On the Relationship between Damage Compensation and Default

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Abstract

Compensation for breach of contract is the most important and most widely used form of liability for breach of contract, is one of the core content of the whole contract legal system. The research on the compensation for breach of contract is of great significance. This system is an important measure to ensure the full and accurate performance of the contract obligations. However, the general principles of liability for breach of contract damages, the principle of liability, the elements and whether to deal with non-property damage compensation has been controversial, the new contract law after the implementation of the problem still exists. It should be clear that the general principle of compensation for breach of contract is to fill the damage, the principle of liability should be consistent with the principle of liability for breach of contract, non-property damage clearly compensation.

Key words: damages, breach of contract;

1. INTRODUCTION

(1) The concept of compensation for breach of contract
Damages for breach of contract refers to the contract party because does not fulfill the obligations of the contract or does not comply with the contract to the other party to the contract when it caused damage by the breaching party shall, in accordance with the contract or compensation for a remedy for breach of contract damages each other. Because the compensation for damages is based on the contractual obligations of the parties, that is, the debtor has no obligation to perform the contract. Damages for breach of contract as the most common countries unanimously approved, one of the most important remedy for breach of contract, its purpose is to make up for the creditor debtor damage caused by breach of contract and lose the benefit of the victim's interests as to the performance of the contract should reach the state.

(2) The characteristics of compensation for breach of contract
Damages for breach of contract is generated in the debtor does not fulfill the contract debt in the case of the responsibility for the consequences, as one of the liability for breach of contract form, mainly has the following characteristics: first, damages for breach of contract is a responsibility of the parties to the contract for breach of contract arising. Therefore, the contract relationship is a prerequisite for the existence of damages for breach of contract, if the contract is invalid or revoked, to contract one party causes damage, does not belong to the compensation for damages for breach of contract, but should be culpa. Second, breach of contract damages are compensatory in nature, generally do not have punitive. Is the main character of compensatory damages for breach of contract, and the key issue is whether both punitive. In

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this regard, the common law and civil law emphasizes the compensation for breach of contract are compensatory measures, rather than punitive measures.

2. The Constitutive Requirements of Liability for Breach of Contract

(1) Breach of contract

The default behavior is that the debtor fails to perform or non-conforming performance breach should be illegal, is a breach of contract and the contract established according to law is one of the basic value judgment "illegality" is the premise of legal evaluation. For this evaluation, usually without the burden of the debtor's illegal behavior of creditors, the debtor can provide evidence that they have legitimate reasons, the parties with elimination of illegality, even if the party violated the legal protection of the contract objectively, is not illegal. The behavior of breach of contract can be expressed in many forms, such as failure to perform, delay in performance, incomplete performance, injury and refusal to perform. This article does not discuss too much.

(2) The concept of damage

There are different views on the concept of harm. One view is that the damage to the interests of property or legal interests of the state. This view was first put forward by German scholar Mommsen in 1885. By de Zayed (windscheid) and the German Civil Code accepted the difference means that the victim for event and the loss of interest, which is the property of the victim state have damage difference produced in no damage occurs. This doctrine has been in Germany for centuries and has been accepted by most scholars. But now scholars begin to criticize it and establish a new theory. The scholars who advocate the theory of actual damage think that the damage caused by the specific object is a component of the damage concept. There is a sense of independence, which they call the objective damage. Objective damage can be calculated directly, is generally accepted by people. [5] at this point we have to take into account the so-called intangible damage, that is, the specific value of depreciation and the spirit of their own damage. These damages cannot be measured in terms of money, nor can they be calculated with data. The scholars who advocate the theory of actual damage ignore this aspect. This paper argues that the damage should include the actual damage objective damage and the invisible damage (including the spiritual damage and intangible value depreciation). And we should combine the theory of damage balance and the theory of actual damage to define the damage. Therefore, this paper defines the breach of contract as the tangible and intangible benefits of the victim and the damage. Only in this way can we effectively fill the deficiencies of the above two theories, so as to define the breach of contract more closely and comprehensively.

3. The correct treatment of damages for breach of contract damages and the relationship between

The compensation for breach of contract and the compensation for mental damage are different concepts. Strictly speaking, is the concept of compensation for damages for breach of contract and tort should be relatively, because of mental damage compensation in practice more widely, also caused should include the spiritual damage compensation problem in the liability for breach of contract. From the perspective of foreign legislation, precedents and theories, we should not apply the spirit compensation in the contract liability. The common law is generally believed that the action of contract does not apply to mental damages (injured feelings) the issue of compensation, so an employee was fired and humiliated by a client, because lawyers failed to sue for divorce in take appropriate steps to protect its interests and suffered damage, can according to the requirements of the contract compensation. The "contract law" article 353rd
(restated due to mental impairment losses) stipulates: "the ban on mental damage compensation for breach of contract, unless at the same time, causing bodily harm, or breach of contract or the Department of mental damage so special that it become a very easy to happen." However, in Anglo American law, under the exception of the spirit of compensation for damages. According to the French law, in an action of contract in principle does not apply to mental damages, but in judicial practice, the court held that, if the mental damage caused by breach of contract, breach of contract and tort problem will involve competing, the court allowed the victim request compensation for mental damage in breach of contract and infringement on the strict distinction between not the case. In a word, the contract law of every country has confirmed the principle that the contract liability is not allowed to remedy the mental damage, but in the case of exception, it can be used to compensate the victim's spiritual damage. But it is worth studying whether these experiences can be used for reference to the contract law of our country. The application of compensation for mental damages in tort cases in china. In practice, some courts have begun to apply the compensation for mental damages in some special cases of breach of contract.

4. Conclusion
Compensation for breach of contract is the core of civil law, how to determine the scope of compensation for breach of contract damages in theory and judicial practice has a very important role. Complete compensation principle is a basic principle, but must adhere to the legal system in this regard, all will be limited, such as the rule of basic rules and other supplementary means derogation rules and restrictions, the rule of contributory negligence. Correctly and properly deal with various kinds of compensation for breach of contract in real life, to further promote the development of the market economy.

Reference
[1] Lin Chengren, "Research on the compensation for reliance interest in civil law", "the Theory of Jurisprudence".