

Original Paper

Research on Compulsory Contracting Obligation of Civil Liability under the Civil Code

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Abstract

This paper introduces the concept of compulsory contracting obligation from the case analysis, and analyzes the characteristics and types of compulsory contracting obligation. Subsequently, the civil liability for breach of the compulsory contracting obligation is analyzed from its nature and constituent elements, and its liability method is proposed and introduced in detail.

Keywords

compulsory contracting obligation, violation, civil liability

1. Case Review

The plaintiff is the owner of the house in Xingcheng City, and the defendant Shuangxing Heating Company is an enterprise that provides heating services for the third phase of Century Huafu District in Xingcheng City. In August 2020, the plaintiff purchased Xingcheng housing from Xingcheng Fubang Real Estate Development Co., Ltd. In October 2022, the plaintiff obtained the housing ownership certificate of Xingcheng City. On October 18, 2022, the plaintiff paid the defendant 3944 yuan from 2022 to 2023 according to the heating price of 24 yuan per square meter and the billing area of 164.35 square meters (including the basement area of 48.74 square meters). During the acceptance of the defendant Shuangxing Heating Company, it was found that the door connecting the garage and the basement of the household was still not completely closed, which was an illegal act of unauthorized expansion of the heating area. The plaintiff was asked to make rectification and said that the heating was suspended before the rectification. On October 22, 2022, the plaintiff complained through the 8890 platform that the heating unit refused to heat because there was a door between the network area and the non-network area. The heating office of xuanxing city went to the scene of the house involved in the case to consult with the plaintiff and the defendant on the issues reflected by the plaintiff, and no agreement was reached. On October 28, 2022, the Xingcheng Heating Office replied that it was found

that the household was Room 102, Unit 1, Building 16, Phase 3, Century Huafu Community. The basement of the original design drawing of the house was not connected to the garage. The user changes the building structure of the house without authorization, so that the garage is connected with the basement (with a warm room). According to Article 33, paragraph 5 of the “Huludao City Heating Regulations”, the user may not expand the heating area without authorization. If heating is needed, the user needs to rectify it himself. The defendant Shuangxing Heating Company has not restored heating to the house involved in the plaintiff’s case. In another investigation, in July 2018, the defendant Shuangxing Heating Company and Xingcheng Fubang Xingcheng Fubang Real Estate Development Co., Ltd. signed a “heating access agreement” on the issue of community access heating in the case. In October 2019, the defendant Shuangxing Heating Company conducted a preliminary test of the heating facilities of the Xingcheng Century Huafu Phase III community. During the acceptance process, the company found that there were 21 households with basements on the ground floor of the community, and there was a connection between the network basement and the garage. Among them, the basement containing 102 rooms in unit 1 of building 16 is connected to the D4-51 garage, and it is proposed that the garage is connected to the network basement. It is necessary to go through the network access procedures by the development enterprise, or restore the original wall of the basement door to the garage to maintain the independence of the basement space. In November 2019, the defendant Shuangxing Heating Company began to provide heating for the third phase of Xingcheng Century Huafu District. Again, there is a burglarproof door between the basement of the plaintiff’s house and the garage. The plaintiff provided invoices, housing warrants, the defendant’s submission of the network access agreement, on-site video, 8890 platform reply, etc., and the statement transcripts of the parties.

The court of first instance believes that civil subjects engaged in civil activities should follow the principle of fairness and reasonably determine the rights and obligations of all parties. According to Article 648 of the Civil Code of the People’s Republic of China; the power supply contract is a contract in which the power supplier supplies power to the electricity user and the electricity user pays the electricity fee. The power supplier who supplies power to the public shall not refuse the reasonable contract requirements of the power user. In combination with the relevant provisions of the Civil Code on the reference to the applicable power supply contract for the heat supply contract, the heating service enterprise shall also provide the heating obligation in accordance with the state regulations and shall not refuse the heating in accordance with the above provisions. Although there is no written heating agreement between the plaintiff and the defendant, the defendant is responsible for the heating service in the district where the house is located. The plaintiff has paid the heating fee, and a de facto legal relationship has been formed between the plaintiff and the defendant. Article 26 of the “Regulations on Urban Heating in Liaoning Province” stipulates that “during the heating period, the heating unit shall ensure normal, stable and continuous heating, implement 24-hour uninterrupted service, strengthen inspections, find problems or receive repairs, and shall deal with them in a timely

