

Judicial Disagreements and Rule Integration on the Validity of Lease Contracts for Illegal Buildings

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Abstract: Validation of lease contracts for illegal buildings have demonstrated great divergence due to non-uniformity of interpretation from the level of norm application within the co-existence of three judicial approaches. Based on the multi-source nature of the criteria for identification of illegal buildings, we analyze the intertwined structure of the normative system involved in determining its validity, showing difficulties in the application of the obligatory effects and property determinations due to normative intertwinement. By analyzing the typology of the three judicial approaches, emphasizing that the root of the divergence is in different answers about the correlation between construction management norms with contract validity. Integrating approach based on the typological reconstruction of mandatory provisions focused on the normative separation between illegality defects and validity evaluations, aimed at the hierarchical treatment of contractual effects can help resolve the disagreement among judges while preserving consistency in normative logic.

Keywords: Illegal buildings; lease contracts; contract validity; mandatory provisions; principle of distinction in real right changes

Introduction

The validity of lease contracts for illegal buildings is significant not only theoretically but also practically: On the one hand, it concerns the normative relationship between the validity of obligatory acts and the factual status of property rights (the interpretation approach to mandatory provisions in evaluating the validity of juridical act) and the special application of the principle of distinction in real right changes in the field of obligation law, which is very useful for analyzing the systematic consistency of relevant theories under specific applications; on the other hand, lease relations with illegal buildings as the subject matter are extremely common, and there exist inconsistent adjudication standards by courts at all levels regarding such disputes, resulting in potentially different judgments over the validity even among similar cases, thus affecting transaction security and the reasonable expectations of the parties involved. In this paper we analyze the inherent difficulty in determining its validity based on the perspective of normative logic, examine the typological differentiation of existing judicial approaches and their logical attribution, and explore normative ways to reconcile divergences at the interpretive level.

1. Normative Logic and Application Difficulties in Determining the Validity of Lease Contracts for Illegal Buildings

1.1 Normative Examination of the Criteria for Identifying Illegal Buildings

The obvious multi-source characteristics on defining illegal buildings from the normative level: according to the dimension of planning permission and land use, the Urban and Rural Planning Law and the Land Administration Law set up the legality requirement of construction activities which leads to a different conclusion about the same construction fact upon applying the two normative evaluation. The differences in identification criteria will directly cause the precondition concept of "illegal buildings" with different scope of extension under different judicial context. There exists a distinction between procedural illegal construction and substantive illegal construction (well acknowledged by the legal scholars) where the former can be eliminated as an illegality through completion of remedial procedures but it is hard to remedy because of violation of the substantive requirements of urban and rural planning or land use. However, there is no hierarchy for this distinction in the current normative

system.

Whether it belongs only to the construction act and/or also to the building is a further normative preliminary issue that deserves discussion. For determining the illegality of the construction act – The use function of the building at the physical level will not lose due to the illegality of the construction act (if we attribute the illegality to the building itself, its subject matter is in an "unlawful" state from the very beginning) there are no clear normative guidelines on the interpretive level as to which way should be chosen; precisely this different choice is one of the underlying reasons behind diverging validity determinations in judicial adjudication^[1].

1.2 Normative System Structure for Determining the Validity of Lease Contracts

Validation of lease contracts for illegal buildings necessitates a cross-evaluation of the Contract Book of the Civil Code against property law norms. Provision (Article 153, paragraph 1 of the Civil Code) saying that a juridical act violating mandatory provisions is void; general provisions on rights and obligations under lease contracts and institutional requirements in property law about the legality of buildings form a normative cluster to evaluate its validity. It is hard to decide if the requirements concerning building legality in construction administration norms are an essential basis for evaluation of the validity of lease obligatory acts or only maintains the administrative order with the intent to negate the validity of private law acts – this is not self-evident from the interpretive point of view.

Direct application of public law licensing requirements to determine the validity of contracts in private law requires further proof for a normative basis. Questions concerning the validity of lease contracts relate to questions on the legal hierarchy of mandatory provisions (differences regarding the weight of different levels of normative documents with respect to validation determination) violation by construction acts against lower level norms but can not be used to declare the contract void based upon higher-level norms – adding yet another layer to the complexity of validity determination.

