

Research on Relevant Issues Regarding the Creditor's Right of Revocation in the Chinese Civil Code

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Received: September 22, 2023

Accepted: October 8, 2023

Online Published: October 31, 2023

doi:10.5539/ass.v19n6p53

URL: <https://doi.org/10.5539/ass.v19n6p53>

Abstract

The creditor's right of revocation is an important aspect of the debt preservation system. Regarding the legal effects of and approaches to realizing this right, there are various interpretations in the theoretical realm and inconsistencies in judicial practice. From a legal effects perspective, the creditor's right of revocation in nature is not solely a right of formation, but also contains elements of a right of claim. In an action for the creditor's revocation right, the creditor can simultaneously request the counterparty to assume the civil liability to the debtor as a result of the revocation of the act, such as returning property, providing compensation, or fulfilling overdue debts. In terms of the approaches to realizing the right, the creditors can directly apply for compulsory enforcement based on an effective judgment arising from their litigation or revocation litigation with the debtors to realize their rights against the debtors. Generally, there is no need for a combined exercise of the right of revocation with the subrogation right. However, in special circumstances, allowing the two rights to be exercised together can strengthen the protection for the creditors.

Keywords: creditor's right of revocation, exercise effects, warehousing rules, subrogation right

The Civil Code establishes the system of debt preservation. The debt preservation system primarily comprises the creditor's right of subrogation and the creditor's right of revocation. As debt preservation involves third parties other than the contracting parties, it has been a contentious topic, drawing wide attention in both the theoretical realm and judicial practice. In particular, there is considerable debate and inconsistency in judicial practice regarding the legal effects of and approaches to realizing the creditor's right of revocation. This article, with reference to Articles 157, 538, 539, and 542 of the Civil Code, as well as relevant provisions in the Civil Procedure Law, seeks to condense some specific rules by organizing diverse perspectives and lessons learned from judicial practices, with the aim to provide valuable insights that can serve as points of reference for legislations or judicial interpretations.

1. The Legal Effects of Exercising the Creditor's Right of Revocation in China

In judicial practice, there are two fundamental modes of judgment regarding the legal consequences of exercising the right of revocation: one involves solely ruling on revocation, while the other simultaneously requires the counterparty to return property to the debtor when issuing a revocation judgment. In theoretical discussions, there are mainly two viewpoints concerning the legal effects of exercising the right of revocation: one perspective asserts that the exercise of the creditor's right of revocation only deprives the debtor's act of its legally binding force, without directly generating any effects of a right to claim, so that after revocation the debtor's property serves as a general guarantee for all creditors. (Note 1) (Long, 2020, p. 130) The other viewpoint contends that the exercise of the creditor's right of revocation grants the creditor both the power to nullify the debtor's act and the right to request the return of property from the counterparty. (Note 2) (Wang, 2015, p. 121; Cui, 2021, p. 160; Han, 2018, p. 458)

The differing views on the legal effects of the creditor's right of revocation essentially reflect a debate about the nature of this right. One standpoint argues that revocation is a right of formation (action) (Wang, 2016, p. 148), while another opinion contends that revocation is a combination of a right of formation and a right of claim. (Wang, 2015, p. 121; Han, 2018, p. 458) The author leans towards the compound theory, primarily based on the

following considerations. Firstly, despite the Chinese Civil Code using the wording “request the people’s court to revoke the debtor’s act” in describing the effects of exercising the right of revocation, which seems to imply a right of formation action, the restitution of property is an inherent outcome of exercising the right of revocation irrespective of whether the legislators explicitly address the issue of property restitution. If an action for revocation right solely leads to revocation without restitution, it would leave legal relationships and property ownership in an unstable state. Relevant legislative explanatory notes also acknowledge that when the debtor’s act of gratuitously disposing of or transferring its property at a low price or acquiring property at a high price is revoked, the debtor shall not make further payments to the counterparty if the debtor has not already done so, and the counterparty no longer has the right to demand payment from the debtor. If the debtor has already performed to the counterparty, the counterparty is obligated to return the property and restore it to the original state, and if the counterparty is not able to do so, the counterparty shall make compensation accordingly. (Huang, 2020, p. 182)