manner”. In the life of residents, electricity, water, gas and heat are all public goods closely related to people’s livelihood. Ordinary residents generally cannot directly choose the main body to provide products and services. In the district where the plaintiff lives, the defendant is the only unit that provides heating services. The heating pipelines and other facilities in the district are managed by the plaintiff. The plaintiff, as the owner of the house involved in the lawsuit, can only accept the heating services provided by the defendant. If the defendant refuses to provide services, the plaintiff will be in a situation where heating services cannot be obtained, which is unfair and does not conform to the basic principles and spirit of the law. Therefore, the defendant, as the only heating institution in the heating service area, cannot refuse to provide heating services for the plaintiff. The plaintiff has paid the heating fee, and the defendant should fulfill the heating obligation. Therefore, the plaintiff requests to resume heating and support it according to law.

In this case, we can see that the compulsory contracting obligation guarantees the plaintiff’s own rights and interests. Chapter X Contracts for the Supply of Electricity, Water, Gas and Heat in Title III of the Civil Code Contracts for the supply of electricity, water, gas and heat in Title III of the Civil Code are contracts in which one party provides electricity, water, gas and heat for the use of the other party, and the other party makes use of these resources and pays remuneration. The characteristics of the contract include the public nature, that is, it has a compulsory contracting obligation.

2. Concept of Compulsory Contracting Obligation

The concept of compulsory contracting first appeared in Germany. German scholar Medikus explained the compulsory contracting in his own works. German scholar Medikus believes that compulsory contracting is under the legal norms. In order to protect the rights and interests of the beneficiaries, the obligor has the obligation to sign a contract with the beneficiaries, and the content of the contract should be specific or neutral and fair. Professor Wang Liming believes that compulsory contracting is the conclusion of a contract. It is not based on the consent of the person at that time. As long as one party makes a contracting request, the other party has a statutory contracting obligation.

Article 494 of the “Civil Code of the People’s Republic of China” states that where the state issues national ordering tasks or mandatory tasks in accordance with disaster relief, epidemic prevention and control, or other needs, the relevant civil subjects shall conclude contracts in accordance with the rights and obligations stipulated in relevant laws and administrative regulations. The parties who have the obligation to issue an offer in accordance with the provisions of laws and administrative regulations should issue a reasonable offer in a timely manner. The parties who have the obligation to make commitments in accordance with the provisions of laws and administrative regulations shall not refuse the other party’s reasonable contract requirements.

Therefore, compulsory contracting refers to the obligation of the civil subject to conclude a contract with the counterpart at the request of the counterpart, or the obligation of the civil subject to issue an offer to the counterpart to conclude a contract. The former is mandatory commitment, and the latter is

mandatory offer. The civil subject who has the obligation to sign a contract with the counterpart is called the contracting obligor. The contracting obligor has the obligation to make an offer to the other party or to make a commitment to the offer made by the other party, which is the compulsory contracting obligation. This obligation is legal, and the contract concluded because of the performance of the compulsory contracting obligation is a compulsory contract.

China's Civil Code stipulates the following compulsory contracting obligations:

- (1) The "Civil Code of the People's Republic of China" stipulates that if the state issues mandatory tasks or national ordering tasks as needed, the relevant legal persons and other organizations shall conclude contracts in accordance with the rights and obligations stipulated in relevant laws and administrative regulations;
- (2) The "Civil Code of the People's Republic of China" stipulates that the lessor who sells a rental house shall notify the lessee within a reasonable period of time before the sale, and the lessee shall have the right to purchase first under the same conditions;
- (3) The "Civil Code of the People's Republic of China" stipulates that the carrier engaged in public transportation shall not refuse the usual and reasonable transportation requirements of passengers and shippers.

