

Original Paper

Research on the Determination of Joint Debt of Husband and Wife

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Abstract

The identification of joint debt is in a fundamental position in the settlement of marital debt disputes, but the existing research has exposed the defects of insufficient connection between procedures and entities. On the basis of systematically interpreting the rules for determining the joint debt of husband and wife, through the case situation, it can be found that there are problems such as value imbalance, vague standards and mechanical application of the rules of proof in Article 1064 of the Civil Code. Based on this, targeted suggestions for improvement can not only help the couple's debt disputes to be properly handled, but also effectively respond to the legislative expectations of "summarizing practical experience", promote the couple's debt litigation rules to get rid of the "extreme" legislation, and gradually realize the balance of multiple values.

Keywords

common interests, joint debt of husband and wife, balance of interests

1. Introduction

The settlement of marital debt disputes mainly involves the determination, settlement and execution of debt nature, which directly affects the interests of debtors and creditors, and indirectly affects the stability of marriage and family and the safety of market transactions. Once it is determined that a joint debt is established, the husband and wife should bear the responsibility of jointly paying off the debt, and the joint property and personal property should be taken as the object of execution in the execution procedure. It can be seen that the determination of joint debt is in a fundamental position in the handling of marital debt disputes. However, for the identification of the joint debt of husband and wife under the triple role of family law, property law and procedural law, compared with the fruitful research results at the entity level, the procedural issues have been put on hold for a long time, and the connection between entities and procedures is pending due to the lack of necessary care.

In addition, the burden of proof, as a link between substantive and procedural issues, is the closest combination of substantive law and procedural law. There are not only obvious theoretical differences in the burden of proof on the facts of the use of debt by one of the spouses, but also the problems of generalization of application. This is not only contrary to the consensus of strengthening the collaborative research of entities and procedures, but also does not help to promote the resolution of practical problems by breaking the internal disciplinary barriers of law. Therefore, it is necessary to study the criteria for determining the joint debt of husband and wife and the burden of proof directly related to it from the perspective of civil integration.

2. The Historical Evolution of the Rules for the Determination of Joint Debts of Husband and Wife

The different legislative values in different periods lead to frequent changes in the rules for the determination of joint debts of husband and wife. From Article 24 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the Marriage Law of the People's Republic of China (II) (hereinafter referred to as the Interpretation of the Marriage Law (II)) to Article 1064 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Cases Involving Marital Debt Disputes (hereinafter referred to as the Interpretation of Marital Debt) and Article 1064 of the Civil Code of the People's Republic of China (hereinafter referred to as the Civil Code), the determination of the joint debt of husband and wife has always been a matter of great concern to the legislative, judicial organs and researchers, during which a fierce exchange of views has been formed.

(1) Interpretation of Marriage Law (2) Interpretation of Article 24

Article 41 of the "Marriage Law of the People's Republic of China" (hereinafter referred to as the "Marriage Law") first established the criteria for determining the joint debt of husband and wife "living together for husband and wife". According to the "normative theory" of the distribution of the burden of proof, each party must claim and prove the conditions of the legal effect on its own favorable norms. Article 91 of the Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China (hereinafter referred to as the "Interpretation of the Civil Procedure Law") clearly stipulates the rules for the distribution of burden of proof for different legal elements. Specific to the husband and wife debt disputes, the creditor who claims that the debt of one of the husband and wife is a common debt should bear the burden of proof of the fact that "living together for the husband and wife". However, as a third party outside the relationship between husband and wife, the creditor is often difficult to prove the specific use of the debt. In addition, a large number of husband and wife colluded with each other and transferred property at that time, which caused great damage to the interests of the creditor. The Supreme People's Court passed the "Marriage Law Interpretation" (2) Article 24 stipulates that the people's court can directly presume that the debt's "husband and wife live together" is true according to the basic fact that the debt of one of the spouses

occurs during the “duration of marriage”, and then determine the establishment of the joint debt of the husband and wife. Unless one of the spouses can prove that “the creditor and the debtor clearly agreed to personal debt” or belong to the “marriage law Article 19, paragraph 3” of the situation.

