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A Comparative Analysis of the Litigation Qualifications of the Mainland Owners' Committee and the Hong Kong Owners' Court Association in the Common Dispute Cases

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Abstract

There are frequent disputes in residential communities in the Chinese mainland regarding property encroachment and illegal construction. The collective rights protection efforts by the homeowners face procedural obstacles. The core issue lies in the fact that the Civil Code of China does not clearly define the complete civil litigation subject qualification. In contrast, the Building Management Ordinance of Hong Kong grants the homeowners' legal committee an independent legal person status and clear litigation qualifications, resulting in higher efficiency in rights protection. This article employs a comparative research method, analyzing the litigation qualifications of property owners' organizations in the two regions from dimensions such as legal basis, legal person status, and property liability. The study reveals that the main difference between the two regions lies in that the mainland law does not clearly define the litigation qualifications of the owners' committee, while the Hong Kong corporation enjoys the legal litigation qualifications; this difference stems from the different legislative logics of the two regions. Based on this, this paper proposes a path to improve the property rights protection system for property owners in the Chinese mainland. It constructs a mechanism for the exclusive property rights and liability assumption of the property owners' committee, clarifies their status as an unincorporated organization and their litigation qualifications, and simplifies the authorization procedures for litigation. This research can provide theoretical and practical references for the improvement of the property rights protection system for property owners in the Chinese mainland.

Keywords

owner's committee, owner's legal corporation, litigation qualification, common parts, comparative study

1. Introduction

There are frequent disputes in the public areas of residential communities in the Chinese mainland regarding illegal constructions, encroachment on shared passageways, and unauthorized occupation of green spaces. The collective rights protection efforts by the owners encounter numerous procedural obstacles. The root cause lies in the Property Rights Chapter of the Civil Code, which only grants the owners' committee the right to make substantive requests but does not uniformly define their status as a civil litigation entity. In contrast, the

Building Management Ordinance of Hong Kong clearly stipulates that building owners can legally establish a homeowners' association. This association has an independent legal person status and can file lawsuits in its own name, which leads to higher efficiency in protecting rights. Therefore, the institutional experience of Hong Kong may provide useful references for improving the path of homeowners' rights protection in the mainland.

There are frequent disputes related to illegal constructions and other issues in the Chinese mainland. When the owners' committees (OC) in the Chinese mainland pursue legal protection through litigation, they generally encounter difficulties regarding the unclear status of their legal entities. Current research indicates that the ambiguous legal status of OCs is the root cause of the problem. There is a debate in the academic community regarding this issue: the affirmative view advocates classifying OCs as "unincorporated organizations" and granting them litigation rights; the negative view holds that OCs have no independent property and are merely the executive bodies of the owners' assembly [1]. There are significant differences in judicial rulings across various regions. In disputes involving the same type of common property, some courts recognize the right of the property owners' association to file a lawsuit, while others directly reject the case on the grounds of insufficient legal standing, resulting in numerous cases where the same facts lead to different judgments, thereby undermining the uniformity of judicial proceedings.

In contrast, the Hong Kong Owners' Corporation system offers a mature model. Research shows that Hong Kong corporations, in accordance with the Building Management Ordinance, have obtained independent legal person status and can file lawsuits and defend themselves in their own names, without the need for temporary authorization from the owners' meeting. The corporations have independent assets and a clear liability assumption mechanism. The government actively assists by lowering the establishment threshold of the corporations and providing financial support and technical assistance.

However, the existing research is clearly fragmented. Research in the mainland mainly focuses on internal institutional disputes, while research in Hong Kong emphasizes the introduction of the system. There is a lack of systematic comparison between the two from the perspective of "litigation eligibility". There are relatively few comparative studies that specifically address disputes regarding illegal constructions in shared areas and conduct in-depth comparisons of legal bases between the two regions.

This article aims to fill this gap. It adopts a comparative research method, systematically comparing the litigation qualifications of property owners' committees in the mainland and Hong Kong's homeowners' association in disputes over illegal constructions in common areas. It focuses on core elements such as legal basis, legal person status, and property liability, providing specific and feasible reform paths for improving the legal protection system for property owners in the mainland.