3. Characteristics of Compulsory Contracting Obligation

3.1 The Power of Compulsory Contracting to the Contracting Obligor Comes From the Law

The compulsory contracting obligation is imposed by law on the obligor, which is a legal obligation. It cannot be refused without justifiable reasons, and must bear the relevant legal consequences of violating this obligation. Mr. Liang Huixing once proposed that the supervision of contract freedom plus public law is to protect the relatively weak party. The compulsory contracting obligation has its particularity and needs to be applied cautiously. From this point of view, the power of compulsory contracting to the contracting obligor must come from the law.

The law of our country is statute law, so the law is lagging behind the development. At this time, the legal principles can play a complementary and bottom-up role. In the face of great controversy among judges and the lack of specific provisions in the current law, it is difficult to apply directly. It is necessary to rely on legal principles to make judgments and allow them to play a command and auxiliary function. In addition, the "honesty and credit, public order and good customs, equality and voluntariness" in the legal principles are highly abstract and can be flexibly used to properly fill the legal loopholes caused by the lag of the law.

3.2 Compulsory Contracting Has the Dual Attributes of Public Law and Private Law

Public law is related to national interests. The object of its adjustment is the state and public interests. One party is the state, and the other party is subordinate or obedient, which is mainly reflected in mandatory norms. The private law is the object of adjustment is personal interests, the main emphasis is the equality and freedom of the individual. From the above, we can find that there is a clear boundary

between public law and private law. However, with the rapid development of society, there is a trend of public law infiltrating and integrating into private law in various places and countries. In order to realize the right of equality in law, many compulsory contracting obligations are stipulated. “Compulsory” has the color of public law, and “contracting” has the characteristics of private law. The compulsory contracting obligation originates from the law, which naturally has the nature of public law. In addition, the compulsory contracting obligation still needs to be established through the offer and commitment of both parties, which is the core and manifestation of private law autonomy. And the compulsory contracting obligation is to achieve substantive justice, which corrects the “non-free” part, which is an important principle and value of private law.

To sum up, compulsory contracting not only has the nature of public law, but also has the nature of private law. On the one hand, it reflects the mandatory nature of the state, and the scope of adjustment is not only limited to the scope of private law, but also covers public law-such as administrative law, economic law, criminal law and so on. On the other hand, compulsory contracting still conforms to the characteristics of private law, follows the essential attributes of private law, and runs on the track of private law.

3.3 The Contractual Freedom of the Forced Contracting Party Is Limited

The principle of freedom of contract refers to the freedom of the parties to decide whether to enter into a contract and who to enter into a contract. The freedom here refers to the decision to decide completely according to their own wishes without any restrictions. The compulsory contracting obligation makes the forced party not have no way to exercise the right to freely contract, and to force the conclusion of the contract according to the law. Although the compulsory contracting obligation limits the contractual freedom of the forced contracting party, its essence is to protect the overall interests of the relatively weak party and prevent some units with strong economic strength and monopoly status from arbitrarily using their own advantages to infringe on the interests of ordinary people. Because of the huge strength and economic gap between the two sides, in order to avoid the ordinary people being forced to accept some unfavorable and harsh terms due to this gap and monopoly relationship, only the contractual freedom of the forced parties can be restricted to a certain extent.

3.4 Neutrality and Extensibility of Compulsory Contracting Obligation

The compulsory contracting obligation is neutral, because the compulsory contracting obligor needs to comply with the compulsory contracting obligation, but it cannot stipulate the specific content and terms of the contracting contract. In addition, the establishment of the contract also requires the parties’ own meaning to complete the direct offer and commitment. Therefore, the compulsory contracting obligation is a means, which can only balance the interests of both parties in a neutral position and safeguard the overall interests as much as possible. The compulsory contracting obligation is also extended. The development and change of society is extremely rapid, and the law often lags behind the development of society. We often face some areas where the compulsory contracting obligation originally needed is no longer needed, and the areas that were not originally needed need to apply the

compulsory contracting obligation for development reasons. In order to better adapt to the development and changes of society, protect the interests of vulnerable groups and maintain social justice, the obligation of compulsory contracting also needs to change with the development of these situations.