The marital property relationship plays an external guarantee role in the personal relationship. As an important part of the marital property system, the determination of the joint debt of husband and wife directly affects the maintenance of marriage and family relations. Correspondingly, the protection of creditors’ interests in the determination of joint debts of husband and wife not only affects the security of market transactions based on private lending, but also has a direct impact on financial investment transactions, which is enough to see its social value in market transaction mode and security guarantee. If the application field of the rules for determining the joint debt of husband and wife is limited to the divorce process, in fact, the rules for adjusting the external legal relationship of husband and wife are limited to the internal legal relationship of husband and wife. The social value of creditors and their representatives will inevitably be obscured, which will not help the balance of multiple values.

(2) Analysis of “husband and wife debt explanation”

In order to enable creditors to control risks in the early stage to avoid the difficulty of proof in the later stage, under the premise that the “husband and wife debt interpretation” refines the criteria for determining the joint debt of husband and wife, the “joint debt presumption” of one spouse’s external debt is changed to “individual debt presumption”. It is stipulated that in addition to the debt of one spouse’s “daily life needs of the family” is directly presumed to be the joint debt of husband and wife, other debts must be proved by creditors’ “joint debt co-signing” or “living together for husband and wife, common production and operation” in order to be recognized as joint debt of husband and wife.

In the specific litigation process, the parties’ claims, denials, defenses, re-defenses and other attack defense systems constitute the basic framework for the distribution of the burden of proof. In view of the facts of various legal elements, the proof activities of the parties who bear the burden of proof belong to this certificate, and a high probability proof standard needs to be achieved; the proof activity of the other party is counter-evidence, and it is only necessary to lower the fact that the judge has formed the essential facts to the state of unclear authenticity. Such a cycle, supplemented by the judge’s interpretation of the provisional evidence based on the proof activities of the parties, gradually promotes the identification of the facts of the elements, and finally forms the evaluation of the authenticity of the facts of the elements.

According to the “interpretation of husband and wife debt”, “joint debt signing” and “living together for husband and wife, common production and operation” need to be borne by the creditor who advocates the establishment of joint debt of husband and wife. The burden of proof should meet the high probability proof standard, and there is basically no difference in understanding. However, there is a view that it is a “beautiful-looking” practice to set different rules of proof for the “daily life of the family” as the boundary of the “husband and wife debt interpretation”, which is ultimately the creditor’s burden of proof for the purpose of the debt. This is obviously inconsistent with the basic

requirements of the application of the presumption rules.

(3) Analysis of Article 1064 of the “Civil Code”

The compilation of the Civil Code provides an opportunity for the improvement of the rules for the determination of joint debts of husband and wife. Researchers have made suggestions. There is a view that the “joint debt and joint signature” of husband and wife should be incorporated into the “Civil Code” and used as a principled standard for the determination of the joint debt of husband and wife; however, there is a view that the “joint debt and joint signature” of husband and wife is not established. The “interpretation of marital debt” establishes the rule only to correct the influence of Article 24 of the “interpretation of marriage law” (2), and to guide judicial practice to avoid the expediency of extreme cases; it is also believed that based on the particularity of the relationship between husband and wife, the independence of husband and wife as the subject of legal relationship and the protection of creditors’ rights, the joint debt and joint signature of husband and wife can only be an exceptional supplementary rule at most.

In the face of fierce academic debate, the attitude of the legislature on the determination of the joint debt of husband and wife has also changed significantly, and has made difficult choices. The draft absorbs the provisions of the new judicial interpretation and clarifies the scope of the joint debt of husband and wife. However, the rules for determining the joint debt of husband and wife established in Article 1064 of the Civil Code have not achieved the balance of interests of all parties in the handling of marital debt disputes, and there is still room for further improvement.