1.3 Normative Intertwinement between Validity Evaluation of Juridical Acts and Determination of Real Right Attribution

The deeper questions regarding the validity of lease contracts for illegal buildings appear because there is an intertwining between validly determining obligations act and factual determination of real right status when validation of lease contracts depends on its internal aspect of contract law (genuineness of declaration of will or possibility of the subject matter), while in adjudication logic it transfers directly by the fact that illegal buildings do not have ownership at the level of real right to determine the validity of lease contracts. The questions in adjudication: Conclusion according to real right norms that illegal construction cannot establish real rights concerning if the builder can acquire ownership but does not concern whether the builder can transfer the use interests of the building to others via a contract – Validity of obligatory acts and determination of requirements for change of real right are essentially normative issues at different levels^[2].

The principle of distinguishing real right changes enables us to solve this problem in order: dividing real right changes into two levels (obligatory acts and real right acts) does not require the fulfillment of the requirements for real right changes in determining the formation and validity of obligatory acts. To directly include the conclusion that whether or not illegal buildings may acquire ownership at the real right level into the validity determination of lease contracts actually blurs the boundary of evaluation between different normative levels. We should notice the normative meaning of the possession system here; since the illegal building has a fact with physical use value, its possession status can be transferred through lease contracts, so the negative evaluations at the real right level will not lead to comprehensive negation at the obligatory level.

2. Typological Examination of Judicial Disagreements and Logical Attribution

2.1 Normative Basis and Limitations of the Invalidity-Determination Judicial Approach

Invalidity Determination Approach has its significant role for determining the lease contracts involving illegal buildings. It considers that the requirement on building's legality contained in construction administration norms possesses the normative attribute of affecting the validity of private law acts; therefore, lease contracts involving illegal buildings as their subject matter are void because it

violates the mandatory provisions. There exists a direct normative relationship between public law construction administration requirements and private law contract validity evaluation based on the interpretation of this adjudicating logic which results in a negative evaluation towards the latter if the former is violated. Its legitimacy from the perspective of the normativity is far from being obvious considering that the legislative purpose of construction administration norms mostly aim at maintaining construction order while whether they have the normative intention to negate the validity of lease contracts with such buildings as the subject matter does not have enough interpretive support.

As for adjudication effect, there exist some inherent problems when using the method of determining invalidity: after being determined that the lease contract is void, we can't adjust the facts of possession and use according to the principle of contract validity any longer; we should deal with the interest relationship between lessor and lessee by the rules of unjust enrichment restitution. Besides, the determination of rent for lease relationships concerning illegal buildings generally takes into account market factors and the risk allocation about defect of the subject matter anyway, thus the blanket approach of voidance and restitution doesn't match the reasonable expectation of the parties. Determining invalidity approaches compact the problem of how much the cause is illegal as a binary question which cannot distinguish various nature and different severity of illegal causes at the level of validity evaluation without enough normative precision.

2.2 Normative Structure and Logical Approach of the Validity-Affirming Judicial Approach

Validity-affirming approach deals with lease relationships about illegal buildings from the perspective of contract validity. Its logical structure focuses on properly differentiating between the validity of obligatory acts and the factual status of property rights—the formation and validity of a lease contract does not necessarily require that the lessor owns the leased property (there is thus a relative obligatory relationship among them); even though the builder fails in obtaining ownership of the illegal building, he has de facto control over the building, which may be considered as the factual basis for performing the lease contract; if the leased property possesses the attribute of being usable and capable of yielding benefits at the physical level, then the purpose of the contract will be capable of being achieved. It focuses on judging the illegality only on the construction act but not extending it to the lease obligatory relationship based thereon^[3].

The logic of performance impediment law applies in case of application of the validity affirming approach – illegal buildings are exposed to risks of administrative regulations or even physical demolitions during the lease period; such risk (normatively) should be considered as an obstacle at the performance level instead of a defect at the validity level. Having formed a valid contract, any dispute caused by inability to use the leased property may be settled according to the system of non-performance of obligations or warranty liability for defects without denying its existence on the validity stage. The validity affirming approach preserves the logical distinction between these two levels of determination of the validity and adjustment of the effect of contracts, it is more hierarchically structured logically. There still exists the issue that the validity affirming approach does not explain well the internal inconsistency resulting from a valid contract with an illegal subject matter within the legal system.

2.3 Type Structure and Applicable Boundaries of the Differentiated-Treatment Judicial Approach

Middle way of differentiated-treatment between total invalidity and total validity consists in carrying out differentiated validity evaluations according to the type and degree of illegal causes, peculiarities of the case. Main aspects of differentiation treatment from viewpoint of typology: procedural illegal construction and substantive illegal construction differ in validity evaluation (they may get relatively lenient evaluation at the validity level because of their possibility for remedy); considering the change in the illegal status after the conclusion of the contract (the illegality is later eliminated), then the contract validity will be cured accordingly; applying different rules depending on the stage of performance (distinction between lease relationship that was actually possessed and used vs one that is not yet delivered) regarding effect treatment. Differentiated-treatment enables us to make more refined adjustment of interests at the case level.

