if the national system is relatively complete at this time, it is the best choice

for the debtor to obey the law. When the debtor is in a strategic environment with incomplete subrogation system, it is more inclined to choose the debt evasion behavior that will bring greater benefits to itself. Similarly, according to the hypothesis of rational man, the lender also does not want the system to be more complete. Compared with the high completeness of the creditor's rights protection system, the relative income of the individual is often higher, but the overall income level of the society is declining. Only when the two sides of the game abide by the corresponding performance rules of the creditor's rights and reasonably guarantee the creditor's rights, can the overall income between the society or the two reach the highest.

2. Conclusion of analysis

From the analysis conclusion of game theory, in the two different states of the completeness of the subrogation system, the creditor and the debtor reach the "Nash equilibrium" of the two situations respectively, which meets the requirements of legal norms. The second Nash equilibrium, namely the debtor in the market for the protection of creditor's rights incomplete situation to escape debt to realize the maximization of their own benefit, does not conform to the distribution principle of the rights and obligations and legal value identity specification, through illegal means of erosion creditors legitimate interests to maximize their own value, greatly disrupt the market order, this behavior should be in the

system design by my Treasury preservation system abandoned outside. In addition, the dishonesty of the market subject (the debtor and the secondary debtor are the community of interests, and intend to deceive the creditor) will increase the judicial cost, so attention should be paid to the credibility of the debtor in the litigation of the subrogation right in which the debtor has a kinship with the secondary debtor. Only by constantly improving the theoretical construction of the creditor subrogation system and effectively preserving the legitimate and legitimate rights and interests of the debt, can we realize the unity and coordination of maximizing personal interests and social interests, and realize the dual goals of promoting the development of market economy and maintaining the legal order of the credit market under the premise of both parties in the transaction.

B. Cost-benefit analysis

1. The framework of the analysis

The cost benefit theory (or expected cost benefit theory) explains that the parties only weigh the pros and cons at the level of instrumental rationality. Landes~ -Posner~ -Gould condition (the theoretical contribution of three famous legal economics, referred to as "LPG condition") is a typical explanation of cost-benefit theory. This theory describes the decision-making mechanism of litigation as the balance of expected cost and benefit, that is, when the plaintiff's expected litigation benefit is higher than the expected settlement cost of the defendant, the lawsuit occurs, otherwise the settlement is reached. However, the litigation theory represented by LPG conditions does not involve the specific factors that affect the cost and benefit.

Drawing on the research perspective and thinking of its cost-benefit theory, the possible infringement of the debtor on the creditor's right and the necessity of setting the creditor subrogation right are analyzed. The following simple model is used to represent, that is:

The creditor subjectively makes the motive that affects the realization of the debtor's creditor's right maliciously

$= \alpha * (\text{The expected income of the creditor that affects the realization of the debtor's debt} - \text{the total cost of litigation with the creditor})$

$= \alpha * (\text{Unproperly expected enrichment} - \text{expected total litigation costs})$

$= \alpha * (A * \text{Amount of claims} - \text{completeness coefficient of the preservation system of } B * \text{debt})$

Among them, α , A and B represent the coefficient of correlation respectively, and the total litigation cost of

the debtor includes the litigation costs and the compensation for the reasonable rights and interests of the creditor. Because they are the subjective expectations of the debtor, they are closely related to the completeness of subrogation in the debt preservation system and the deterrent incentive degree of the debtor.

2. Conclusion of analysis

In the case that the subject matter of the creditor's right is given, in order to reduce the debtor's subjective malice of the motivation to affect the realization of the creditor's right, we should strive to increase the expected litigation cost with the creditor, that is, to ensure the realization of the legal creditor's right by constructing a complete system of creditor's right subrogation. As the cornerstone of the normal operation of modern creditor's rights, the effective and full realization of creditor's rights plays a decisive role in the credit of the parties and even a country's economy. The inefficient realization of creditor's rights will greatly curb the generation of transactions, and then affect the economic development level of a country and people's well-being. The protection of the debt is very important. Therefore, when the creditor makes an behavior that affects the realization of the debtor's rights, the boundary and exercise scope of subrogation should be widened as much as possible on the premise of guaranteeing the debtor's necessary rights of the debtor, so as to guarantee the realization of the creditor's rights to the greatest extent.

