



Identification of the Nature of Payment Delivery between Relatives--Taking Yu and Zhang Private Lending Dispute Case as an Example

Ya Yu

Shanghai Fengxian District People's Court, Shanghai, China

whenbin@126.com

Abstract. In private lending disputes involving relatives, the lenders are often unable to provide loan vouchers for various reasons. The Supreme People's Court issued the "Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Private Lending Cases" (referred to as "Private Lending Provisions"). Among them, Article 16 makes clear provisions on the settlement of such disputes. The plaintiff files a private lending lawsuit based on the transfer voucher. In addition to the plaintiff's responsibility to prove the existence of the fact of borrowing, the defendant's defense is also provided. In judicial practice, there are great disputes about the application of this interpretation and the burden of proof after the defendant's defense. Based on these disputes, this paper makes a profound exploration and analysis of the application of this interpretation from the case.

Keywords: private lending, burden of proof, relatives, defense.

1 Introduction

In a case, the plaintiff Yu claimed that the defendant Zhang borrowed CNY 300,000 from him on July 29, 2014 on the grounds of doing business. The two sides did not agree on the repayment period. Plaintiff Yu made a payment of 300,000 yuan to Defendant Zhang's bank account on the same day. After several reminders, the defendant Zhang did not repay the money. The plaintiff sued the court, requesting orders: 1. requesting the defendant to return the plaintiff's loan of 300,000 yuan; 2. requesting the order that the defendant pay the interest calculated on the basis of the 1-year loan interest rate published by the National Interbank Funding Center from the date of prosecution to the date of actual repayment, with a principal of 300,000 yuan.

The defendant Zhang argued that it was not recognized. The money was a gift. At that time, the defendant was about to get married. The money was given to the defendant by Grandma. The two parties never determined that the money was a loan. It has been seven years since the money occurred in 2014. The statute of limitations is also problematic. The defendant does not agree with the plaintiff's claims.

After the trial, the court found that the original and the defendant were grandpar-

ents. On 29 July 2014, the plaintiff transferred 300,000 yuan to the defendant through the bank. On 13 December 2014, the defendant was registered to marry Zhu. The plaintiff asked the defendant to repay the loan on the grounds of private lending, and the defendant refused to repay the loan on the grounds of the plaintiff's gift.

The People's Court of Fengxian District of Shanghai held that the plaintiff claimed that there was a private lending relationship with the defendant, and evidence should be provided to prove that there was a loan agreement between the two parties and that the disputed funds had been delivered. The bank transfer certificate provided by the plaintiff can only prove the direction of funds. In the case that the defendant defends that the transfer is a gift from the plaintiff to the defendant and makes a reasonable explanation, the plaintiff should further provide evidence for the existence of a loan agreement between the two parties. Although the plaintiff denies the defendant's defense claim and proof, and insists that there is a loan agreement between the two parties, it does not provide other evidence to prove it, which is obviously contrary to the law. Therefore, the court did not support the plaintiff's claim that the evidence of the loan relationship was insufficient, and then rejected the plaintiff's claim.

The Shanghai First Intermediate People's Court held that the parties should provide evidence to prove the facts on which their claims are based or to refute the facts on which the other party's claims are based, otherwise the parties who have the burden of proof will bear adverse consequences. Yu claimed that he lent 300,000 yuan to Zhang for return, but in addition to providing transfer vouchers to the court, there was no evidence to prove that the two sides formed a loan agreement on the transfer. Based on the fact that the 300,000 yuan was all of his deposits, it was proved that the 300,000 yuan was a loan and lacked legal basis, which was difficult for the court to accept. The court of first instance has made a full and reasonable analysis and discussion on the fact that the money involved in this case should not belong to the nature of loan in combination with the special relationship between the parties in this case, the source and trend of 300,000 yuan, and the testimony of witnesses in the first instance. Mr. Yu believes that the appeal reasons such as the violation of the procedure and the wrong distribution of the burden of proof in this case are not accepted by the court. In summary, Yu's appeal request is not established, and the first instance judgment should be maintained.