The Scope of Application As regards the scope of application of the differentiated treatment, there is no uniform standard identifying illegal building types in adjudication, and the difference between procedural illegal construction and substantive illegal construction will lead to different conclusion according to case-by-case resulting into unpredictable outcome of validity evaluation. In essence, the

differentiated treatment provides a large room for adjudicator's discretion but there are not sufficiently clear normative guidelines upon which it rests (e.g., the same illegal situation receiving different validity determination in different adjudications) – methodologically trying to balance rule-based certainty against its flexibility, we await further normative refinement as to how to steady maintain this balance in specific cases^[4].

By observing this juxtaposition among these three judicial approaches we can see how deeply rooted are their answers to one and the same normative questions – What is the strength of the connection between construction administration norms and the validity of lease contracts? The invalidity approach focuses on the direct permeation of norms; the validity approach on the independence of obligatory acts while the differentiated treatment seeks an intermediate transition from both sides. All three approaches' normative premises have not been uniformly interpreted at the systemic level – which is the logical reason for ongoing judicial disagreements.

3. Integrative Approach to the Validity Rules of Lease Contracts for Illegal Buildings

3.1 Typological Reconstruction of Mandatory Provisions in Validity Determination

Reconciliation of judicial divergences concerns primarily improving the typology of mandatory provisions regarding contract validity. Main crux of the approach of determination of invalidity applied in current adjudication is indiscriminate classification of construction administration norms which can negate the validity of private law acts not distinguishing the difference between various kinds of mandatory provisions according to their normative purposes and normative effects. When formulating a typological method, it will be necessary to apply three dimensions (normative purpose, normative object, and consequences of violation) as coordinates for classification: At the dimension of normative purpose we need to identify if some mandatory provisions have the intention to preserve the construction administration order itself, or also bear the normative intent to protect transaction security and the counterparty of the contract; at the dimension of normative object we need to distinguish whether the mandatory provision has target on the implementation process of the construction act, or the status requirements of the building as a transaction subject matter; at the dimension of consequences of violation we need to determine whether the legal consequences of violating the mandatory provision includes the negation of contract validity under private law, or only sanctions under public law.

As regards the normative system – there are no mandatory provisions about the legality of buildings which have the normative quality of affecting the validity of lease contracts. Only procedural requirements aimed at the implementation stage of construction acts (normative purpose of which is encouraging orderly conduct of construction activities) make a logical leap into the field of normative logic, extending the consequence of violation of these provisions to the validity level of lease contracts with such buildings as the subject matter. It is possible to believe that the provision has the normative intention of affecting the validity of transactional acts if it explicitly stipulates that the legality of the building is a precondition for its entering the sphere of transactions. Differentiating between those mandatory provisions with the normative orientation towards private law effects from those being restricted to the regulatory purposes at the public law level is the basis of integration of the rules on validity determination; and this is the normative prerequisite for refining adjudication.

3.2 Normative Separation between Illegality Defects and Contract Validity Evaluation

The integration of validation rules for lease contracts for illegal buildings must separate clearly between valid obligation acts and the factuality of real rights. The determination of validity of a lease contract focuses on whether the leased property has the factual status of usability and capability of yielding benefits rather than taking the legality of the leased property as the premise. It can be difficult to be recognized about its ownership in terms of real right attribution; illegal buildings possess, use and yield economic benefits as factual things that have physical use value which are enough to form the realistic basis of the existence of a lease relationship. Focusing on judging the illegality from the construction act but not extend it to the lease obligatory relationship with such building as the subject matter is a logical link when integrating adjudicative rules^[5].

The principle of distinction in real right changes provides us with some theoretical basis in our system: separating real right changes into two levels – obligating acts and real right acts; Formation

and validity of obligatory acts do not require fulfillment of the requirements for real right changes as a precondition. In other words, a lease contract (a juridical act that establishes obligatory rights and duties) has been affected by whether the lessor owns the leased property just on the question if the lessor fulfills the delivery obligation and whether the lessee gets stable use rights but does not affect whether it is formed and become effective among the parties. If after the contract is validly formed, there exists an impediment to perform because of the defect of illegalities in the leased property, then we should solve this problem via the system of non-performance of obligations or warranty liability for defects rather than negating the existence of the contract at the validity level. This separation guarantees the difference between these two levels of determining the validity of contracts and adjusting their effects, which are hierarchically structured logically.