The academic debate and the change of legal rules on the determination of the joint debt of husband and wife are all to meet the complicated practical needs. The judicial situation is not only the best yardstick to test whether the academic point of view is reasonable or not, but also the guide to grasp the direction of rule improvement. At present, although there are a small number of research results on the empirical analysis of the determination of the joint debt of husband and wife, they often criticize the practice of not strictly judging according to law in judicial practice, lacking comprehensiveness, objectivity and neutrality, which is obviously inconsistent with the Supreme People’s Court’s interpretation of Article 1064 of the “Civil Code”. The expectation that “it needs to be further explored and summarized in judicial practice to balance the interests of creditors and non-borrowing spouses” is obviously inconsistent.

3. Analysis of the Judicial Determination of the Joint Debt of Husband and Wife

Article 1064 of the Civil Code fully inherits the interpretation of matrimonial debt. The application of the interpretation of matrimonial debt still has important reference value for the study of Article 1064 of the Civil Code. This part examines the judicial determination of the joint debt of husband and wife from the macro and micro levels. At the macro level, taking private lending disputes as a reference system, it can be intuitively seen that in private lending cases involving the identification of joint debts of husband and wife, the appeal rate and retrial rate of the parties are generally significantly higher than those of ordinary private lending cases, which can explain the complexity of the identification of joint debts of husband and wife.

In order to further understand the judicial application of the rules for the determination of the joint debt of husband and wife, this part next takes the identification standard as the main line from the micro level, and examines the judge's derivation of the legal elements of the joint debt of husband and wife according to the facts of the case by summarizing the demonstration of specific cases.

(1) The husband and wife's "joint debt and joint signature" are different

The couple's "joint debt co-signing" includes the debt formed by the couple and the creditor based on the common meaning at the beginning of the debt, as well as the debt that one of the spouses bears externally and is subsequently recognized by his or her spouse. The above two types of situations have differences in application in practice.

First, as to whether the couple's "joint debt and joint signature" can be determined according to the guarantee behavior of the debtor's spouse, a judge believes that "although Meng signed the loan contract as a guarantor, the signature is sufficient to prove that he agreed to Xiao's loan to Li, and the loan involved should be regarded as the common intention of Xiao and Meng, so the loan in this case belongs to the joint debt of the couple"; however, a judge believed that for the debts of one of the husband and wife, the spouse's signature as a guarantor indicated that he was only willing to assume the guarantee responsibility and did not have the intention to borrow jointly with the borrowing husband and wife. The loan does not belong to the joint debt of the husband and wife.

Second, as to whether the couple's "joint debt co-signing" can be determined according to the money involved in the case of the debtor's spouse account, a judge believes that "although the defendant Niu did not sign the debit, the plaintiff transferred some of the loan to Niu's account, indicating that the defendant Niu was aware of the loan, and supported the plaintiff's claim for the joint debt of the husband and wife according to the provisions of Article 1 of the "husband and wife debt interpretation"; however, a judge held that "although part of the loan involved in the case occurred during the marriage of the two defendants and part of the money was transferred to a bank card of Zeng, whether the loan involved in the case was a joint debt of the husband and wife should still be proved by the plaintiff". If such differences are summarized as the debtor's spouse account "partial collection, full debt recognition", and the referee judge's insistence on "partial collection, partial recognition".

Thirdly, whether the debt can be recognized as “joint debt and joint signature” according to the debtor’s spouse’s knowledge of the debt, a judge believes that the defendant Yang Mouli is not a guarantor, but he is in a husband-and-wife relationship with the defendant Wang, and should be aware of the generation of the debt. Therefore, the debt is a joint debt of the husband and wife, and the defendant Yang Mouli should bear the joint repayment responsibility; However, a judge held that “although Mr. Qin and Mr. Shi were still in the husband-and-wife relationship during the period when Mr. Qin issued a loan to the plaintiff, according to the statements of both parties, Mr. Shi’s behavior of taking the loan to the plaintiff and informing Mr. Qin of the proper use of the loan can only prove that he was informed of Mr. Qin’s borrowing from the plaintiff, and cannot directly presume that Mr. Shi made a joint loan with Mr. Qin”.

