China Civil Code Amends Rules Regarding Marital Properties Bought with Parents Money

Description

A recent case prompted us to delve into the issue of ownership of home properties bought by couples with capital contribution from their parents.

Shanghai Luxury Property

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It is commonplace in China (esp. in first tiered cities like Beijing, Shanghai, Shenzhen and Guangzhou) throughout the country, young couples often buy their first home, with substantial financial aids from their parents thanks to the sky-high property prices.

While most of time, such issues are raised in domestic divorce cases, we have handled quite a few international divorce cases in which similar issues popped up.

So does or can the foreign spouse have any claim in properties bought with the money from the parents of their Chinese spouses?

I. **Case Profile/Basic Facts**

A Southeast Asian lady married a Chinese man in 2014, and they lived in an apartment owned by the husband's parents in Shanghai. A couple of years later, the couple had twin babies, and suddenly the small apartment was crowded. The family decided to sell two properties owned by the husband parents and then immediately purchase two bigger properties so that the new couple and the parents will each have their own homes. For some reason, the property bought for the couple was registered in the name of the husband only.

Not long after that, the couple started seeing their relationship deteriorate quickly, and a divorce seems inevitable.

II. Will the Foreign Wife Entitled to Anything in the Property?

First of all, as a foreign-related civil case, we need to first determine the applicable law to the question we are discussing. Unfortunately, this choice of law issue can be very confusing in practice when it comes to division of marital properties in divorce lawsuits. For easy discourse here, as the fact in the case indicated, the couple have been living in China under the same roof before they started legal action, so the applicable law is surely Chinese laws.

We shall look back at the rules in the past in this regard that have been employed in judiciary practice. For this purpose, the newly enacted China Civil Code has added a new layer of complexity on the issue. Let us dive into it.

(1) China Supreme Court Interpretation II on China Marriage Law

In 2001, when the revised China Marriage Law was enacted, there were no specific rules regarding ownership of marital properties contributed by parents.

In 2003, China Supreme Court issued its second judicial interpretation on China Marriage Law, in Article 22:

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> Where parents contribute fund in purchasing real property for the couple before marriage, such contribution shall be considered as gift to their own child, unless otherwise explicitly expressed by parents as gift to both couple.
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> ???
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> Where parents contribute fund in purchasing real property for the couple after marriage, such contribution shall be considered as gift to both of the couple, unless otherwise explicitly expressed by the parents as gift to one of them.
> *First Rule on Property Ownership with Contribution from Parents in China*

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This provision quoted above is largely in line with the general rules regarding ownership of marital properties or matrimonial properties under China Marriage Law, namely, (1) assets acquired by spouse before marriage are his or her personal assets, and assets acquired after marriage are community properties of the couple, and (2) ***gifts or inheritance during marriage is community property unless the donor or testator explicitly expresses such gift or inheritance as given to one party only***.

(2) China Supreme Court Interpretation III on China Marriage Law

On August 13, 2011, the third interpretation by China Supreme Court on China Marriage Law came into effect in which Article 7 sparked huge controversy among society and judicial practitioners:

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> Article 7 Where upon marriage, one spouse's parents contribute fund in purchasing real properties for their child and the title is registered in the name of the said child, such property shall be deemed as a gift only to the child of fund contributor, and thus such property shall be the personal property of the spouse.

> ???

> Where a property is bought with funds contributed by parents of both couple and the property title is registered in the name of one spouse, such property may be deemed as co-owned by the spouses in the form of tenancy in common in such a ratio as that of contributions between the parents of the couple, unless otherwise agreed by the parties.
> *Article 7 of 3rd Interpretation of China Marriage Law*

If you read this provision carefully, you shall realize that this new judicial interpretation by China Supreme Court has altered the general rules in regard of vesting of property title in married couples during their marriage. To certain extent, it is right to say that this interpretation has gone too far to change the law of superior legislation. Thus, this has caused huge controversies in practice prompting many wives to push their husbands to add their names onto property titles to ensure they would not end up with nothing in case of divorce.

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(3) **China Civil Code and New Interpretation on Marriage Chapter**

With China Civil Code enacted and coming into force from January 1, 2021, an ancillary interpretation by China Supreme Court on the family section of the Code was also issued taking effect as of January 1, 2021 as well.

The new interpretation on family sections in China Civil Code has put together most provisions that used to scatter in several separate interpretations or notices or replies from China Supreme Court.

In regard of ownership of such matrimonial properties bought with fund contribution from parents, the new interpretation provides for that in Article 29:

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> Article 29 Where parents contribute fund in purchasing real property for the couple before marriage, such contribution shall be considered as gift to their own child, unless otherwise explicitly expressed by parents as gift to both couple.

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> Where parents contribute fund in purchasing real property for the couple after marriage, the agreement thereof shall prevail; failing such agreement or it is not clear in their agreement, regard shall be had to principles set out in sub-paragraph (4) of paragraph (1) of Article 1062 of China Civil Code
> *New Interpretation on Marriage Section of China Civil Code*

Clear as it is, China Supreme Court has abandoned its take indicated in the 3rd interpretation of China Marriage Law, retreating to prior rules without the “deemed” rules. In the meantime, the new interpretation on the Civil Code emphasizes on the importance of private agreement to prevent disputes.

III. What Would be the Outcome in the Case

Since the property in the case we set out above was bought in 2014, a time when the third interpretation on China Marriage Law is still effective, the ownership of the property (in other words, whether the foreign wife shall have any interests in the property bought with the money from the parents of the husband) shall be determined in accordance with the law then in effect (namely, the 3rd interpretation of China Marriage Law). Thus, the foreign wife shall not legally claim any ownership interests in the property though this property was bought during her marriage with her Chinese husband.

However, assuming the property was bought in 2021 with all other facts of the case remaining the same, the foreign wife would be able to claim a certain percentage (up to 50%) in the property if at the time of purchase, the husband’s parents didn’t sign any agreement with the husband and/or the wife. While theoretically, the foreign wife may claim up to 50% of the property, courts will look at more factors (such as length of marriage, faults for marriage breakdown) to arrive at different percentages to be awarded to the wife.

So, when getting married with Chinese citizens or otherwise subjecting yourself to Chinese laws, you shall need to understand China family laws in terms of marital or matrimonial assets just in case that you may end up in divorce proceedings in China courts.

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Date Created
October 2021
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