Secondly, from a comparative law standpoint, it is widely acknowledged in overseas legal systems that a judgment affirming the right of revocation encompasses a property restitution effect. This is still because, fundamentally, the debtor’s financial capacity can only be restored through the actual return of property. (Song, 2021, p. 152) For example, in Japan, the prevailing view is that “the creditor’s right of revocation is not only about the revocation of the act, but also about requesting the return of property or benefits obtained as a result of fraudulent acts”. (Wagatsuma, 2008, p. 154) The amended Japanese civil law directly provides for the creditor’s right to request the return of property or, when returning the property itself is difficult, the right to reimbursement of its value. Article 424 of the Japanese Civil Code also employs similar languages, and the prevailing view aligns with the compound theory. (Note 3) In Germany, the Creditors’ Avoidance of Transfers Act (AnfG) regulates the creditor’s right of revocation, treating it as a right of revocation claim (Anfechtungsanspruch) rather than a right of formation. When the creditor files a lawsuit on the right of revocation claim, a favorable judgment will directly instruct the counterparty to make payment to the creditor, which constitutes a payment judgment. (Song, 2021, p. 152) (Note 4) In Taiwan, China, the predominant view also favors the compound theory. (Sun, 2006, p. 546) Mr. Shi Shangkuan argues that for acts carried out by the debtor that are purely void, it is still essential to request the counterparty to fulfill the obligation to return the property. Otherwise, it would be challenging to ensure that, in all circumstances, the property naturally reverts to the scope of the debtor’s liability property. (Shi, 2000, p. 546) When the right of revocation impacts the change of real property rights, in a legal context where the theory of the juristic act of real right is acknowledged, the counterparty should return the property in accordance with the claim of real right when the juristic act of real right is revoked. (Note 5) (Qiu, 2004, p. 318) Under the creditor formalism perspective, the counterparty who has received the property should return it based on unjust enrichment claims, when the contract that serves as the basis for property rights is revoked. Otherwise, the property loss due to the debtor’s fraudulent act cannot be returned to the debtor’s control, thereby significantly diminishing the effectiveness of a revocation judgment.

Thirdly, looking at it from a judicial practice standpoint, the majority of cases also align with the second viewpoint. For instance, in cases where the debtor is the defendant, the court, upon the plaintiff’s request, typically issues a judgment that not only revokes the debtor’s action but also instructs the restoration of the original status and the return of property. (Note 6) In a case where both the debtor and the counterparty were defendants, and the plaintiff requested the court to revoke a sales contract and directly restore the real estate registration, the court issued a judgment that revoked the contract and mandated the counterparty to carry out the restoration of the registration. (Note 7) Research has shown that cases in which judges simultaneously support the creditors’ claims for “revocation plus return” make up 85% of cases decided in favor of the creditors, while the remaining 15% are primarily attributable to the fact that the creditors did not assert a restitution claim. (Note 8) (Zhao, 2018, p. 1083) This approach is explicitly echoed in Guiding Case No.118 issued by the Supreme People’s Court. (Note 9) In other words, the exercise of the creditor’s right of revocation encompasses not only the effect of a right of formation but also that of a right of claim.

In conclusion, the compound theory is more in line with the prevailing view and judicial practices. Based on this, the author contends that in China, the legal effects of exercising the creditor’s right of revocation can be summarized into the following rules, which could be explicitly clarified in relevant judicial interpretations: When a creditor, in a revocation right action, simultaneously requests the counterparty’s civil liability for returning property, providing compensation, or settling overdue debts after the act is revoked, the People’s Court should uphold such requests in accordance with the law. While this rule refines the system of the creditor’s right of revocation under the Civil Code and helps the People’s Court establish a consistent standard for judgments, it is important to consider the following issues when applying it.

Firstly, the rule follows the “warehousing rule”, which is different from the direct payment rule applied to the creditor’s subrogation right. Under this rule, a creditor can request the counterparty of the debtor to assume responsibilities such as returning property, providing compensation, or settling overdue debts, but the creditor cannot directly require the counterparty to assume corresponding responsibilities towards creditors themselves. When the counterparty proactively enforces an effective judgment, the counterparty should enforce the judgment to the debtor in accordance with the “warehousing rule”. Certainly, if the counterparty refuses to enforce the judgment, the creditor has the option to apply for compulsory enforcement. Additionally, if the rights and obligations between the creditor and the debtor have already been affirmed by an effective judgment, the creditor can, based on that judgment as well as the judgment for the revocation right, also seek to enforce the debtor’s claims against the counterparty.

Secondly, the creditor’s right of revocation combines the characters of both a right of formation and a right of claim. With respect to these two distinct legal powers, the creditor can opt to exercise them separately or simultaneously in a lawsuit. In a revocation right action where property return is implicated after revocation, but the creditor’s claim solely concerns the revocation of the debtor’s act without encompassing a request for property return, to fundamentally resolve the dispute, the People’s Court may clarify the matter based on the specific circumstances of the case and advise the parties to include relevant requests. This approach helps reduce unnecessary litigation burdens and streamlines the subsequent enforcement process. Of course, this primarily applies to situations where the debtor has already fulfilled their obligations to the counterparty. If the debtor has not yet fulfilled their performance, there is no issue of requesting a return. If, after clarification by the People’s Court, the creditor still insists on only suing for the revocation of the contract between the debtor and the counterparty without requesting the counterparty to return the property to the debtor, this constitutes the creditor’s disposition of their own rights, which the People’s Court should respect. However, because the main text of the effective judgment does not contain a payment clause, there might be obstacles if the creditor seeks to compel the counterparty to return the property to the debtor through compulsory enforcement.

