Analysis of Civil Enforcement Property Investigation System

Yang GAO*

Department of Law, Nanjing University of Information Science and Technology,
Nanjing 210044, China

*Corresponding author

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Abstract. The executive power is the bottleneck in our country the court execution work, this article from the actual state of legislation in the civil execution the debtor property investigation system and the judicial practice, analyzes the reasons for the debtor's property is difficult to find out, and on the basis of the study abroad related system, and puts forward some countermeasures to perfect our civil execution of property investigation system.

An Overview

The civil enforcement property survey system refers to the system of investigating the property of the debtor of the hidden property. Namely in the process of execution, the creditor, the debtor and the courts in the implementation of property investigation relationship between rights and obligations, and failed to perform its obligations, the executive main body should bear the adverse consequences of the system. The scope of the investigation of property investigation is relatively certain. One of the differences between the civil enforcement property survey and other investigation is that its investigation subject is more specific, which is generally investigated by creditors and courts.

The Status Quo of the Civil Enforcement Property Survey System

In order to realize their own interests early, the creditor will actively investigate the debtor's property and understand the debtor's ability to repay the debt, but the means of investigation are also limited. Because property information belongs to the debtor's personal information, it is inevitable that the creditor's investigation is in an awkward situation. Although the way of investigation of the creditor is a debtor's property identification method, it does not specify the legal investigation means and scope of jurisdiction that the creditor can adopt. When the creditor applies for compulsory execution of the court, the debtor's property information must be provided, otherwise the court may choose not to initiate the execution procedure. Moreover, the law does not explicitly stipulate the legal liability of the creditor to investigate the situation, which makes the investigation of the creditor become optional. If excessive emphasis on the responsibility of the creditor when start performing, and to determine whether a case, so the creditors want to realize their interests very difficult by the referee hindered the executed smoothly. The property investigation should be clearly defined by legislation as a right of creditors. Creditors information regardless of whether the personal property of the debtor, can choose to apply to the court, ask the courts to a debtor's property investigation work, have difficulty in creditors, the court shall actively investigate the property of the debtor according to the power leads. Some courts in pursuit of our working efficiency and the creditors apply for compulsory execution, subject to creditor can master the debtor property information, personal property information, if the creditor does not provide the debtor is not put on record. The court's omission has brought substantial damage to the interests of the creditors, but the law does not stipulate that the creditor can take the remedy. The inability of creditors to fully investigate the embarrassing fate of the executed property can be attributed to the fact that the law does not explicitly grant the creditor investigation powers, which is the main reason why creditors investigate the difficulties. Creditors are not familiar with the scope of the
property to be executed, causing the creditors to have no investigation. Creditors rely on the habitual thought of the court investigation, which makes it less active for creditors to investigate the execution of the property.

The obligor's active declaration of personal property can be used to force the debtor to declare voluntarily, but the phenomenon of the debtor's debt evasion and the avoidance of debt is still outstanding. No declaration procedures, return and declaration of specific content, lead to actual operation in knowing to declare the debtor, but because no notification procedure, also don't know when to declare, who to declare, declare what content, to declare what form, causing the debtor to declare difficult. Even the court has found that the debtor has not declared the truthfully, and the debtor can use legal loopholes to defend himself against the law. In the absence of the consequences of failing to perform the reporting obligations, the obligor does not actively perform the reporting obligations, making it difficult for the debtor to ascertain the property. Court may summon the debtor to appear in court for questioning, a warrant the debtor to court, and even can be searched for the debtor to obtain property information, however, for the debtor don't cooperate with the investigation, it shall be liable for any consequence liability provisions is insufficient, lack of deterrence. In addition, it is also a problem that the punishment of the person subjected to the execution is unitary and the attack is not very strong. In order to protect their own interests, debtors often do not voluntarily declare their property status. This is mainly due to the law for the reporting obligation of the debtor and the corresponding punishment regulations is not perfect, make the debtor illegal cost is low, and eventually lead to take the initiative to declare the debtor property investigation way become a mere formality. The current legislation is not specific to the debtor's property survey, making it difficult to carry out practical operation and obstructing the investigation of civil execution property.

