

Jurisdiction clause in loan agreements: you cannot afford to ignore this, esp in Shanghai

Description

Good lessons are learned from great frustration.

A client entrusted me to sue his borrower for a return of RMB 1 million based on an agreement signed by the parties. The legal relationship is straightforward indeed: you borrowed the money, and then you repay it when due.

My client, the lender, and the borrower, while both living and working in Shanghai, are however not local Shanghainese but come from other parts of China.

Under Chinese civil procedure laws, when the plaintiff initiates a lawsuit against the defendant based on a contract, in absence of agreement on competent court, there are two jurisdictions for him to choose: one is the domicile of the defendant, and the other is the place of the contract performance.

The domicile of the borrower is hard to figure out as he never resides in a place for more than a year. The only domicile that can be established is the place of this person's household registration which is in his hometown outside Shanghai. Of course, due to local poor legal environment, we will least want to sue there.

My next option is to file the case with the court in the place of contract performance. Under China Contract Law, without express stipulation on place of contract performance, in the case of performance of delivery of currencies, the place where the receiver of the money is located shall be the venue of contract performance. As now it is time for the debtor to pay back the money, it is a natural finding that the place of my client shall be the place of contract performance. so I should be able to file the case with the people's court of Pudong District where my client has been living for long.

Separately, I found a judicial interpretation issued by China Supreme Court back in 1993, saying that the place of the lender should be regarded as the venue of contract performance.

But much to my surprise, at the case filing window of Pudong court, I was briefly dismissed by the judge who despite the Supreme Court interpretation said I can only go to the court in the place of defendant's domicile without giving any explanation why they ignored the judicial interpretation. I then turned to one of my friends who is a judge in a Shanghai court, and he confirmed that in Shanghai, in practice, courts only consider the domicile as the place of jurisdiction in dispute involving debt or loan.

Now with that, I would only be able to sue the defendant in his hometown, which poses a big risk of being treated unfairly due to the generally rampant local protectionism.

So this unpleasant experience raises alarm to people who are engaged in loaning business in Shanghai, China that it always pays off to pay attention to the court jurisdiction clause by stipulating explicitly the competent court to which disputes shall be submitted.

Actually, it is advisable to provide for clear clause regarding court jurisdiction in any other business contracts.

Date Created

June 2012

Author

admin

Shanghai Landing Law Offices