Thirdly, it should be noted that in the revocation right actions, the creditor’s rights are not restricted solely to matured creditor’s rights. However, the relevant provision should be limited to the matured creditor’s right. Consequently, the creditor can seek a concurrent trial and payment judgment only for the debtor’s matured creditor’s right. For debts that have not yet matured, the revocation right actions cannot expedite their maturity.

2. Approaches to Realize the Creditor's Rights in Revocation Right Actions

The revocation right system in the Chinese Civil Code adopts the “warehousing rule”, which means that the legal effect of revocation is to include the relevant property into the debtor’s liability property, serving as a general guarantee for all creditors, without granting priority in getting repayment to any specific creditor. The warehousing rule may render creditors proactively exercising their rights unable to obtain full repayment, thus failing to create incentives for exercising the revocation right. The warehousing rule may prevent proactive creditors from obtaining full repayment, thus failing to create incentives for exercising the revocation right. Therefore, it is necessary to clearly define the approaches for creditors to realize their rights in statutes or judicial interpretations and provide clear guidance for creditors to secure their own legitimate interests.

With regard to the construction of pathways to realize the rights, many scholars suggest adopting a model that combines the exercise of subrogation rights and revocation rights. The combined exercise of these two rights means that a creditor simultaneously asserts subrogation rights in a revocation right action, requesting that the debtor’s counterparty directly fulfill their obligations to the creditor while revoking the debtor’s relevant act. Scholars advocating for this model argue that Article 542 of the Civil Code only produces the effect of revoking a juristic act, without directly creating a right of claim. To conclusively resolve the issue, creditors must rely on the subrogation right system. Therefore, it is necessary for future statutes or relevant judicial interpretations to stipulate and permit concurrent filing actions combining both revocation rights and subrogation rights. (Long, 2020, p. 120) Judicial practice has seen a number of cases where creditors are allowed to simultaneously exercise subrogation rights and revocation rights. (Note 10)

Nonetheless, there are also many arguments against the model of combining the exercise of revocation rights and subrogation rights. The main reasons for opposition include the following. First, the creditor’s subrogation right and revocation right do not have identical functions, which poses theoretical obstacles to simultaneous exercise. The subrogation right system addresses the debtor’s passive behavior, with the legislative purpose of preserving the debtor’s liability property. In contrast, the revocation right system addresses the debtor’s active behavior, with the legislative purpose of restoring the debtor’s liability property. Second, the two systems have different requirements for their exercise. These differences include the outward appearance of the debtor’s act, whether

malicious intent of the third party is required, and whether the creditor's right must have matured. Third, the effects of exercising the two rights are different. The exercise of the subrogation right follows the rule of priority repayment, while the exercise of the revocation right follows the warehousing rule. Furthermore, allowing simultaneous exercise can create issues such as leaving no room for the application of the revocation right, confusion between claims of real right and claims of creditor's right, and confusion of parties' identities. (Wang, 2019, p. 6-7) In judicial practice, there are also cases where the combined exercise of revocation rights and subrogation rights is not upheld. (Note 11) Scholars who disagree with the combined exercise are of the view that after invoking the revocation right by the creditor, the matured rights can be directly enforced through the enforcement procedure. There are no more than two scenarios in which matured creditor's rights typically fall into: either the creditor has obtained an enforcement basis through litigation or arbitration proceedings with regard to the creditor's right, or the creditor has not commenced any litigation or arbitration proceedings with regard to the creditor's right. In the former situation, the fact that the creditor has obtained an effective judgment for the revocation right indicates that the real rights in the property transferred have been restored. In this case, the creditor can enforce the revocation judgment by utilizing the enforcement procedure regarding the primary debt. (Note 12) In the latter situation, the disposition outlined in the revocation judgment, which mandates the return of the property, is *per se* enforceable. Furthermore, Guiding Case No.118 issued by the Supreme People's Court has affirmed the creditor's standing to seek enforcement against the counterparty. The creditor may recover the property held by the counterparty through the enforcement of the revocation judgment. Hence, there is little opportunity for the concurrent exercise of the revocation right and subrogation right to be applicable. (Song, 2021, p. 160)

