

On the Exercise and Effect of the Right of Simultaneous Performing

Chih-Yuan Kuo*

Abstract

It is an important and common practice in support of the unique effect for the right of simultaneous performing when performing obligation in accordance with bilateral contract. However, after sufficing the establishment of the right of simultaneous performing, there exists a number of uncertainties concerning the means to exercise the right of simultaneous performing and its effect. This article compares the means of exercising the right of simultaneous performing between when it goes beyond civil procedure and pursuant to civil procedure; moreover, elucidates the court ruling when the defendant exercises the right of simultaneous performing as the means of defense. In addition, when it comes to the situation that the parties delay in presentation or delay in reception, would it undermine the exercising of the right of simultaneous performing? This article strives to offer an analysis in greater depth attributable to the necessity of further discussion. Besides, issues such as that should it be a whole winning judgment when the courts rule a judgment of exchange performing that the plaintiff's allegation has grounds as well as the defendant's argument on the right of simultaneous performing is reasonable? How could the proclamation of legal execution be enforced? Would there be an explicit distinction when it comes to the settlement under the civil procedure? By reviewing the fundamental substantive law and procedural law all

* Associate Professor, Center for General Education, National Taichung University of Education. The author is grateful to anonymous reviewers for very helpful comments and suggestions, leading to substantial improvements for this paper. Any remaining errors are the author's responsibility.

Email: cykuo@mail.ntcu.edu.tw

at once, this article undertakes the issues raised above into discussion to articulate the incongruity that the consequences of exercising the right of simultaneous performing might contradict the original legal purpose provided by the civil code for the right of simultaneous performing, which would be thought-provoking.

Keywords: bilateral contract, right of simultaneous performing, counter presentation, judgment of exchange performing, means of defense, commencement of execution