2. The Litigation Qualifications of the Owners' Committees in the Chinese Mainland for Disputes over Common Areas

2.1 The Provisions of the Current Laws

Article 286 of the Civil Code stipulates that the property owners' committee can assert civil claims such as cessation of infringement against acts of occupying common property and illegal construction. However, the legal provision only defines substantive rights and does not uniformly define their independent status as civil litigation subjects, nor does it clarify whether they can independently bear civil liability in case of defeat. According to Article 278 of the Civil Code, litigation for protecting the rights of jointly-owned properties falls under major matters related to common management. In principle, it requires the approval of a two-thirds majority vote from both the owners. The process of granting authorization on a case-by-case basis is cumbersome, which increases the cost of the litigation process.

Furthermore, according to the provisions of the Civil Procedure Law regarding the conditions for filing a lawsuit, the plaintiff must have a direct interest in the case, and organizations with independent assets are eligible to be litigants. However, the owners' committee is not clearly qualified in either of these two aspects, which further exacerbates the ambiguity of its litigation eligibility.

2.2 Academic Controversies and Judicial Dilemmas

Regarding the legal status of the owners' committees in the mainland and whether they have the right to file lawsuits in disputes such as illegal constructions, there are two schools of thought in the academic community: the "proposition" viewpoint and the "denial" viewpoint. The "proposition" viewpoint argues that the owners' committee should be defined as an "unincorporated organization" and be granted litigation rights [2-4]. According to Article 15 of the Property Management Regulations, the owners' committee has the right to sign a property service contract on behalf of the owners with the property service enterprise. The conclusion of such a contract is a typical civil activity, and some scholars believe that this indicates that the owners' committee possesses the corresponding civil capacity for rights and civil capacity for conduct, which is commensurate with its functional scope. Therefore, some scholars suggest including the owners' committee in the "unincorporated organizations" category as stipulated in Article 102 of the Civil Code. Moreover, granting the owners' committee the status of a litigation entity can better safeguard the common interests of the owners and is conducive to the stable development of the community. Some judicial practices have also supported this approach. In the case of Party A from Pingshan District of Benxi City suing Benxi Limited Liability Company and others regarding the dispute over the division of building ownership, the defendant occupied the public areas of the community to build structures. The owners' committee filed a lawsuit, and the first-instance court ultimately supported the lawsuit request of the owners' committee, ordering the defendant to restore the residential use of the houses and the original state of the site.

The "denial" viewpoint holds that the owners' committee has no independent property and merely serves as the executive body of the owners' assembly, lacking the conditions of a civil subject [5]. The owners' committee is neither an independent legal person nor an unincorporated organization. Unincorporated organizations must meet conditions such as being legally established, having certain property, and having an organizational structure. The owners' committee "lacks independent assets and funds, lacks a certain activity venue, and lacks the ability to independently bear civil liability", thus not having the qualifications of a civil entity. There are also negative opinions in judicial practice. In the fourth-party dispute case involving the Owners' Committee of Hanlin Ocean View and the Residents' Committee of Lingshui Community regarding the issue of shared ownership rights, the Owners' Committee requested the defendant to vacate the owners' activity room and restore it to its original state. The trial court ruled that the plaintiff's lawsuit was inadmissible due to an inappropriate legal entity, and thus dismissed the lawsuit.

3. The Litigation Qualifications of Hong Kong Property Owners' Corporations in Disputes over Common Areas

3.1 The Legal Person Status and Litigation Rights Clauses of the Building Management Regulations

The Building Ordinance of Hong Kong has made systematic provisions regarding the establishment, legal status and property protection of the owners' committees. Article 8 stipulates that after the committee completes registration, it acquires a permanent legal person status and can independently initiate and defend all lawsuits related to the common properties of the building. This litigation right is complemented by the special building fund system as stipulated in Article 20.

In terms of property protection, Article 20 requires that the corporation establish and maintain a regular fund to cover various expenses for exercising its powers and performing its duties. At the same time, it allows for the establishment of a reserve fund to handle emergency expenditures. This institutional arrangement provides a stable source of funds for the corporation to independently bear litigation costs and compensation for losses in case of defeat, laying a property foundation for its litigation status.