4. Types of Compulsory Contracting Obligations

4.1 Direct Compulsory Contracting

Direct compulsory contracting means that the law has direct provisions on compulsory contracting obligations, mainly some public utilities, such as the supply of hydropower, coal, natural gas and other units, or based on a specific identity, occupation and obligations, such as motor vehicle drivers and so on.

At present, China's direct compulsory contracting mainly includes:

(1) Public transportation: like buses, taxis are closely related to the lives of ordinary people, and are important means of transportation for people's daily travel. The service objects of these vehicles are uncertain. Therefore, many places have issued relevant laws and regulations. Taxi drivers are required not to refuse passengers when passengers make reasonable demands. However, it is also determined that the following three conditions can be rejected: taking a taxi in a place where parking is prohibited; taking a taxi when a person who is restricted or incapable of civil conduct travels alone; passengers put forward unreasonable compliance legal requirements.

(2) Public utilities: The compulsory contracting obligations in this area are mainly stipulated in water supply, electricity, coal, heating and other industries closely related to the lives of ordinary people. These industries have something in common: first, the goods and services provided by these industries are necessities in people's daily life, and people's daily life is inseparable from these goods and services; second, most of these industries are monopoly enterprises. If the enterprise does not perform the contract, people's daily life will lose the basic living conditions and quality of life. Therefore, as long as the compulsory contracting obligation is implemented from the legal level, people's daily production and life can be guaranteed.

(3) Medical treatment : Article 27 of the "Medical Law of the People's Republic of China" points out that doctors should take emergency measures to treat patients in need of emergency treatment, and should not refuse emergency treatment; if the opinions of patients and their close relatives cannot be obtained due to emergency situations such as rescuing dying patients, the corresponding medical measures can be implemented immediately with the approval of the head of the medical institution or the authorized head. Therefore, doctors and hospitals have a mandatory contracting obligation in the case of acute illness.

(4) Insurance industry: in China's "motor vehicle traffic accident liability compulsory insurance regulations", Article 10 points out that the insured should choose to engage in motor vehicle traffic accident liability compulsory insurance business qualifications insurance company, the selected insurance company may not refuse or delay underwriting. However, most of the contracts in the

insurance industry are based on the results of free consultation between the parties.

4.2 Indirect Compulsory Contracting

Indirect compulsory contracting refers to the compulsory contracting that is not expressly stipulated by law but is applied by analogy according to the relevant principles of public order and good customs in civil law. At present, China's indirect compulsory contracting includes the following two types:

(1) Easement: a party is the state and for the public interest of the society to lay or build canals and other reasons need to use other people's land, if the use of easement mode, according to the relevant provisions of the "property law", the parties to set up the easement shall be concluded in writing the contract. And the law stipulates that the land owner, the right to land contractual management and other land applicable rights holders in the content of the contract should have a mandatory contracting obligation.

(2) Specific service industries: such as catering accommodation and even haircut and other service industries, although there are many similar shops, ordinary people in a refused service will not affect people's living conditions. However, in a specific area or situation, there may be only one catering and accommodation enterprise in this area or during this period. At this time, this enterprise refuses customers to eat and stay, which will affect the daily life of ordinary people. Therefore, these industries have compulsory contracting obligations under certain conditions.

4.3 Distinguish between Direct and Indirect Meaning

Its significance is that the law has very clear and specific provisions for direct compulsory contracting, which can be directly applied with reference to the law. The indirect compulsory contracting is derived from legal provisions or legal principles, and its application is more complicated than the direct compulsory contracting, which may lead to improper application.

5. Civil Liability for Breach of Compulsory Contracting Obligations

5.1 The Nature of Civil Liability for Breach of Compulsory Contracting Obligations

Compulsory contracting is that the law expressly stipulates that the obligor bears legal obligations and cannot arbitrarily change the obligor's corresponding obligee to enjoy legal rights. They have the right to request the contracting obligor's right to contract with him. However, contracting is, after all, a legal act that can only be reached by consensus between the two parties, requiring the parties to perform in accordance with the specific content of the offer commitment. If the obligor fails to perform its obligations in accordance with the content of the compulsory contracting, the relevant rights of the obligee cannot be realized or even cause damage to the interests, the obligor needs to bear the corresponding legal liability for its failure to perform its obligations. However, at present, there is no clear stipulation on the specific nature of civil liability in legislation, and there are different opinions in academic circles.