(2) The boundary of “for the daily needs of the family” is unclear

In order to make up for the defects that the family agency disputes caused by the lack of legislation cannot be solved smoothly, and the rights and interests of the bona fide counterpart and the transaction security cannot be guaranteed, Article 1060 of the Civil Code clearly stipulates the family agency system for the first time, and stipulates that the debts borne by one of the husband and wife “for the daily needs of the family” have legal effect on both husband and wife unless otherwise agreed with the counterpart. However, because this article does not specify the scope of application of the family agency right, it leads to the judicial chaos of determining the joint debt of husband and wife by this standard.

First, there are obvious differences in the judgment cases on whether it can be directly determined that it is “for the daily needs of the family” according to the amount of debt raised by one of the spouses. First of all, according to the appearance of the small amount of debt raised by one of the spouses, it is directly determined that the debt is “for the daily needs of the family”. A judge believes that “the defendant Wang Weixia borrowed a small amount from the plaintiff Zhao Shishan, which did not exceed the daily living expenses of the family, and should be identified as the joint debt of the husband and wife”; but some judges hold a negative view. In addition, for one of the husband and wife to buy a house, a family car and other large debts, a judge classified it into the category of “daily life needs of the family”; however, some judges believe that the expenditure has gone beyond the scope of “for the daily needs of the family”, and require creditors to prove the objective use of the debt.

Second, as to whether one of the husband and wife’s “daily life needs of the family” includes business activities, a judge believes that “daily life needs include both production needs and life needs”. In this case, the second defendant owes the seasoning money for business needs during the existence of the relationship between husband and wife. According to the second provision of “husband and wife debt interpretation”, it should belong to the joint debt of husband and wife. However, some judges believe that “Sun did not sign the loan contract, and Cheng also recognized that the loan was mostly used for company operation, and did not submit evidence to confirm that the loan was used for the daily needs of husband and wife, so he did not support Cheng’s claim for joint debt of husband and wife”.

Thirdly, on the issue of whether “for the daily needs of the family” includes the infringement of one of the spouses, a judge believes that the debt of compensation for infringement damages arising from the case arises from the defendant Guo’s driving during the duration of the marriage relationship to maintain the daily needs of the family. During the operation of the van that benefits the family, and it has not been proved that there is an agreement between the husband and wife that the marital property is owned separately, and the two defendants should share it; however, some judges first recognized that the debt of the husband and wife to foreign infringement occurred on the way to pick up their spouses and children, which was for the daily needs of the family. However, after a turn of words, it was pointed out that the existing rules for the determination of joint debts of husband and wife focused on contract disputes based on private lending, and there was no clear response to the determination of joint debts of husband and wife in infringement disputes. Based on the principle that the tort liability should be borne by the actor himself, the debt involved in the case does not constitute the joint debt of the husband and wife.

(3) The application of the standard of “living together for husband and wife, common production and operation” is chaotic

In the criteria for the determination of the joint debt of husband and wife, the most difficult dispute between the parties and the court is “living together, producing and operating together”. The staff of the legislature also admitted that there is great uncertainty in the judicial application of the standard, and “the issue of who will prove the proof is the most complex and controversial issue”.

First, it is strictly recognized by the standards established in Article 1064 of the Civil Code. Due to the privacy of husband and wife’s life, it is often difficult for creditors to prove whether the debt is “for husband and wife to live together and jointly produce and operate”. According to the logic of judicial syllogism, deductive reasoning is carried out, and the vast majority of cases are ultimately lost to creditors because of the inability to prove. Because the husband or wife’s business behavior in social life is generally ultimately to meet the needs of family life, if the debt involved in the case is identified as the joint debt of the husband and wife, the legal provisions will be generalized in use. That is to say, in this case, even if the judge considers that it is highly possible for one of the spouses to borrow money to meet the needs of family life, but as long as the creditor cannot prove that the debt is directly used for the couple’s common life, the joint debt will not be established.