3.2 Liability Allocation Mechanism and Judicial Practice

In terms of liability assumption, the "corporate property priority, supplemented by individual property of the owner" principle was established in the Hong Kong Building Ordinance. Article 17 sets up a tiered enforcement rule: the enforcement of the effective judgment shall prioritize the corporate special fund; only when the fund is insufficient for repayment and approved by the Land Tribunal, can the owner be pursued for compensation according to the proportion of the property rights; the legislative purpose is to isolate the unlimited liability risk of the innocent owner. In judicial practice, the owner's incorporated association widely uses litigation means to safeguard the rights of the common parts of the building.

In the case of Liu Junle of Lian'an Building's owner's incorporated association, the association accused the owner of building three illegal structures on the rooftop and blocking the public passage with debris, violating the relevant provisions of the building deed, and applied to the Land Tribunal for a mandatory order to remove the illegal structures, restore the affected part and clear the debris. After the Tribunal's hearing, it confirmed that the association had the right to apply for compulsory execution, and ultimately supported the association's application.

In the case of Zheng Ruifeng and another of Huabao Commercial Building's owner's incorporated association, the association accused the owner of building unauthorized structures on the platform and driving iron rods into the exterior wall of the building, causing damage to the exterior wall and water leakage. The association applied to the Land Tribunal for an injunction to remove the remaining part of the unauthorized structures and compensate for the cost of exterior wall repair. After the Tribunal's hearing, it confirmed the association's litigation qualification and the legitimacy of the request.

The above case demonstrates that the Hong Kong Owners' Corporation can directly initiate judicial procedures in disputes such as illegal constructions in its own name. Its litigation subject qualification has been fully guaranteed in practice, and the judicial relief channels are smooth and effective.

4. Comparative Analysis of Litigation Qualifications in Two Regions

4.1 Comparison of Institutional Elements

The two systems can be systematically compared from the following aspects.

First, in terms of legal basis and legal status of the entities. The Property Law and the Property Management Regulations of the mainland do not clearly stipulate the legal status of the owners' committee. Whether it has the qualification as a litigation entity remains controversial. The Building Management Ordinance of Hong Kong clearly defines the legal status of the owners' association, granting it clear litigation qualifications, enabling the association to have a legal basis when defending its rights. Thus, it can be seen that the legal status clarity of the Hong Kong system is significantly superior to that of the mainland, while the ambiguity of the mainland's laws has directly led to the long-standing controversy over the litigation qualifications of the owners' committee.

Second, in terms of the authorization process. The mainstream view in the mainland holds that the owners' committee is merely the permanent institution of the owners' assembly. The Civil Code and the Property Management Regulations have not stipulated the legal status of the owners' assembly either. This further exacerbates the ambiguity of the legal status of the owners' committee. The owners' committee makes decisions on behalf of all the owners. Whether it is to safeguard the common interests of the owners or manage common affairs, all such actions must be authorized by the owners' assembly. In contrast, the Hong Kong owners' registration corporations do not require temporary authorization from the owners' assembly. Within the legal framework, they can directly make decisions and file lawsuits. In this regard, the authorization process in Hong Kong is more efficient, while the cumbersome authorization process in the mainland significantly raises the threshold for homeowners to protect their rights [6].

Thirdly, in terms of the method of bearing property-related responsibilities. The property committees in the mainland do not have exclusive isolated assets. Once they lose a lawsuit, they have no independent assets available for execution, making it difficult for the judgment to be implemented. In contrast, the companies in Hong Kong have independent assets and can bear the litigation costs and compensation in case of defeat on their own. This provides a clear path for homeowners to protect their rights, and they are less likely to refrain from exercising their rights due to concerns about potential compensation risks.