The author basically agrees with this perspective. In cases where a creditor secures a favorable and effective judgment in both the primary creditor's right action and the revocation right action, it obliges the counterparty to fulfill the obligations to the debtor, while the debtor becomes obligated to fulfill the obligations to the creditor, forming a chain of payments. During the enforcement procedure, the debtor's general creditor's rights against the counterparty are subject to compulsory enforcement. (Note 13) Hence, achieving the realization of the creditor's rights through the enforcement procedure not only aligns with existing legal provisions but also circumvents the disputes regarding the prerequisites for the combined exercise model and excessively intricate system designs. Nonetheless, it's essential to emphasize that the scope of compulsory enforcement should be restricted to the extent of the creditor's rights held by the creditor and the range of obligations owed by the counterparty to the debtor. In situations where the debtor's property proves insufficient to entirely satisfy all debts, the "warehousing rule" should still be applicable. In other words, if the debtor faces multiple enforcement applicants, and the property to be returned by the counterparty is insufficient to cover all debts, an individual creditor cannot obtain priority in repayment. In such scenarios, as per the provisions outlined in Articles 506 (1), 508, 511, 514, and other relevant sections of the Judicial Interpretation of the Civil Procedure Law, when the debtor's property cannot fully satisfy all debts, other creditors with valid grounds for enforcement may request participation in the distribution process. For ordinary creditor's rights, they are in principle reimbursed in proportion to their respective shares in the total distribution amount, with the remaining debts continuing to be settled by the debtor. If the debtor meets the criteria for bankruptcy, and with the consent of one of the enforcement applicants or the debtor (the party subject to execution), the court shall initiate a "transformation of enforcement into a bankruptcy procedure". In cases where the involved parties object to this transformation, ordinary debts are settled based on the order in which property preservation and enforcement measures were implemented. Moreover, in a revocation right action, the creditor can strengthen the protection of their rights by seeking property preservation measures against the counterparty's assets.

It is necessary to delve further into whether there is absolutely no room for the application of combined exercise of revocation rights and subrogation rights. The author believes that some scholars advocate for this model primarily because it encourages creditors to actively exercise revocation rights, thereby preventing unfair situations where other creditors who have been sitting on their rights manage to "take a free ride". This is also the reason why some judicial cases accept this model. From a comparative law perspective, whether in civil law countries like Germany and France, which have inherited the Roman law tradition, or in common law countries, the "warehousing rule" is all broken to some extent, allowing revocation rights holders to directly seek compensation from escaped assets. In German law, for example, the corresponding legal action for revocation rights lawsuits is called an action for liability (Haftungsklage, also known as the action for toleration of compulsory enforcement). In this case, the defendant is not obligated to fulfill the debt owed to the plaintiff, but is legally obliged to tolerate the plaintiff's application for enforcing specific property and obtain compensation therefrom. (Gao, 2023, p. 116) (Note 14) In France the prevailing theory believes that the *actio Pauliana* grants the creditors the legal effect of non-opposability when pleading for a declaration of fraudulent acts. (Gao, 2023,

p. 115) (Note 15) Non-opposability means that fraudulent acts are only ineffective against the creditors exercising the actio Pauliana, thereby allowing them to apply for enforcement on escaped assets. (Gao, 2023, p. 115) (Note 16) In Anglo-American law, the intentional depletion of property by the debtor that harms the creditor's rights is governed by the fraudulent conveyance rules. Once obtaining judicial priority, the creditor can directly enforce the transferred property using common law remedies or seek equitable remedies to clear the third party's ownership under equity law. In comparison to other general creditors and those who obtain priority later, the creditor is entitled to preferential payment from the auction proceeds. (Gao, 2023, p. 121) While the aforementioned foreign legislations do not directly incorporate the combined exercise model of revocation rights and subrogation rights, they achieve the objective of individual fulfillment of debts by positioning creditors' revocation rights as auxiliary procedures for compulsory enforcement and granting them priority in receiving payment from escaped assets. Although these jurisdictions follow different approaches, they ultimately serve the same purpose as the combined exercise model.