The court's investigation into the personal property of the debtor is the most important means of investigation. But there are problems. The current law stipulates that the court launches the investigation after the creditors' investigation and the filing of the debtor, and does not specify the premises for the court to initiate the investigation. It has led some courts to launch investigations, abuse their power, and waste judicial resources in order to improve efficiency. Court has forced characteristics of such investigations, after the start the investigation, the court can take a variety of means, the method is a powerful deterrent, due to abuse of power, individual court there is no specific provision in the law and the responsibility of the court, abuse of power, make the rights and interests of the debtor cannot be protected. The relevant laws are still to be perfected in the courts to initiate investigation procedures and legal responsibilities. It is necessary to clarify the premise of the investigation of the right of initiation of the office, and to clarify the court's abuse of power and the duty of omission to urge the court to properly exercise the relevant authority. The court has played an important role in the investigation of the civil execution of property, but in practice, the court has not achieved its due effect in the investigation of its functions. This is due to the current law to the court in the process of investigation power, responsibility, means, investigation of regulation is not clear, lead to the court for the implementation of property survey questions not too seriously. It is difficult to carry out the investigation because of the high cost of investigation and the lack of experience and negative experience of some executive personnel in the court.

The Idea of Perfecting the Investigation System of Civil Enforcement Property

To Improve the Significance of the Civil Enforcement Property Survey System

Creditors can be encouraged to proactively investigate debtor's property. Creditors use of civil enforcement power given by the execution of property investigation system, in the case of court has not been investigated, on its own investigation, take the initiative to find the debtor property, as far as possible to reduce the damage of their legal interests. The ability to declare property to the obligor will help. In most cases of enforcement, the obligation of the debtor to protect his own interests and thus refuse to voluntarily declare his property or even conceal his property has caused a great deal of trouble to the implementation. The civil enforcement property investigation system
stipulates the obligor's obligation and the consequences of the failure to fulfill its obligations, urges the debtor to actively declare the property, so that the civil execution procedure can be completed smoothly. To be able to define the functions and duties that it enjoys. Because the relevant provisions are not clear, there are some unreasonable practices in practice that individual courts should not be or disorderly. Civil execution of property investigation system not only defined the responsibilities of the debtor and creditor, also made clear the court for inaction or messy as behavior shall bear the responsibility, not only can promote the court actively correct exercise of power, but also can remind the creditor and the debtor to exercise supervision, avoid the court's improper survey activity. We should be able to implement the concept of governing the country according to law and build an honest society. If the legitimate interests of the creditors can get timely implementation, so will bring psychological creditors' mistrust of the court, damage the judicial authority, has adverse effects on the harmonious and stable social environment.

**Improve the Plan for the Civil Implementation of the Property Survey System**

**The Scheme of Creditors.** Creditors have an urgent desire to realize their own interests, which must pay more attention to the debtor's property information. The legislation should encourage the voluntary investigation of creditors. At the same time, the law should make clear that the investigation of creditors is the right, not the obligation, to reduce the burden of creditors to a greater extent and balance the psychology of creditors. The creditor may know its property information through the bank or the unit of the debtor. It can also be used to evaluate the existing real estate and movable property of the debtor by hiring a social property appraisal institution to obtain the information of the property to be executed, and the debtor must cooperate. However, when investigating, creditors should observe social ethics and pay attention to the protection of other people's information. In terms of the specific approach of the creditor investigation, China can draw on the investigation by the executing agency of France. Through legislation, creditors can entrust agents and administrative enforcement agencies to investigate the information provided by the social credit system. You can also set up an interrogation program for creditors. The creditor may obtain the debtor's more detailed property information by asking the person who knows the case. Creditors discovered shall promptly report to the court after the property, and provide the corresponding evidence indicate the property location, or the court upon receiving the report from creditors, should review in time, if the property of the debtor can be perform, should be enforced immediately, in an efficient way to realize the creditor's interests.

