Strategically Deal with Your China Property When You Divorce

Description

Pretty often I am approached by clients or by foreign peer attorneys inquiring about how they should deal with their China properties when they divorce in a foreign jurisdiction.

Some of them are too late when they call me. Kate (not the inquirer's true name) is one of them.

She has been living with her husband in California for many years and now is the process of divorcing in California court. Not long ago, she called me and said she was not happy with the judgment of the American court over the division of the property located in Beijing China. The property was actually bought by herself before her marriage with husband. Back then, she signed the purchase contract with property developer on her own and paid more than half of the contract price and took out a mortgage loan from the bank. At the time of her purchase, the property was still under construction, one and half a year later, the property was delivered to her, but she got married with her husband some six months after she paid the down payment and before the property was delivered to her and title thereof registered in her name. Of course, as you may imagine, they had been paying off the mortgage loan after marriage using community properties accruing after marriage.

She tried to present a few pieces of evidences to American judge with a view to proving that the property was and should be considered as her own property and her husband should be entitled to only a proportionate share in the value of the property, a share in line with husband's contribution in paying off the mortgage loan against the full cost of the property. But due to the weakness of the evidences and a difficult understanding by the judge of the property transaction in China, the judge finally ruled that the China property shall be equally divided by the spouses.

She was upset about the court decision, so she found me and made the call.

What Can I Do Now? She wondered.

On the one hand, despite the American court decision, she could still go to China and sue her husband for a fresh division of the property, and very likely that she will get a different court judgment in her favor. Chinese courts tend to award the full title in the wife and order a proportionate compensation to the husband.

On the other hand, she will put herself in trouble if she fails to honor the judgment of the American court, though she now has a different court decision from a China court. After all, she lives in USA and she can escape the American laws. Refusal to honor the court decision may easily constitute a contempt of court in USA. That is not funny.

So this is a catch-22 situation where she could have avoided if she or her American lawyer had strategically framed the divorce lawsuit.

The strategy is that from the very beginning of the American divorce proceeding, the wife should insist that the China property should be left to the jurisdiction by China court, after all, most jurisdictions

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follow the general rule that real estate disputes (even in the context of divorce dispute) should always be left to the jurisdiction of the court where the real estate property is situated.

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