Second, with loose standards, it is determined that “couples live together and produce and operate together”. In the face of the harshness of the criteria for determining the joint debts of husband and wife established in Article 1064 of the Civil Code, some judges have relaxed the conditions for determining the objective use of the debts of one of the spouses beyond the daily needs of the family, and given full play to the judicial initiative. With the help of daily life experience and marriage and family living habits, reasoning, through the facts of specific cases, “living together for husband and wife, common production and operation”, forming a free evaluation of the use of debts of one of the spouses. But unfortunately, the logic of some judges’ inferences has exposed obvious differences. For

example, there are a large number of judges presume that the joint debt of the husband and wife is directly based on the fact that the debt of one of the husband and wife occurs during the “duration of marriage”; another judge held that “according to common sense of life, during the period of husband and wife living together, the husband or wife’s foreign farming cooperatives are one of the economic sources of family life, and there is no evidence to confirm that the debt involved in the case is the debt of a certain person, and the debt of a certain person in the name of a person during the existence of the relationship between husband and wife should belong to the joint debt of husband and wife”.

According to the facts of the case, the judges inferred that the husband and wife “co-debt co-signing”, “for the daily needs of the family”, “for the husband and wife to live together, co-production and operation” have different conclusions, exposing the obvious problem of “different judgments in the same case”, which is obviously inconsistent with the general requirement that the legal argumentation field should strengthen the consistency of supporting judicial adjudication argumentation. Under the background of gradually promoting the “case retrieval” mechanism of difficult cases to assist judicial adjudication, the above-mentioned differences exposed in the judicial determination of the joint debt of husband and wife will not only make the judges of similar cases at a loss, but also obviously contradict the requirements of “further standardizing the application of unified law, ensuring the unified and correct implementation of law, effectively safeguarding the dignity and authority of the national legal system, ensuring judicial justice and improving judicial credibility” proposed in the “Implementation Measures for the Unified Application of Law by the Supreme People’s Court”.

4. Analysis of the Causes of the Judicial Determination of the Joint Debt of Husband and Wife and Suggestions for Improvement

The reasonable identification of the joint debt of husband and wife first needs to establish the basic concept of balancing and protecting the interests of the parties to the dispute. Then, it is necessary to clarify the applicable boundary of each identification standard. Finally, the proof mechanism of the use standard of the husband and wife should be optimized.

(1) To establish the basic concept of balancing the interests of creditors and debtors’ spouses

In the whole development process of modern law, although the courts, legislators and jurists are likely to lack a clear conclusion about what is being done, they are engaged in seeking practical adjustment and coordination methods for various conflicting and overlapping interests under the control of a clear practical purpose instinct. On legislative issues, legal norms are formulated by legislators to solve various conflicts of interest; in judicial activities, judges should make a just judgment and balance the conflicting interests. When the legislative value is biased, the burden of balancing the interests should be borne by the case judge.

The treatment of marital debt disputes is also fundamentally a balance of interests between creditors and debtor spouses. A perfect husband and wife debt system design should seek a balance between the two, not only to protect the legitimate rights and interests of creditors, but also to prevent the debtor’s