Fourth, regarding litigation efficiency and judicial consistency. Mainland legislation lacks a unified legal standing for homeowners' committees in litigation, leading to inconsistent judicial standards across different regions. This results in some homeowners developing a passive attitude towards protecting their rights due to unclear legal avenues and the high likelihood of their lawsuits being dismissed. Furthermore, the lack of standing for homeowners' committees often leads to their lawsuits being dismissed by courts on the grounds of insufficient legal capacity, wasting time and resources without providing substantial relief. Conversely, some courts recognize their standing, resulting in frequent inconsistencies in judgments for similar cases. In contrast, Hong Kong has clearly defined standing for corporations, leading to higher litigation efficiency and better judicial consistency.

4.2 Legislative Logical Differences

At the legislative logic level, there are significant differences between the two regions.

Mainland legislators have not clearly defined the legal status and litigation standing of homeowners' committees, primarily based on the following considerations: First, homeowners' committees lack independent assets to bear litigation costs or liability for damages in case of defeat. Even if they are granted litigation standing, the lack of assets may render the relevant provisions ineffective; if they lose a case and have no assets to execute, judicial authority will also be affected. Second, granting homeowners' committees litigation standing could overload the judiciary, with homeowners' committees initiating lawsuits over trivial matters, crowding out limited judicial resources. Third, the internal organizational structure of homeowners' committees lacks clear regulations, and there is no specific supervisory body to constrain their exercise of power, potentially leading to the risk of abuse of power—filing lawsuits in the name of all homeowners that may not be appropriate, while the consequences of losing the case must be borne jointly by all homeowners, infringing on the legitimate rights and interests of other homeowners.

Hong Kong's legislative logic presents a different value orientation. First, legislators believe that managing common areas is both a shared right and an obligation of all owners, and owners must actively protect their interests through rights protection. Second, this legislation helps enhance owners' sense of belonging to their community, promotes connections among owners, builds owners' associations with a sense of identity, and thus promotes the overall healthy development of Hong Kong society.

4.3 The Foundation and Feasibility of Mutual Learning Between the Two Systems

Firstly, the underlying framework of the two systems is similar. The "owners' general assembly + owners' committee" system in the mainland and the "owners' registration committee + management committee" system in Hong Kong have a highly similar structure. The similarity of the framework implies that Hong Kong's experience in "legal personization" transformation is directly applicable as a reference for the mainland. Secondly, both regions' legislation recognize the basic principle of owner self-governance. The mainland's "Civil Code" clearly states that "owners can establish an owners' general assembly and elect an owners' committee", while the Hong Kong Building Ordinance grants the owners' registration committee a permanent and continuous legal person status. The underlying logic is to respect the autonomy of the owners and encourage them to manage the property themselves. The value orientations of the two regions are consistent. In conclusion, the Hong Kong system has the feasibility basis for being borrowed and transformed by the mainland.

5. Insights for Improving the System of Owners' Rights Protection in the Mainland

5.1 Property Foundation: Establishing the Property Special Ownership and Liability Fulfillment Mechanism for the Owners' Committee

The previous comparative analysis shows that there are significant differences in the way property liability is borne between the two regions. Hong Kong associations have the ability to bear litigation costs due to their independent funds, while the property owners' committees in the mainland face fundamental obstacles because they do not have independent assets. Therefore, through legislation, special rules for the common property of the owners' committee can be added. Owners can vote through the management regulations to establish a separate special fund, which is only used for property maintenance and litigation related to common disputes, with separate accounting and dedicated use, and clearly distinguished from the personal property of the owners. In this way, the owners' committee will have the financial basis to bear litigation costs and the risks of losing the case, and the court can promptly execute the property in case of a loss.

In order to prevent some members of the owners' committee from abusing their powers and damaging the rights and interests of other owners, a clear responsibility mechanism should also be established [7]. Article 17 of Hong Kong's Building Management Ordinance can be used for reference: against a judgment or order made by a corporation, enforcement proceedings should first be initiated against the property of the corporation; only if the property of the corporation is insufficient to pay off the debt, enforcement can be carried out against individual owners with the permission of the Lands Tribunal. The mainland can learn from this hierarchical enforcement rule and clearly stipulate that debts incurred by the owners' committee when participating in litigation should be paid off with its independent property first; the shortfall can only be recovered from the individual owners in proportion to the owner's exclusive portion after review and approval by the court [8]. This arrangement helps protect the rights and interests of ordinary owners and prevents innocent owners from being burdened with debts that they should not bear due to the owners' committee's abuse of executive power.