Regarding the specific legislative context in China, while it is true that there are clear drawbacks to building a combined exercise model without distinguishing circumstances, it does not mean that this model is not applicable at all. In special situations where both the requirements for subrogation rights and revocation rights are met simultaneously, the court can conditionally support their combined exercise, thereby strengthening creditor protection through the priority payment rules of subrogation rights. The following path can be established for this approach: "*When the debtor abandons their matured creditor's rights or maliciously extends the period of performance of his due claim, thereby impeding the enforcement of the creditor's matured creditor's rights, the creditor may, while requesting the revocation of the debtor's act, exercise the debtor's rights against the counterparty after the act is revoked through subrogation*". Specifically, firstly, the debtor must have engaged in an act involving the abandonment of the creditor's rights or maliciously extending the period of performance of his due claim. Because the behavior that actively reduces liability property is more reprehensible than failing to exercise creditor's rights, it can be argued that a debtor who engages in acts leading to an undue reduction of liability property would, *a fortiori*, not actively exercise the resulting rights after these acts have been revoked. Therefore, in such a situation, the criteria for subrogation rights concerning the debtor's failure to exercise its right against a counterparty or an accessory right related thereto is met. The cases where the debtor transfers their property at an obviously unreasonably low price, acquires property from another at an obviously unreasonably high price, or provides security for another person's debt, etc., are not within the scope of the application of this rule. Second, such an act must have impeded the enforcement of the creditor's matured right. A revocation right action does not necessitate the maturity of the creditor's rights, but a subrogation lawsuit does. Therefore, when both rights are exercised simultaneously, the shared requirement that the enforcement of the creditor's matured claim has been adversely affected must be met. This can circumvent the issue of disparate requirements for exercising the two rights. Third, the rights held by the debtor against the counterparty after the act is revoked are matured rights. The claims that arise from the revocation of the debtor's improper act can pertain to either a creditor's right or a real right. In contrast, the exercise of subrogation right is confined to a creditor's right and an accessory right related thereto only. Hence, this rule restricts it to a claim of a creditor's right. Fourth, the revocation action and subrogation action must fall within the jurisdiction of the same court, as otherwise, it would not be possible to combine the exercise of the two rights. In cases that do not fall under this rule, creditors can enforce their rights through the enforcement procedure in accordance with the warehousing rule.

3. Other Key Issues in Revocation Right Actions

3.1 Concurrent Trial of Action for the Underlying Creditor's Rights and Revocation Right Action

In practice, there are two scenarios in which a creditor may initiate a revocation action. One scenario is that the creditor initially files a lawsuit against the debtor for payment and, after winning the case, discovers that the debtor has carried out acts falling under the circumstances specified in Articles 538 and 539 of the Civil Code. In such a situation, the creditor then files a separate revocation action. The other scenario is that the creditor has not yet filed a lawsuit for payment against the debtor but discovers that the debtor has carried out acts falling under the circumstances specified in Articles 538 and 539 of the Civil Code. In this case, the creditor directly initiates a revocation action, naming both the debtor and the counterparty as co-defendants. The rights and obligations between the creditor and the debtor can be consolidated and adjudicated directly within the revocation action. This approach does not present any structural alignment obstacles and offers the advantage of reducing the litigation burden on the creditor. From the perspective of foreign legal experiences, there are also precedents for consolidating the basic claim and revocation claim in legal proceedings. Both French law and American law allow the "bundling" of the substantive legal relationship between the creditor and debtor in revocation lawsuits.

Discussion of fraudulent acts can only occur when the existence of the debt is established. Therefore, from the perspective of procedures safeguards, the defendant status of the debtor should be recognized. In American law, it is further clarified that creditors simultaneously bringing claims for monetary payment against debtors and revocation claims against third parties constitutes a joinder of claims. (Gao, 2023, p.127-128) (Note 17) It needs to be noted that if the creditor requests the court to accept the revocation action to also adjudicate the debt relationship between it and the debtor, the court may concurrently accept both cases if they both fall within its jurisdiction. If the jurisdiction over the underlying debt relationship between the creditor and the debtor is specified in an agreement or is subject to exclusive rules, and the court accepting the revocation lawsuit does not have jurisdiction over this matter, the court shall not simultaneously accept both cases. Instead, it should inform the creditor to file a separate lawsuit in the court with the appropriate jurisdiction.

3.2 Actions for Creditor's Right of Revocation and Actions for Third-Party Revocation

The Civil Procedure Law establishes a system for third-party revocation actions, which is designed to offer recourse to a person unable to participate in the litigation, who is not a party to the case but whose civil rights and interests have been infringed upon. Considering that the third-party revocation action is a special *post facto* remedy procedure, it is necessary to prevent persons who are not parties to a case from abusing their litigation rights, as this could impact the stability and authority of effective judgments. Therefore, there should be limitations on creditors filing third-party revocation actions as plaintiffs. In general, this limitation applies to third parties as defined in Article 59 of the Civil Procedure Law, both those with independent claims and those without independent claims, but it does not typically encompass creditors. As a result, there is generally no overlap between creditor revocation actions and third-party revocation actions. However, according to the prevailing view among practitioners, in special circumstances, creditors should be permitted to initiate third-party revocation actions. For example, when the rights and obligations between a debtor and another party have been ascertained by an effective court judgment, which prevents a creditor from exercising revocation rights under Articles 538 and 539 of the Civil Code or Article 31 of the Enterprise Bankruptcy Law, the creditor may, in such cases, be allowed to file a third-party revocation action if it fulfills other conditions as specified in the laws and judicial interpretations.