2 The Legal Analysis About the Relevant Case

2.1 Allocation of Burden of Proof in Private Lending Litigation Only Based on the Transfer Vouchers of Financial Institutions

The onus of proof, also known as the burden of proof, refers to the corresponding responsibility that the subject of proof should bear in the proof of litigation according to the statutory authority or burden of proof.^[1] In civil litigation, the burden of proof means that the parties should provide evidence and prove the facts they claim. If the evidence of the whole case cannot be used to determine the authenticity of the facts claimed by the parties at the end of the litigation, the parties should bear the adverse consequences of the litigation.^[2] The distribution of the burden of proof is the distri-

bution of the resulting adverse consequences when the facts of the case cannot be ascertained. In the case of private lending disputes in which the plaintiff only filed private lending litigation based on the transfer vouchers of financial institutions, and the defendant pleaded that the transfer was to repay the previous loans or other debts of the two parties, the key issue is to find out whether the two parties have a loan agreement, and the core issue is the principle of distribution of burden of proof. Article 90 of “The Supreme People’s Court’s Interpretation of the Application of the Civil Procedure Law” (hereinafter referred to as the “Judicial Interpretation of the Civil Procedure Law”) stipulates: “The facts on which the parties base their claims or refute the claims of the other party shall be proved by evidence, except as otherwise provided by law.” Article 91 of “The Judicial Interpretation of the Civil Procedure Law” stipulates that the people’s court shall determine the burden of proof in accordance with the following principles, except where otherwise provided for by law: the parties claiming the existence of a legal relationship shall bear the burden of proof for the basic facts of the legal relationship. In the case of contract disputes, the party who advocates the establishment and entry into force of the contractual relationship bears the burden of proof for the fact that the contract is concluded and entered into force. Private lending disputes are a kind of contract disputes. In general, even if the debtor does not make any defense, the creditor should also prove that there is a loan agreement between the two parties and the actual delivery of the money. That is, when the plaintiff files a private lending lawsuit, if it can submit evidence that the loan agreement and the amount actually occurred, its litigation claim should generally be supported.

Article 16 of “The Private Lending Provisions” stipulates that the plaintiff only initiates private lending litigation based on the transfer vouchers of financial institutions. The defendant argues that the transfer is to repay the previous borrowings or other debts of both parties, and the defendant shall provide evidence to prove his claim. The reason why it is so stipulated is that considering that the plaintiff, as the plaintiff who advocates the existence of private lending relationship between the two parties, has not been able to submit the loan contract as direct evidence, but has submitted the corresponding evidence of the actual payment of the money, that is, it should be considered that it has completed the preliminary proof of the fact that there is a lending relationship with the defendant. ^[3]

2.2 The Defendant’s Standard of Proof for the Defense Claim

What is the requirement for the people’s court to make the defendant’s determination of “proving his claim”? That is, under what circumstances, the burden of proof is transferred to the plaintiff. The author believes that the evidence provided by the defendant to his own defense claim should meet the reasonable and possible standard of proof, rather than the high probability standard.

First of all, specific to the provisions of Article 16 of the “Private Lending Provisions”, if the defendant is required to achieve a high degree of probability in his defense claim, at this time, because the two sides claim that the facts are fundamentally opposite, the defendant’s claim should be directly determined to be established, thus rejecting the plaintiff’s claim. However, the provisions at the end of the article stipu-

late that the plaintiff still bears the burden of proof for the establishment of the loan relationship. On the surface, the plaintiff seems to have a second opportunity to overturn the facts of his original claim, which is not consistent with the principle of good faith in civil litigation. Therefore, if the standard of proof of defense facts set for the defendant reaches a high degree of probability, the corresponding legal effect should not allow the plaintiff to prove the existence of the loan relationship, but should directly reject the plaintiff's claim.^[4]

Secondly, the defendant only bears the burden of counter-evidence against his defense. After the plaintiff only provides the remittance certificate of the financial institution as evidence, and the defendant raises the defense of the transfer payment or the performance of the debt based on other legal relationships, the defendant only bears the burden of counter-evidence to his own defense of the fact claim, and does not bear the burden of this evidence; the burden of proof only needs to reach the degree of shaking the conviction of this certificate. This evidence refers to the evidence put forward by the party who has the burden of proof in civil litigation to prove the truth of the facts he claims. Counter-evidence refers to the evidence put forward by the party without the burden of proof to prove that the other party's claim is not true.^[5]

2.3 Analysis of the Burden of Proof In This Case

The plaintiff in this case filed a lawsuit only on the basis of the transfer voucher of 300,000 yuan to the defendant, and did not provide other evidence to prove that the two sides reached an agreement on the intention of the loan agreement. However, considering the kinship between the two sides, the above evidence provided can prove that the money actually occurred and can be identified as the preliminary evidence of the existence of the loan agreement between the two sides. At this time, the defense of the defendant and the probative force of the evidence should be reviewed. The defendant's defense in this case is that because the defendant is close to marriage, the plaintiff gave money to the defendant as an elder and made a reasonable explanation. Because the defendant's claim constitutes counter-evidence, it is not necessary to require the defendant to submit sufficient evidence to directly prove that there is a gift relationship between the two parties, but the defendant's explanation of the other reasons for the payment should submit the necessary evidence to prove that the situation and occasion are real and reasonable. In this case, it is not necessary to require the defendant to submit a situation that can directly prove that the plaintiff's payment of money is a gift. After the defendant makes a reasonable explanation of the defense, the judge can be convinced that the gift situation may exist, so that the facts to be proved are in a state of unknown authenticity.^[6]