At present, there are four main theories about the specific nature of the civil liability of the compulsory contracting obligor:

(1) The theory of contracting fault liability: The point of view of this theory is that civil liability should be borne for breach of compulsory contracting obligations, and civil liability is contracting fault liability. Professor Wang Liming believes that the party's refusal to enter into a contract with the other party in violation of the compulsory contracting obligation is a kind of contracting fault behavior. Therefore, the compulsory obligor should bear the contracting fault liability for his refusal to enter into a contract. Professor Wang Liming's reason is that the violation of the compulsory contracting obligation occurs at the contracting stage and will damage the interests of the counterpart.

(2) Tort liability theory: The point of view of this theory is that the liability for breach of compulsory contracting obligations is tort liability. At present, Germany, France and China's Taiwan region all agree with this view. In the tort law of Germany and France, the act of violating the obligation of compulsory contracting is considered to be an act of infringing the rights of the counterpart, and it is also a kind of tort. Therefore, German and French countries define civil liability for breach of compulsory contracting obligations as tort liability.

(3) Liability for breach of contract: The point of view of this theory is that compulsory contracting is an obligation expressly stipulated by law. The content of this obligation is that it is necessary to conclude a contract with the counterpart, and most of the compulsory obligors are units or organizations that provide public services. Therefore, according to the legislative purpose and content, the rest within the scope of the compulsory contracting obligation should be established on the basis of legal provisions. That is to say, even if the compulsory contracting obligor refuses to conclude a contract with the counterpart, the contract is still valid. Therefore, the doctrine holds that the civil liability for breach of compulsory contracting obligations should be characterized as liability for breach of contract.

(4) Independent liability theory: The point of view of this theory is that the civil liability for breach of compulsory contracting obligations is an independent civil liability. The reason is that the purpose of the state's establishment of compulsory contracting obligations is to urge public service agencies to actively fulfill their social responsibilities and ensure that the daily lives of ordinary people can be met. Therefore, the public service institution rejects the contracting request of the counterpart, and the public service institution should bear the responsibility of "actually fulfilling" the compulsory contracting obligation. Therefore, the civil liability for breach of the compulsory contracting obligation should be a type of liability independent of the existing liability.

5.2 Constitutive Elements of Civil Liability for Breach of Compulsory Contracting Obligations

(1) Operators have compulsory contracting obligations in the contract: the following three operators have obligations in the contract. The first is the monopoly of quasi-public goods or service contracts: the contract mainly includes life resource-based and basic service-oriented quasi-public goods branding service contracts. The second is the monopoly of private goods or service contracts: although private goods are not of a public nature, it should be to fully allow the market to compete freely, and operators

enjoy contract freedom. Therefore, only if the operator abuses the relevant status to infringe on the rights and interests of the general public, it will have a compulsory contracting obligation. And the law explicitly prohibits the act, for example, “refuse to trade with the counterparty without proper reason”. Third, non-monopolistic but discriminatory private product or service contracts: although it is said that the operator is essentially aiming at profit in the business process, there will be no discrimination caused by some other reasons. However, sometimes due to the operator’s own political position, interests or religious beliefs, it will set up some special conditions for products or services or refuse to provide products or services to certain types of consumers.

(2) The operator has the behavior of violating the compulsory contracting obligation: first of all, the operator must refuse the contracting behavior, which will violate the compulsory contracting obligation, and then there is the possibility of civil liability. In addition to the positive act of refusing to conclude a contract, the operator’s violation of the compulsory contracting obligation also includes acts that do not constitute implied commitments, omissions of intention realization, and improper contracting conditions: First, unless the operator has reasonable reasons, it cannot expressly inform the consumer of its non-compliance with the compulsory contracting obligation, otherwise it will constitute a violation of compulsory contracting. Second, although it is not clear to refuse to perform the contract, but the establishment of some unreasonable restrictions, which is actually equivalent to the refusal to perform the contract, its legal effect is consistent with the refusal to perform the contract, need to bear civil liability.