3.3 Exercise of Revocation Rights in Chain Transfers

Regarding situations where a debtor gratuitously or at an unreasonably low price transfers property and the acquirer subsequently transfers it to a third party gratuitously or at an unreasonably low price, the creditor's revocation rights systems in the Japanese Civil Code and Taiwan's "Civil Law" incorporate provisions known as the "subsequent acquirer rule". (Note 18) The term "subsequent acquirer" (also referred to as the "indirect transferee" or "indirect beneficiary") refers to a person who acquires rights from the beneficiary (i.e., the debtor's counterparty). (Han, 2018, p. 469) However, based on the languages of Articles 538 and 539 of the Chinese Civil Code, the current creditor's revocation rights system in the code does not include the subsequent acquirer rule. This has led to conflicting opinions in practice. One perspective contends that creditors should be permitted to concurrently revoke the acts undertaken by both the debtor and the subsequent acquirer. (Note 19) Another viewpoint maintains that the creditor's revocation right should typically be limited to its own counterparty and should not extend to the subsequent acquirer. Therefore, when exercising the revocation right, the creditor may not make requests against the subsequent acquirer. (Note 20) Regarding which legal norms should be applied to address this issue, some suggest recognizing the existing legal gaps in the current creditor's revocation rights system under the Civil Code, which could be addressed by referring to relevant legislative practices and theories. Another approach to resolving the issue is to address it by applying existing provisions related to the invalidity of juristic acts and good faith acquisition. (Cui, 2020, p. 149)

The issue of exercising revocation rights in the context of chain transfers has received significant attention in China's academic and practical domains. Many scholars are advocating for clear rules concerning revocation in chain transfers to be included in the judicial interpretations issued by the Supreme People's Court related to the Contract Part of the Civil Code. (Note 21) However, the author disagrees on extending revocation rights to cases of chain transfers. The primary reasons for this viewpoint are as follows. First, it will generate too great an impact on China's existing system of law of obligations. The revocation right itself already challenges the privity principle. Allowing revocation of the transactions between the counterparty and the subsequent acquirer would constitute a substantial departure from the privity principle, thereby exerting a disruptive impact on the system of law of obligations and may not be conducive to transaction stability. Second, the existing rules are already capable of addressing this issue. According to the norms concerning the invalidity of juristic acts and good faith acquisition, after the first transaction was revoked, the counterparty did not acquire property rights. Therefore, any subsequent transaction that involves the disposition of those property rights would be considered

unauthorized disposal. Since the transferee is acting in bad faith, there is no basis for a good faith acquisition. Consequently, the property rights would still belong to the debtor. Even if the subsequent transaction is not revoked, the creditor with revocation rights can still treat those property rights as part of the debtor's liability property. Third, it should be avoided to prematurely establish new rules. Since the Civil Code does not explicitly address the revocation of subsequent transactions, introducing entirely new rules through judicial interpretations may not be justified in the absence of compelling necessity. It would be wiser to apply existing rules, such as those pertaining to the invalidity of juristic acts and good faith acquisition, and leave space for further exploration within academia and practice. When the time is ripe, these rules can be elevated to become universally applicable.

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Notes

Note 1: This viewpoint argues that Article 542 of the Civil Code clearly defines the theoretical construct of a creditor's right of revocation as one under which it is interpreted as a right of formation, thereby only producing an effect of rescinding the juristic act without directly generating the effect of a right of claim.

Note 2. This doctrine can also be referred to as the "compromise theory" and is further interpreted in two ways. One interpretation suggests that the specific content of such a right of claim is to request the counterparty to return the property to the debtor, which does not involve any performance to be received by the creditor. The

other interpretation advocates that to restrict the debtor from receiving or redispersing the performance, the creditor can accept the property on their behalf. According to the first interpretation, the property the creditor requests to be returned becomes the debtor's liability property, while according to the second interpretation, the creditor can, in some circumstances, enjoy priority in being paid through set-off.

Note 3. Article 424 of the Japanese Civil Code stipulates: "An obligee may demand the court to rescind an act which the obligor commits knowing that it will prejudice the obligee; provided, however, that this does not apply if a person that benefits from that act does not know, at the time of the act, that the obligee will be prejudiced." After the 2017 amendments to the Japanese Civil Code, Article 424-6 was added, which deals with requests for the return of property or reimbursement of its value. Before 2017, the wording of Article 424 in the Japanese Civil Code was similar to Article 74 of the Contract Law of China. During this period, the prevailing view and case law in Japan favored the compound theory rather than the theory of the right of formation.

