Change title of China property based on a foreign court judgment?

Description

A client from United States just got divorced with his American wife through court proceeding, and in the American court judgment, a piece of real estate that was bought by the couple in Shanghai China was ordered to be owned by the husband only and the husband in turn will pay a sum of money to the wife.

Now the question is whether and how the husband can remove his ex-wife's name off the title deed which has both names on it.

So the husband approached me for advice.

The answer is negative. The husband probably cannot do anything about the title with the American court judgment.

The core issue of the question is whether the American court divorce judgment can be recognized and enforced in China.

Yes, China courts will recognize and enforce foreign court divorce judgments only if one of the parties to the judgment is a Chinese citizen and to the extent that only the divorce decision itself will be recognized, or in other words, other parts concerning property division or child custody in the foreign court judgments won't be recognized.

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There are a few posts on this blog for your reference:

Deal with the property in China after you get divorced in your home country

foreign court judgment enforcement in China

We noticed that back in 2012, the China Construction Ministry issued a pieced of rules regarding property registration standards in which it provided: (1) foreign judicial documents shall be firstly recognized in China before it can be used for effecting title registration, and (2) where recognition is not possible, then it is better such foreign judicial documents should be notarized in the foreign country and then legalized at Chinese consulate in that same country. From this provision, it seemed to indicate that notarization and legalization of the foreign court judgment can replace the China court proceeding to recognize a foreign court judgment. This has apparently gone too far. Indeed, many pointed out that the construction ministry rules have overstepped into the ambit of judicial authority and the provision is inappropriate.

With the reforms in real estate registration in 2015, China land ministry formulated a detailed technical rules regarding real estate registration. While it also provides that foreign judicial documents shall be firstly recognized in China before it can be used for effecting title registration, it does not have the similar wording regarding notarization and legalization of foreign judicial documents, a departure from the registration standard rules.

In summary, it is safe to say the foreign court divorce judgments containing property division decisions can not in any way be used in China to effect title change.

Foreign divorcing couples caught in such a situation where they have China properties to be divided or disposed of, may have to resort to options:

(1) they amicably come to a divorce agreement on the treatment of their China properties, and both parties will come to China in person or grant power of attorney to lawyers to act on their behalf, to effect title transfer for their properties.

(2) in absence of amicable divorce agreement, the parties may have to file a case in China court to divide the properties again despite that their foreign divorce judgments may have already ruled in regard of their marital properties in China. In this case, the foreign court judgment may be admitted as evidence to prove the divorce fact and then Chinese court will proceed to divide the properties in accordance with Chinese laws.

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