(3) The consumer’s request for contracting is legal and has the possibility to perform: the operator must first have the obligation to force the contracting, and secondly, it must also be based on the legality and enforceability of the contracting request. Otherwise, the civil liability is not legitimate, and the compulsory contracting obligation will lose its meaning. The understanding of the legality and enforceability of the contracting request proposed by the consumer is as follows : First, the contracting request should be specific and include the intention to enter into a contract with the operator, and the operator should be reasonably convinced of the contractual rights it requires to establish through the commitment; at the same time, the inviter has issued an offer to the counterpart, and the content and form of the offer are in accordance with the law. Secondly, the contract is enforceable. Firstly, the compulsory contracting obligation is essentially to ensure that the ordinary people can enjoy the rights and interests they should enjoy, emphasizing the conclusion of the contract and the realization of the interests after the conclusion, so as to ensure that the ordinary people can obtain the necessary resources and services for life. Therefore, the service advocated by the contracting request should be within the scope of the service business of the operator with the compulsory contracting obligation and its service capacity.

5.3 Ways of Bearing Civil Liability for Breach of Compulsory Contracting Obligations

(1) Forced conclusion of a contract

In the above, we have repeatedly mentioned that the compulsory contracting obligation is essentially to protect the basic life of the ordinary people. The purpose of its establishment is not to compensate for the losses caused by the violation of the compulsory contracting obligation, but to urge the public service units to perform their duties and reach a contract with the counterpart to ensure that the basic needs of the ordinary people are met. The core of the compulsory contracting obligation is also to protect the rights of relatively vulnerable groups. Therefore, for forcing the obligor to refuse to conclude a contract without good reason, the most important way of responsibility is to actually fulfill its obligations and conclude a contract, which is not only more practical than compensating for losses, but also more able to protect the rights and interests of ordinary people. For example, A opened a factory in a city with frozen goods as the main product, which needed to use a lot of power facilities in the process of production and life, but the local power company refused to conclude the contract. From the case, we know that, compared with the compensation for the existing losses, the performance of the contract with the local power company is the most meaningful way to bear the responsibility.

(2) Damages

As mentioned above, although the most effective and practical way to bear responsibility is compulsory contracting, it is not applicable or partially applicable to some contracts. Professor Cui Jianyuan proposed that the compulsory obligor should give the counterpart corresponding compensation for the part that has not been compensated for the compulsory contracting. Especially in the case of damage to personal rights and interests, damage compensation is more reasonable and more able to protect the rights and interests of the other party. Therefore, damage compensation plays an important complementary role. For example, A took a taxi to a city, but the driver refused to carry it on the way and asked A to get off the highway. Subsequently, the rear car caused a serious collision with A, resulting in serious injury to A. In this case, it is no longer meaningful to continue to enforce the contracting. Relatively speaking, damage compensation can better safeguard the interests of a.

(3) Apology

Apology is a common way to make up in daily life, and it is also a common way to bear civil liability, which is also applicable to the violation of compulsory contracting obligations. For example, the compulsory obligor's refusal to perform does not cause substantial damage to the counterpart, but has a certain impact on its spirit, and the impact does not reach the level of compensation, then the act of apology can be reflected. For example, the refusal to perform the contract leads to the dissatisfaction of the counterpart, resulting in his mental discomfort. At this time, the apology can play a role in soothing and alleviating the emotion of the counterpart. Furthermore, apology basically does not produce economic costs and is easy to use. It can not only resolve the contradiction between the two sides, but also play a disciplinary role in the obligor. It is a good way to achieve both ends.

6. Conclusion

The purpose of the state's establishment of compulsory contracting obligations is to urge public service agencies to actively fulfill their social responsibilities and ensure that the daily lives of ordinary people can be met in order to safeguard the interests of vulnerable groups. At present, there is no provision in China's legislation that violates the legal consequences of compulsory contracting obligations, and only administrative and criminal responsibilities are stipulated, and there are few provisions on civil liability. And the nature of civil liability for breach of compulsory contracting obligations has not been clearly defined, and the academic community has more controversy about its nature.

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