Research on the Responsibility of Express Delivery Service Contract

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ABSTRACT. With the rise of e-commerce, the express industry is booming, and the amount of express delivery is increasing day by day. Therefore, in order to improve the distribution efficiency, express enterprises often complete the distribution through transfer investment, intelligent express box or third-party collection. It is necessary to clarify the legal relationship between express enterprises and other subjects, and make it clear that transfer investment and intelligent cabinet belong to the debt fulfillment assistant of express enterprises, and the legal responsibility should be borne by express enterprises. The third party is the client of the addressee, and the legal liability incurred shall be borne by the third party.

KEYWORDS: Express service, Smart express box, Express enterprise

1. Introduction

On the determination of the subject of compensation for express loss, this paper discusses the following situations: the subject of compensation for loss when the express is delivered to a third party, the subject of compensation for the loss of transfer delivery and intelligent express box delivery.

2. Transfer Investment and Intelligent Cabinet

About re investment. The determination of the liability subject of express transfer depends on the nature of legal relationship. There are many different understandings in practice, among which the representative is agency theory and debt transfer theory.

Agency theory holds that the nature of the re investment agreement is agency contract, that is, the cooperative network is the agent of express enterprises. The express enterprise, as the principal, shall bear the express loss caused by the cooperative network’s re transferring to the investment ring section to perform the agency duties. However, the author believes that the act of re investment does not conform to all the characteristics of agency. Agency is a civil activity in which the agent deals with the principal’s affairs in the name of the principal. In practice, the transfer of cooperation network is not in the name of express enterprises, but in their own name. Therefore, the nature of express transfer is not an agent, and the view that express enterprises should bear the responsibility of compensation for express losses based on the agency relationship cannot be established.1

According to the theory of debt transfer, express enterprises and cooperative outlets have reached a re investment agreement and used this method to deliver, which has obtained the consent of the recipient, and has the conditions of debt transfer stipulated in the contract law. Therefore, the express delivery transfer has the nature of debt transfer, and will produce the legal consequences of debt transfer. As the original debtor, the express enterprise withdraws from the express service contract relationship and acts as the debtor. Therefore, the new debtor, that is, the cooperative network, shall be liable for the loss of express delivery. But the “postal law” has a special regulation on express business operation, which requires obtaining business license in advance. Any subject without permission is not allowed to engage in express business operation activities. The cooperative network does not need to obtain business license, and delivery is also a part of express business operation. Therefore, the cooperative network does not have the operation qualification of express delivery business, so it can not become an express business. As the independent undertaker of express delivery obligation, there is no legal support for the theory of debt transfer.

The author believes that: when the express delivery enterprise delivers the express to the cooperative network, its contractual obligation has not been completed. The nature of the transfer agreement between the express enterprise and the cooperation network is regarded as the entrustment contract. The cooperative network, as the assistant of debt
fulfillment, keeps the express according to the instructions of the express enterprise and transfers it to the recipient. The consequences of the behavior belong to the express enterprise. Therefore, during the period of express damage and loss, should be borne by express enterprises. Of course, the express loss is caused by the cooperative network’s violation of the re investment agreement, and the express enterprise can claim compensation from the cooperative network after assuming the user’s liability for compensation.

3. Collection

Express Collection refers to the third person entrusted by the user to sign for and receive the express. The third person is called the agent. Express enterprises can complete the delivery in the way of agent collection. Thanks to the agreement between the user and the agent. In the contract, the user is the client and the agent is the trustee, and the receiver shall bear the following obligations: first, the obligation to sign and receive the express, including the acceptance of the express; second, the obligation to keep the express properly; third, the obligation to transfer the express to the receiver in time.

For the loss occurred after the express collection is completed, the user is not allowed to claim damages to the express company, and the user can only claim the liability for breach of contract from the agent according to the entrustment contract.

It should be noted that the agent’s breach of the contract obligations does not necessarily lead to the liability for breach of contract. Article 406 of the contract law has special provisions on entrustment contract. The principle of fault liability is applicable to the principle of compensation for breach of contract. In the case of paid collection, we should not only prove that the agent has violated the entrustment contract, but also prove that the agent has subjective fault. In the process of free collection, we should not only prove the fault, but also prove that the fault is serious or intentional The agent shall not be liable for breach of contract.

In practice, when the express delivery enterprise and the addressee contact each other, they will reach an agreement to deliver the express to the guard, property management department or other third party, but the recipient has not obtained the third party’s consent in advance. Then, should the third party be liable for the loss of the express after it is signed by the third party? If the third party does not sign in but receives the express, will it be liable for the loss of the express?

When the recipient and the express enterprise reach an agreement to deliver the express to a third party, the recipient actually gives up the right to deliver the express by name and address. Therefore, when the express enterprise delivers the express to the third party and completes the delivery obligation according to the recipient’s instructions, the user requires the express enterprise to bear the responsibility of compensation for the loss and lose the contract basis. However, express enterprises should express the legal consequences to users.

Then, should the third party be liable for the loss of express delivery after receiving it? According to Article 374 of the contract law, the third party should be liable for the loss of the express, unless the contract is free of charge and can prove that there is no gross negligence. This view holds that the express delivery is delivered after the third party. In case of express loss, the addressee has the right to ask the third party to bear the liability for damages. The legal basis is the contractual relationship in fact. However, we think that the condition for the establishment of the contract is that both parties have the same intention. The third party’s acceptance of the express does not necessarily mean that the third party has the willingness to undertake the obligation of guarantee for the express. We can infer that the third party has two wishes, the first one is willing to undertake. If we think that we are willing to undertake the duty of custody, the establishment of a custody contract is definitely opposite to the principle of freedom of contract. We should presume that the third party is not willing to undertake the custody obligation, and does not form a custody contract relationship, which is more in line with the principle of contract law. The third party serves the interests of the addressee on the premise that the obligation can not be defined or agreed upon, the act of receiving express delivery and providing storage space constitutes non causative management. The legal consequence of negotiorum management is that the beneficiary should return the necessary expenses for its management office to the other party, which does not mean that the third party shall be responsible for the compensation once the express loss occurs afterwards. [2]

4. Conclusions

When the recipient does not obtain the consent of the third party but reaches an agreement with the express delivery enterprise to deliver the express to the third party, if the express delivery loses after delivery, the express enterprise shall not be regarded as the subject of compensation for breach of contract, nor shall the third party be liable for breach of contract based on the breach of custody contract obligation. The addressee should have foreseen that there will be some risks in this way, but it is allowed to occur, so the addressee shall be responsible for the loss.

References

[2] Zhao Heng. Who will pay for the lost express delivery when the property and the guard receive the express delivery. Procuratorial daily, October 8, 2016 (Third Edition)