**About the Debtor's Plan.** The property of the debtor can be divided into two categories, one is the executable property and the other is non-executable property. The unenforceable property mainly refers to the life information necessary for the debtor himself and his family, and is not to be deprived of property under any circumstances. But from the point of view of property declaration, when the debtor declare, whether it's executable property or unenforceable shall declare and then leave to the court according to law and the reality need to be further divided into executable property. At the same time, the property type should be classified in detail in the declaration material, such as if the individual is owned by others, whether it is tangible property or intangible property. It can also be used as a reference to the German obligor's surrogate pledge system, which requires the debtor to take the oath when declaring the property and ensure the honest declaration. The debtor declare that the property has special requirements on the procedure, that is, the debtor is only able to declare his personal property after receiving the notification. The notice should specify which materials the debtor should submit and when and where to submit them. After the submission of the information by the debtor, the court may organize the creditor's rights and the debtor to jointly verify it. After the debtor has completed the declaration, the court may hold a hearing when necessary, and the people around the debtor may participate to assist the identification of the debtor's property. The provisions of the civil procedure law sanction have fines and detention, but far less than foreign, individual fines of up to 10000, unit fines of up to 300000, the longest do not exceed 15 days detention, inadequate deterrent for debtors have abscond psychology. Therefore, in terms of penalties, can draw lessons from the U.S. of using severe punishment mechanism to urge
the debtor to declare property, such as increased fines, extending detention period, make the debtor from debt costs increased significantly. It is necessary to broaden the punishment, such as the punishment of punishment, as the last barrier, to take the strictest criminal responsibility in the serious violation of the regulations of the debtor to protect the legitimate interests of creditors.

**Court Measures.** The law should specify the conditions for the court to conduct its investigation. As long as the conditions for the exercise of the right of investigation are met, whether the creditor can provide the relevant evidence to prove the debtor's property and the corresponding economic capacity, the court shall initiate the investigation right. In the case that the court is not satisfied with the premise of exercising the right of investigation, the court shall not use investigation right to investigate. Can also follow the practice of the French, commissioned by the court, such as the people's procuratorate or departments, administrative agencies by the prosecutor or administrative personnel to the debtor property information collection work, in order to improve the working efficiency. If the relevant enterprise fails to fulfill its obligation to assist the investigation, and does not evaluate the property rights and interests of the debtor in the enterprise according to the requirements of the court, the enforcement court may force the relevant documents such as the enterprise's books to be determined. The court may require opening of a closed premises where the debtor may hide his property. If it refuses to open, the administrative law enforcement departments such as the public security may be forced to open. A bank, an insurance company, a stock exchange, etc., shall not refuse to check the property information of the debtor in the court. Court improper exercise requires, for creditors, it may be facing the court using so-called "burden of proof", creditors will not be a case of risk, and the debtor may be facing the court without sufficient reason to exercise under the premise of such investigations, the risk of their improper behavior affect the debtor's rights. For inaction or messy as courts, law should be the corresponding remedy, a set of sound responsibility mechanism and punishment mechanism, will not be as or as a responsibility to the individual, the creditor, the debtor's complaints targeted, so as to urge the court to perform the functions and powers correctly.

**Improvement of Other Means.** Who master the personal property information of the debtor has an obligation to assist court investigation, such as registration agencies, financial institutions, unit of choose and employ persons, the holder of the subject matter and the administrative authority, after receipt of the court to assist in the investigation of the notice, shall actively cooperate with the court work, within the limits prescribed by law provides information on the property of the debtor. Assist institutions after receiving the court to assist with the investigation notice, shall not transfer property of the debtor or the debtor payment, otherwise the court shall have the right to order to assist agencies within the prescribed time to recover. If within the prescribed period of time, to assist agencies to recover money, the court may rule the within the transfer or the corresponding payment responsibility, and assist to the relevant person in charge of the responsibility.

Perfect social credit system will be beneficial to the creditor and the court free inquiry information needs of the debtor's property, enhance the debtor's property the transparency of information, clear the main obstacle to perform difficult problem, for execution. Due to personal information scattered in different departments, to query to the property of the debtor is complete information, it is difficult for the creditors, it is necessary to establish a perfect social credit system, to avoid enforcement power of creditors become a mere formality. In order to effectively run the social credit system, corresponding safeguards must be matched. To enable creditors to use legal means to inquire into the status of the property executed and bring more convenience to the implementation.

**Conclusion**

Make a clear definition of the nature of creditor enforcement power, the exercise of specific way and the corresponding safeguard measures, to encourage the creditor enforcement power to exercise effectively. In the case of the obligor's declaration of obligation, it is necessary to increase the strength of the sanctions and punish them severely. The court should also specify the procedures for launching the investigation and urge the court to perform its duties reasonably and effectively. It is
also necessary to improve the supporting mechanisms such as assisting in the implementation of social credit.

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