

LEGAL ALERT

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How does the person not involved in the case claim his right against the property to be executed by the court?

Q:

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A:

According to Article 204 of Civil Procedure Law and Article 15-Article 20 of Interpretation of the Supreme People's Court on Issues regarding the Application of the Enforcement Procedure in the Civil Procedure Law of the PRC, any person not involved in a case who claims ownership of the subject property in an enforcement procedure or who has other substantive rights which suffice to prevent the transfer or delivery of the subject of an enforcement procedure may, claim his right before the enforcement court as follows:

1. During an enforcement procedure, the person not involved in the case may raise an objection before the enforcement court to prevent the transfer or delivery of the subject of an enforcement procedure.

The enforcement court, within 15 days of receiving the application for reconsideration, shall not dispose of the subject property in an enforcement procedure during the review of any objection. Where the basis of claim lodged by the person not involved in this case is upheld by the court, the court shall make a ruling suspending the enforcement in accordance with Article 204 of the Civil Procedure Law. The claiming procedure for the person not involved in this case is finished.

2.1 Where the enforcement court considers the objection is untenable, the court shall rule that the objection is rejected and the enforcement procedure continues. Where the person not involved in the case is not satisfied with the ruling and considers the original Judgment or Ruling to be erroneous, the case shall be handled in accordance with the procedure for adjudication supervision.

2.2 Where the enforcement court considers the objection is untenable, the court shall rule that the objection is rejected and the enforcement process continues. Where the person not involved in the case is not satisfied with the ruling and where the consideration is irrelevant to the original Judgment or Ruling, the said person may lodge a claim before the enforcement court within 15 days of receiving the ruling.

3. Where any person not involved in a case lodges a claim in accordance with the above 2.2, the followings shall be noticed:

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| (1) Items of claims: | Claim substantive right against the enforcement property and request to suspend the enforcement of the said property. |
| (2) Competent defendant: | The defendant shall be the applicant for enforcement; If the person subject to execution opposes to the substantive right claimed by the person not involved in the case regarding the enforcement property, the applicant for enforcement and the person subject to execution shall be sued as co-defendants. |
| (3) Governing court: | The enforcement court. |
| (4) Applicable procedure: | Heard with usual civil procedure. The Judgment at the second instance is final. |
| (5) Dispose of enforcement property: | During the procedure, execution of the property shall not be suspended. However, where the claim lodged by the person not involved in the case is reasonable or the said person provides adequate and effective guarantee to request suspension of the enforcement, the court may suspend the enforcement. |

Contact us:

Catherine Chen Senior Partner (catherine.chen@rwlawyers.com)
TEL 021-6326-5800*225
FAX 021-6321-8890 or 021-6323-8906

Clare Lu Senior Partner (yi.lu@rwlawyers.com)
TEL 021-6326-5800*222
FAX 021-6321-8890 or 021-6323-8906



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