VI. COUNTERMEASURES OF CONSUMMATING THE EXERCISE OF SUBROGATION IN THE CIVIL CODE

1. Strengthen the protection of creditor's rights preservation, and effectively protect the rights and interests of creditors

According to the analysis of the game theory model and the cost-benefit model in the fourth part, the debtor has the tendency to influence the realization of the debt when the design of the protection of the debt is too limited to the interests of the debt. At the same time, based on the function and characteristics of debt, the specification of debt preservation should also be the fundamental purpose and important basis of system design. The Judicial Interpretation of the Civil Code Contract (draft) newly stipulates the expansion effect of the jurisdiction agreement on creditors. This is the natural embodiment of the relevant rules of the legal transfer of creditor's right claim, which deserves affirmation. Therefore, it is of great significance to strengthen the protection of creditor's rights preservation and further deepen the exercise scope of subrogation power to protect the rights and interests of creditors and promote the

harmonious and stable operation of the economy and society.

2. Improve the litigation procedure for creditors to exercise the right of subrogation and cancellation, and improve the efficiency of resource utilization

The Judicial Interpretation of the Contract Part of the Civil Code (Draft) has added the provisions that creditors can bring subrogation lawsuits and cancellation lawsuits together, which achieves the purpose of simplifying legal relations and speeding up the exercise of rights. Because such cases belong to the category of debt preservation, in the process of forensics and trial has certain similarities, combined with this case, in the parties interesting to claim the two powers, the court not only can avoid the subsequent litigation, avoid the waste of legal resources, also can better meet the demands of creditors, to protect the interests of creditors, further deterrent to potential want to default the debtor, create a good social atmosphere of maintaining creditor's rights.

3. Strengthen the capacity building of judicial and judicial personnel, and improve their comprehensive quality

This case is only a typical case in many cases of debt preservation and subrogation disputes in China. In reality, the judicial personnel will often face more or even more complex subrogation disputes and other debt disputes. In the case of economic disputes, the standard of the unification of such economic disputes should identify a large amount of evidence materials, make a fair and reasonable judgment, and the grasp and understanding of the evidence are directly related to the fairness and rationality of the judiciary.

In this case, the three court decisions have great differences on whether Tan Shuhua and Tan Yonggang have due claims, which is caused by the different degree of processing and cognition of the evidence. This requires the judicial personnel to master the legal knowledge on the basis of the company's economic business operation also has a certain understanding and grasp, the judicial personnel of such cases put forward higher requirements. Strengthening the judicial ability of judicial personnel and improving the comprehensive quality of judicial personnel are conducive to them to make more accurate and fair judgments when facing disputes over professional economic issues such as subrogation, and improve the standardization, rationality and fairness of the trial.

4. Implement the supervision and management of the debtor and strengthen the debtor's

consciousness of protecting the creditor's rights

Based on the above theory analysis model, the implementation of the social from all walks of life to the supervision and administration of the debtor, deepen the debtor safeguard creditor's rights consciousness is crucial, through the judicial administrative agency supervision, industry association supervision, media exposure, citizens report on the debtor behavior, also can through knowledge, quality education to the debtor fundamentally, the whole society to further create a good market trading atmosphere.

VII. REVELATION AND OUTLOOK

1. The requirements for the exercise of subrogation still need to be complete

The requirement of subrogation exercise is the core of the trial of subrogation disputes. The completeness of the construction of the system is directly related to the determination of whether the due rights and interests of the case, the due claims are obviously different in different courts. Due to the incomplete requirements and insufficient identification of the exercise of subrogation, the unsuccessful litigation or incomplete results of the claim, the legitimate rights and interests of the parties cannot be effectively protected, which is not conducive to social justice. In the expansion of the scope of the object of subrogation in the Civil Code, the rights of creditor's rights can be understood from a broad sense; "warehousing rules" should be applied to different situations, and the definition of rights is the perfection of the system of the exercise of subrogation in China, which is conducive to the protection of creditor's rights. Therefore, the relevant authorities in China should actively legislate and constantly summarize the judicial practice experience to further enhance the completeness of the exercise requirements of subrogation in China.