Note 4. Certainly, there is also a doctrine in German law that views the creditor's revocation action as an action for toleration of compulsory enforcement, also known as the action for liability. The core viewpoint of this theory is that the creditor's revocation action essentially addresses issues at the enforcement level and actually demands that the party against whom the revocation right is exercised tolerates the court's compulsory enforcement. The distinction between the action for liability and the action for payment in substantive law mainly lies in the fact that, in the action for payment, the plaintiff demands the fulfillment of an obligation to pay what the defendant owes, whereas in the action for liability, the defendant does not owe any payment obligation to the plaintiff, and it is only the defendant's specific property that is liable for the debts of a third party. This reference is quoted from Vgl. Rosenberg, Schwab, Gottwald, Zivilprozessrecht, 17.A, München 2010, S.486f. (Yun, 2022, p. 112) The author argues that the difference in substantive law mentioned above does not significantly affect the exercise effects of the revocation right; both actions serve as a means for the creditor to fulfill their rights under the guise of compulsory enforcement. In this sense, the action for liability also falls within the scope of actions for payment.

Note 5. Scholars in Taiwan, China who acknowledge the theory of juristic acts of real right hold this view.

Note 6. 2017 Hu Min Chu No.6569

Note 7. 2018 Min 03 Min Zhong No.1057

Note 8. Case statistics collected as of July 5, 2018.

Note 9. In this case, the Supreme People's Court, in the second and third dispositions of the ruling (see 2008 Min Er Zhong Zi No.23), ordered the revocation of the act and concurrently determined the obligation for return: II. Revocation of the contract in which Northeast Electric exchanged its external creditor's right amounting to RMB 76.66 million and the corresponding interest for the 95% of the shares in Beifu Machinery and 95% of the shares in Dongli Logistics held by Shenyang Gaokai. Northeast Electric and Shenyang Gaokai shall return the stocks and creditor's rights to each other. If mutual restitution is not possible, Northeast Electric shall compensate Shenyang Gaokai for losses up to RMB 247.1165 million, and Shenyang Gaokai shall compensate Northeast Electric for losses up to RMB 76.66 million. III. Revocation of the contract in which Shenyang Gaokai exchanged its 74.4% of the shares in New Northeast Isolation for Northeast Electric's 98.5% of the shares in Shenyang Tiansheng Communication Equipment Co., Ltd. (hereafter "Shenyang Tiansheng"). Both parties shall return the equity interests to each other. If mutual restitution is not possible, Northeast Electric shall compensate Shenyang Gaokai for losses up to RMB 130 million minus RMB 27.8788 million.

Note 10. For instance, in the case "YANG v. GU, A Creditor's Right of Revocation and Subrogation Dispute", when the debtor and his spouse (wife) divorced, they divided their marital property through a divorce agreement. The agreement stipulated that the jointly-owned house and automobile would belong to the spouse. The creditor filed a lawsuit to revoke the provisions related to property division in the divorce agreement. Given that the debtor had signed the divorce agreement and had willingly relinquished his property rights, and he contested the revocation of the divorce agreement, the court therefore held that there was reasonable ground to believe that even after the provisions on property division in the divorce agreement were revoked, the debtor would still be passive in exercising his rights against the ex-wife. Therefore, the court directly granted the creditor the right of subrogation, allowing the creditor to claim the debtor's creditor's right against the ex-wife. The debtor's ex-wife, as a third party, was required to return the corresponding remaining amount to the creditor. See the Civil Judgement 2013 Bao Min Yi (Min) Chu Zi No.5980 of Baoshan District People's Court of Shanghai.

Note 11. For instance, in the case "ZHANG v. Qinghemen District Xiangyu Material Sales Office, Fuxin City, and Heihe Xingbian Mining Co. Ltd., A Creditor's Right of Revocation and Subrogation Dispute", the court held