5.2 Qualification Confirmation: Clarify the Non-entity Organizational Status and Litigation Qualifications of the Owners' Committee

After the homeowners' committee has established a property foundation and clear rules for responsibility assumption, its status as an unincorporated organization and its litigation qualifications can be further confirmed [9, 10]. This article holds that improvements should be made at both the legislative and judicial levels.

At the legislative level, the Civil Code should clearly define the non-legal person status of the owners' committee, grant it clear litigation qualifications, and define the specific boundaries of its exercise of rights. The owners' committee must meet two conditions to file a lawsuit: First, it must represent the common interests of all owners, and the rights it protects must be directly related to the interests of all owners. If the exclusive rights of individual or some owners are infringed, they should file a lawsuit themselves, and the owners' committee has no right to use its independent property to protect their rights. Second, the lawsuit must be filed within the scope of property management affairs. The owners' committee has no right to intervene in matters beyond the scope of management [11]. Only when the above conditions are met can the owners' committee initiate litigation procedures on its own.

At the judicial practice level, courts can, depending on the complexity of specific cases, further clarify the boundaries and exercise path of the owners' committee's power through judicial interpretations in a timely manner, fill the ambiguities or loopholes in existing regulations, and provide unified judgment references for courts across the country.

5.3 Program Optimization: Simplified Path for Litigation Authorization Procedure

The Civil Code stipulates that for owners' committees to initiate or respond to lawsuits, which fall under the category of "other major matters concerning shared ownership and joint management rights" as defined in Item 9 of Paragraph 1 of the same article, authorization from the owners' assembly is required. However, this authorization procedure is cumbersome, inefficient, time-consuming, and labor-intensive, which may lead to a decline in the enthusiasm of owners' committees and a reluctance to initiate lawsuits against infringements.

Therefore, it is necessary to simplify the litigation authorization process for the owners' committee. Each local community can, based on its specific circumstances, have all the owners vote at the first formulation of the management regulations to grant specific matters within a certain scope to the owners' committee. It is agreed that when such matters occur in the future, the owners' committee can directly file a lawsuit without the need for separate authorization for each case again. Of course, for large-scale disposal of public assets or high-value compensation lawsuits, a special vote authorization at the owners' meeting must be held separately. Each local community can, based on the size of the community, set an amount classification standard in the property management guidelines. On the basis of summarizing the judicial practice experiences of various regions, the state can timely issue judicial interpretations or adopt legislation to formally establish the simplified path for the litigation authorization process.

6. Conclusion

This article compares the legal status and litigation qualifications of the owners' committees in the mainland and the owners' corporate bodies in Hong Kong, and reaches three conclusions. First, there are core differences in the systems. In the mainland, the legal status and litigation qualifications of the owners' committees have not been clearly defined, and there are disputes both in theory and practice. In Hong Kong, the Building Management Ordinance directly grants the owners' corporate bodies the legal status and full litigation rights, without the need for the authorization of a temporary owners' meeting. Second, the reason for the differences lies in the different legislative logic. The mainland is concerned that the homeowners' committee lacks independent assets and is prone to overstepping its authority, so it temporarily does not define the qualification of the entity; Hong Kong, on the other hand, focuses on encouraging homeowners' self-governance and fully grants the autonomous organization the rights and responsibilities. Third, the Hong Kong experience can be used as a reference for the mainland. Establish a dedicated property and liability mechanism for the homeowners' committee, legislate to clearly define its status as an unincorporated entity and its litigation rights, simplify the authorization process, and achieve one-time authorization through the management agreement.

This article has certain limitations. The property rights and liability plan only has a framework, and the detailed implementation rules are lacking; direct legislation is difficult in the short term, and it is advisable to first issue judicial interpretations for a transitional period. Subsequently, differentiated designs for different types of residential areas such as old and large ones can be carried out. By comparing the owner self-governance systems of multiple legal systems, an optimized solution suitable for the mainland can be refined.

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