spouse from unwarranted joint debt settlement responsibility. Although countries and regions outside the region have different legislative models, it is a common legislative purpose to seek balanced protection between the interests of creditors and debtor spouses. On the contrary, the presumption rule of joint debt of husband and wife established in Article 24 of China's "Interpretation of Marriage Law (II)" adheres to the purpose of giving priority to the protection of the interests of creditors. Article 1064 of the "Interpretation of Marital Debt" and "Civil Code" is too biased towards the prevention of the risk that the debtor's spouse may be unjustifiably "indebted", and enters the other end of giving priority to the protection of the interests of the debtor's spouse. The problem of "different judgments in the same case" in the determination of the joint debt of husband and wife is ultimately reflected in the fact that the judge adheres to the legislative norms with unbalanced value and exerts judicial initiative to balance the interests of the parties. Whether it is based on the behavior of the debtor's spouse to guarantee the debts of one of the spouses, the referee judge determines that the husband and wife "jointly sign the debts", or infers that the debtor's spouse benefits directly or indirectly from the debts involved in the case based on daily life experience. It is all to protect the interests of creditors by expanding the scope of the legal elements of the joint debt of husband and wife.

(2) To clarify the relationship between the criteria for determining the joint debt of husband and wife

On the basis of clarifying that the determination of the joint debt of husband and wife needs to adhere to the basic concept of balancing the interests of creditors and debtor spouses, it is necessary to further clarify the relationship between the various identification standards to prevent functional disorders caused by unclear relationships.

First, the primary and secondary relationship between the "subjective meaning theory" and the "objective use theory" standards. The debate on the primary and secondary relationship between the criteria of "subjective meaning theory" and "objective use theory" in the determination of husband and wife's joint debt is due to the researchers' differences in the understanding of "individual standard" and "family standard" of marriage and family life in the current social transformation process. This paper argues that the family is not a place of complete personal will and private autonomy. On the contrary, it is a love-based ethical entity composed of family members with husband and wife as the core, and follows the principle of "identity". Even in the tide of modernization transformation, the traditional principle of the unity of husband and wife has added the other-body factor, and the independent personality and equal status of husband and wife have become increasingly prominent. However, as the core of modern family, husband and wife still show a community of family and property that is blessed and difficult to share, carrying the integrity of the family and the characteristics of the identity community.

From the perspective of the joint property system of husband and wife, those who implement the property system generally take the principle of husband and wife integration as the basic principle. Husband and wife usually share the interests of debt, and should give priority to the recognition of husband and wife debt as common debt, supplemented by the judgment standard of individualism.

Second, the relationship between the “subjective meaning theory” standard and the “objective use theory” standard. On the whole, the “subjective meaning theory” and “objective use theory” standards for the determination of the joint debt of husband and wife are in parallel. If the couple reaches a “joint debt agreement”, the debt should be recognized as a joint debt regardless of whether the couple shares the debt proceeds. And vice versa. This means that not only does some of the referee judges know that one of the spouses borrows foreign debts according to the spouse, and finds that the husband and wife have a “common debt agreement”, and then finds that the inference that the debt involved in the case is “living together for the husband and wife, common production and operation” is not necessarily established, and some of the referee judges directly determine that the debt is objectively “living together for the husband and wife” according to the subjective use indicated by the spouse when borrowing. The inference is also difficult to establish.

5. Conclusion

The rules for determining the joint debt of husband and wife have changed frequently, and the legislative value has been swinging at both ends of the protection of the interests of creditors and debtor spouses, exposing the obvious “extreme” legislative tendency. In the final analysis, this is closely related to the social background of rapid transformation. Because the transitional society shows the “multiplication effect of mutual tearing and divergence of social systems”. But there is no doubt that the transformation still contains the mainstream social values and behavior habits, and maintain stability in a certain period of time. In the process of determining the joint debt of husband and wife, whether it is to expand the interpretation of the constituent elements, or to use the rule of thumb to derive the statutory elements from the specific facts, it shows the practical rationality of the referee judge to ease the strictness of the rules for determining the joint debt of husband and wife, and has certain rationality in balancing the interests of the parties to the dispute. However, in order to prevent the “black box operation” in the process of factual reasoning by applying the rule of thumb and enhance the acceptability of the parties to the dispute and the public for the judicial judgment, it is necessary for the judge to strengthen the interpretation and reasoning of the judgment documents and disclose their psychological evidence in time when the judge deduces the debt use of one of the spouses according to the specific facts.

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