At this time, the plaintiff should further submit evidence to prove that there is a loan agreement between the two parties. In the case that the plaintiff failed to submit further evidence, it was finally determined that the facts of the two parties' loan agreement did not exist, thus rejecting the plaintiff's claim. In this case, the plaintiff's transfer of money to the defendant occurred in the period before the defendant's marriage. Seven years later, the plaintiff told the court that the money was borrowed, but it lacked direct evidence to prove the existence of the loan relationship, such as debit

and debt. The statement of the loan reminder process during the trial of the case is not only contradictory, but also has many anomalies, and the witness Zhang's testimony is also inconsistent with the plaintiff's statement. In summary, the court held that the plaintiff sued the defendant on the grounds of private lending disputes, and the evidence was insufficient, and finally rejected the plaintiff's claim.

3 Confirmation of the Fact of Borrowing Between Relatives

Private lending cases occur between relatives, and direct evidence is often relatively simple, mainly debit, arrears or bank transfer receipts, in addition to the statement between the parties. Although there are occasional witnesses in court, it has little effect on finding out the facts of the case. Therefore, the determination of legal facts in such cases often depends on the judge's evidence. In order to make the legal facts close to the objective facts to the greatest extent, the rule of thumb and common sense of life play a major role in the handling of cases.^[7]

Article 93 of the Judicial Interpretation of "The Civil Procedure Law of China" clarifies that the rule of thumb can be used to determine facts in litigation procedures. Article 85 of "The Supreme People's Court's Several Provisions on Civil Litigation Evidence" gives judges the power to use the rule of thumb to determine evidence. The so-called rule of thumb is the understanding of the inherent attributes of things and the state of things between each other formed by people's inductive reasoning from individual to general daily life experience. It not only reflects the causal relationship between things, but also reflects the normal connection between things. The elements that constitute the rule of thumb include: first, the life experience on which it is based must be a normal phenomenon that occurs repeatedly in daily life; second, the rule of thumb can be felt and understood by ordinary people in society; third, the life experience based on this rule of thumb is a rational understanding formed by people in long-term production, life and scientific experiments, which is self-evident. The rule of thumb in the law of evidence is the relevant rules of the judge's determination of the facts to be proved according to the facts that reflect the inherent and inevitable connection between things formed in daily life. It is the knowledge obtained by the judge in combination with his own experience in daily life or with the help of relevant information, and summarizes the causal relationship or general form of the relevant things, and draws a rational understanding of the fact judgment of the case.

In trial practice, daily life experience plays an important role in determining facts and applying law. It is usually reflected in the following aspects: first, to determine the relevance of evidence; the second is to determine the admissibility of evidence; the third is to play the role of reasoning between evidence and reduce the burden of proof of the parties; fourth, the application of the rule of thumb is conducive to the correct determination of facts and fair judgment; fifth, the application of the rule of thumb is conducive to the judge to correctly understand and apply the law. The second paragraph of Article 15 of the "Private Lending Provisions" stipulates that judges should "comprehensively judge" whether there is a lending relationship based on various factors, which essentially clarifies that judges can use the rule of thumb to

determine the legal facts of private lending. In judicial practice, due to the random and disorderly characteristics of private lending, the evidence in private lending cases often shows the omission and dislocation of each link. Therefore, the method of presumption using the rules of daily life experience is more important than other cases in the legal fact determination of private lending cases. It can be said that it has played a leading role in the legal fact determination of private lending.^[8]

4 Conclusion

The author believes that, to deal with the case of lending between relatives to fully utilize the rule of thumb on the authentication of evidence, so as to determine the legal facts, and ultimately make a judgement on the case. Specifically, can be divided into two situations: one is between relatives lending direct documentary evidence such as loan or debt. Should first examine the authenticity of the loan or note, if true, can be recognized as evidence of the validity of the loan. At this point should be claimed by the non-existence of the loan relationship or the existence of other legal relationships bear the burden of proof.^[9] On the other hand, in the absence of direct documentary evidence such as debit, the main burden of proof should be allocated to the party claiming the existence of the borrowing relationship, and the party claiming the existence of the borrowing relationship should provide evidence for its own claims. The formation of the loan, the process of borrowing, and the use of the loan should be strictly examined. In the review, the relationship between the two parties should be fully taken into account, and the common sense of life and the rules of experience should be used to judge the authenticity of the parties' statements. In the trial of private lending cases between relatives, judges should start from the characteristics of the case and make full use of daily life experience, so that the certification results are not contrary to people's daily life experience as much as possible.^[10]

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