that “*Considering the underlying purposes of the two legal mechanisms, the creditor’s right of subrogation is established when the debtor fails to actively exercise their rights. As a result, their liability property does not increase as it should be, thereby jeopardizing the creditor’s interests. By granting the creditor the right of subrogation to directly protect and realize their own rights, it ensures the preservation of the subrogee’s creditor’s rights. The creditor’s right of revocation, on the other hand, comes into play when the debtor disposes of their liability property for certain purposes, causing the property to decrease inappropriately and harming the interests of the creditor. It grants the creditor the right to apply for the revocation of the debtor’s act of disposal, thus ensuring the preservation of the rights of all creditors. One mechanism focuses on the debtor’s passive exercise of their external rights, while the other addresses situations where the debtor actively exercises external rights in an inappropriate way*”. See Civil Judgement 2012 Hei Shang Zhong No.6 of Heilongjiang Higher People’s Court. In the case “China International Water & Electric Corp. v. Shanghai Fumin Reclamation and Dredging Co., Ltd., Longwan Port Group Shanghai Industrial Co., Ltd., Hainan Longwan Port Dredging Group Co., Ltd., A Revocation Right Dispute”, the court held that “*The grounds for revoking the contested action incorrectly conflated the legal requirements underlying the judicial interpretation of construction payment settlement, which is based on the principle of privity of contract and the system of creditor’s subrogation rights, with those of the legal system for creditor’s right of revocation in this specific case. As a result, the court did not accept these grounds*”. See Civil Judgement 2009 Min Er Ti No.58 of the Supreme People’s Court.

Note 12. In comparison to the scenario where the creditor simultaneously exercises the right of revocation and subrogation, both approaches have the effect of the counterparty directly performing to the creditor. However, the approach of combining the exercise of these rights requires the introduction of new regulations at the legislative level, while the solution through the enforcement procedure can be achieved solely through normative interpretation.

Note 13. Article 100 of the Draft Compulsory Enforcement Law, “Scope of Liability Property of the Person Subject to Execution”: In the execution of monetary claims, the following properties can be subjected to enforcement: (1) real estate, automobiles, ships, and aircraft registered in the name of the person subject to execution; (2) movable property possessed by the person subject to execution; (3) deposits and other funds held in the name of the person subject to execution; (4) general creditor’s right against third parties held in the name of the person subject to execution; (5) equity interests, fund shares, asset management product shares, trust beneficiary rights, intellectual property rights, online virtual asset, and other property rights and interests held in the name of the person subject to execution; and (6) property that is conclusively proven to belong to the person subject to execution by effective legal documents or other written evidence.

Note 14. This reference is quoted from Leo Rosenberg/Karl Heinz Schwab/Peter Gottwald, *Zivilprozessrecht*, §18. Aufl., 2018, 90 Rn.

Note 15. This reference is quoted from Legal Provisions of and Commentary on French Civil Code: Contract Law, General Principles of Obligations Law, and the Proof of Obligations. Translated by Qin, L.W. et al., *Beihang Law Review*, (1)2016, p. 240.

Note 16. This reference is quoted from Voir Laura Sautonie-Laguionie, *Action Paulienne*, Répertoire de droit civil, n°105, novembre 2016.

Note 17. This reference is quoted from David Gray Carlson, *Fraudulent Transfers: Void and Voidable*, 29 *American Bankruptcy Institute Law Review* 1, n 53, 9(2012).

Note 18. Article 424-5 of the Japanese Civil Code; Article 244(4) of the Civil Code of Taiwan, China.

Note 19. For details see the attached case “HUANG Yingnan v. Shenzhen Jing Chi Yue Industry Co., Ltd., A Creditor’s Right of Revocation Dispute” [Case. 2017 Yue 20 Min Zhong No.6391 of Zhongshan Intermediate People’s Court of Guangdong Province].

Note 20. For details see the case “GONG Hanlin v. CHEN Xiaoli, A Creditor’s Right of Revocation Dispute”, Case 2018 Su 0602 Min Chu No.4559 of Chongchuan District People’s Court of Nantong City, Jiangsu Province.

Note 21. Scholars propose specific rules as follows: “If the debtor gratuitously disposes of his property, transfers his property at an obviously unreasonable low price, and the counterparty in turn gratuitously dispose the property or transfer the property at an obviously unreasonable low price to others, or provides security for another person’s debt, thereby impeding the realization of the creditor’s rights, and the assignee who acquires the property at an obviously unreasonable low price or the secured creditor in the aforementioned transactions is aware of or should have been aware of these circumstances, then, if the creditor requests the simultaneous revocation of the act carried out by the debtor’s counterparty, the people’s court shall uphold such a request”.

Acknowledgments

Not applicable.

Authors contributions

Not applicable.

Funding

Not applicable.

Competing interests

Not applicable.

Informed consent

Obtained.

Ethics approval

The Publication Ethics Committee of the Canadian Center of Science and Education.

The journal's policies adhere to the Core Practices established by the Committee on Publication Ethics (COPE).

Provenance and peer review

Not commissioned; externally double-blind peer reviewed.

Data availability statement

The data that support the findings of this study are available on request from the corresponding author. The data are not publicly available due to privacy or ethical restrictions.

Data sharing statement

No additional data are available.

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