3.3 Hierarchical Treatment Mechanism for the Effects of Lease Contracts for Illegal Buildings

According to the preservation of the contract validity framework, we need to hierarchize the legal effect of lease contracts for illegal buildings according to different factors (such as the degree of illegality, the subjective state of the parties and the performance status of the contract) to avoid dichotomy between the validity or invalidity of the contract simply. As to the determination of rent in lease relationship, problems of defect risks about the subject matter are generally reflected, therefore, when it is deemed that the contract is valid, there would not be a complete denial of the lessor's claim for rent caused by the illegal attribute of the subject matter; if the lessee was ignorant of the illegal facts at the time of entering into the contract with no duty of care, the lessee should have corresponding price reduction protection concerning rent payment. The condition for exercise of the right of rescission needs to differentiate according to the type and severity of the illegal cause: allowing the lessee a right of rescission only because of the procedural illegality of the subject matter is setting too low a trigger threshold while the risk of demolition faced by substantive illegal construction can be regarded as a justifiable reason for rescission^[6].

The effect treatment mechanism must consider restitution when ending contracts; it cannot simply implement the principle of unjust enrichment restitution assuming the contract is void, but comprehensively decide according to various factors including whether the lessee actually used and enjoyed the leased property or whether there are other burdens suffered by the lessor due to the illegal status. Perhaps we may invoke the subjective value restitution rules of the law of unjust enrichment: the rent paid by the lessee in good faith during the process of using an illegal building doesn't need full restitution only because its subject matter becomes illegal afterwards (which will distort the interest pattern already established), at least with the premise that the contract is valid, we could coordinate mechanisms like the claim for price reduction, the right of rescission and compensation for reliance interest under culpa in contrahendo liability to properly adjust the interests of all parties involved in a lease relationship involving illegal buildings, ensuring consistency in the validity evaluation, thus complete the systematic integration of adjudicative rules at the effect level.

Conclusion

Conflicts among judges about the validity of lease contracts for illegal buildings are caused by inconsistency in their interpretation of the relation between construction administration requirements and the validity of private law acts at the level of norm application. By analyzing the criteria for identifying illegal buildings, the structure of norm applications of contract validity determination, and the intertwinement between real right norms and obligation norms, we identified the interpretive dilemmas encountered by them while determining validity; by analyzing the three types of judicial approaches typologically, we confirmed the divergence is focused on the normative quality of mandatory provisions and the strength of its connection with contract validity. This paper puts forward based on the above analysis to promote the integration of adjudicative rules from three levels: At the level of interpreting mandatory provisions, distinguish the normative purpose and normative object, do not indiscriminate classification of construction administration norms into the category that negates private law effects; At the level of the normative structure of validity determination, focus the illegality evaluation on the construction act, maintain an appropriate separation between the validity of obligatory acts and the factual status of real rights; At the level of legal effects, introduce a hierarchical treatment mechanism to make proper adjustment of the interest of all parties under the framework of a valid contract. The directions worthy of further exploration in the future include the normative expression of typological standards for illegal buildings and the specific applicable boundaries of the principle of distinction in real right changes in the field of lease relationships; the continuous progress

on these problems will help provide a more stable normative basis within the legal system for the validity rules of lease contracts for illegal buildings.

References

- [1] Zhan Huimin. *Civil Rights and Interests on Illegal Buildings and Their Remedies*. 2023. East China University of Political Science and Law, MA thesis.
- [2] Zheng Yaling. "Determination of Validity of Contracts Violating Mandatory Provisions from the Perspective of Proportionality Principle." *Western Law Review*, no.6 (2023): 107-120.
- [3] Shi Jianhao and Shen Yaqin. "On the Private Law Status of Illegal Buildings." *Journal of Hubei Vocational Technical College*, vol.25, no.4 (2022): 89-94.
- [4] Zheng Yaling. *Determination of Validity of Contracts Violating Mandatory Provisions from the Perspective of Proportionality Principle*. 2021. Chongqing University, MA thesis.
- [5] Chang Peng'ao. "Public Law Regulation and Private Law Response of Illegal Buildings." *Law Review*, vol.38, no.4 (2020): 78-87.
- [6] Wang Meng. "Contract Validity and Legal Effects of Unauthorized Leasing of Affordable Housing —Also on the Application of Proportionality Principle in Determination of Contract Validity." *Journal of East China University of Political Science and Law*, vol.22, no.6 (2019): 176-190.