2. The unity of the application of the law still needs to be strengthened

At the beginning of 2021, the Political and Legal Commission of the CPC Central Committee included the improvement of the application mechanism of unified laws in the "Ten Key Reform measures and tasks in the Field of Political and Legal Affairs in 2021", and made it clear that the people's Court would take the lead. In the latest implementation Measures, the Supreme People's Court in the following year made it clear that the same case should be decided across the country. In this case, Tan Shuhua has made different fact findings and judgments on whether Tan Yonggang has any maturing debt, which reflects that there is still some room for improvement in the unity of law application

in China in practice. Standardizing the standards for the application of laws and standardizing the exercise of discretion is of great significance to protecting the legitimate rights and interests of the parties concerned and realizing social equity and justice. The legislative and judicial authorities should pay attention to the construction of the same case and judgment system, attach importance to the unification of the application of law, strengthen the unity of the application of law in our judicial practice, and ensure the realization of the function of the legal system to settle disputes and stop disputes.

3. The incentive mechanism for the parties to exercise the right of subrogation still needs to be improved

Based on the game theory and the expected cost and benefit theory, the parties choose the behavior of seeking benefits and avoiding harm based on the rational person hypothesis, which is also applicable to the behavior in the subrogation dispute. The debtor chooses whether to perform the contract according to the strategic variable of the creditor's rights guarantee system such as subrogation. When the subrogation system is perfect, the default system is small; the creditor also chooses the subrogation strategies according to the strategic variables. In this case, the creditor claims the right of subrogation from the first trial to the retrial, which is also the result of the strategic choice of the creditor with good legal expectations for the judicial trial. Perfecting the subrogation system to guarantee the realization of creditor's rights has obvious institutional incentive effect on both debtor and creditor. At the same time, the system of "contract preservation" in Chapter V of the Civil Code of China is applicable to the whole field of debt preservation, and the expansion of the object scope of the subrogation and revocation rights of creditors in the civil code is in line with the practical needs. Therefore, it is necessary to give full play to the incentive role of the subrogation system, constantly improve the incentive mechanism for the parties to exercise the right of subrogation, further protect the rights of creditors, and create an orderly and stable lending environment through the legal incentive mechanism and the conscious behavior of creditors and debtors.

CONCLUSION

To sum up, 2022 is the key year for China's "14th Five-Year Plan", the first year of the second centenary Goal, and also the second year for the compilation and promulgation of the Civil Code of the People's Republic of China. In the Civil Code, the creditor's subrogation right and the creditor's cancellation right are partially separated from the

"contract performance" in the old Contract Law and divided into a chapter of contract preservation, which further improves the relevant system design of the creditor's subrogation right. The subrogation right of creditors is an important part of the contract preservation system of the Civil Code, which aims to maintain the balance between the security of creditor's transaction and the freedom of debtor's intention. As far as the subrogation system is concerned, China's current legislation and judicial practice still has a long way to go. In the future, relevant laws and regulations still need to be continuously improved and improved, constantly adapt to the development of the productive forces of China's social productive forces in the new era and the increasingly complex transaction production relations between various subjects, and use the creditor's rights preservation system to provide a solid institutional foundation for market entities to carry out economic activities in China. Realize the high quality of our country economic development, realize socialist modernization need various field of synergy, we should fully pay attention to the "civil code" system construction and judicial important role of economic development, pay attention to the organic link between the rule of law construction and economic construction, to achieve judicial and economic mutual feeding, seeking truth from facts, promote economic transactions healthy and smooth operation, maintain the creditor's rights debt market related legal order, implement the law for our economic construction.

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