

J. Y. Interpretation No.403 (May 24, 1996) *

ISSUE: Does Article 18, Paragraph 2, of the Compulsory Enforcement Act requiring the debtor to post adequate bond in case of application for suspension of compulsory enforcement violate the constitutional protection of equality?

RELEVANT LAWS:

Article 7 of the Constitution (憲法第七條); Articles 4 and 18, Paragraph 2, of the Compulsory Enforcement Act (強制執行法第四條、第十八條第二項) .

KEYWORDS:

legislative power (立法權), principle of equality (平等原則), compulsory enforcement (強制執行), handling (處理), enforcement title (執行名義) .**

HOLDING: Compulsory enforcement must be carried out in accordance with enforcement titles. Once the enforcement process commences, unless otherwise provided by law, the process shall not cease, as provided clearly in Article 4, Paragraph 1, and Article 18, Paragraph 1, of the Compulsory Enforcement

解釋文：民事強制執行須依執行名義為之。強制執行程序開始後，除法律另有規定外，不停止執行，強制執行法第四條第一項、第十八條第一項定有明文。同法第十八條第二項規定，於一定情形下，法院因債務人聲請，定相當並確實之擔保，得為停止強制執行之裁定，債務人本此裁定所供擔保，係以

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Act. Article 18, Paragraph 2, of the same Act provides that under certain circumstances, the court, where the debtor makes an application, after posting adequate bond, can determine by a ruling that the enforcement process be suspended. The bond posted by the debtor pursuant to the ruling serves to guarantee the recovery of damages incurred by the creditor due to the debtor's application for suspension of the enforcement process. This protects the rights of both the creditor and debtor and does not increase the debtor's obligations. This is different than a creditor applying for compulsory enforcement which requires an enforcement title and, hence, we found no conflict with Article 7 of the Constitution.

REASONING: Compulsory enforcement must be carried out in accordance with enforcement titles. Once the enforcement process commences, unless otherwise provided by law, the process shall not cease until the execution has been fully carried out. It is expressly provided for by Article 4, Paragraph 1, and Article 18, Paragraph 1, of the Compul-

擔保債權人因債務人聲請停止強制執行不當可能遭受之損害得獲賠償為目的，已兼顧債權人與債務人之權益，並非增加債務人之額外負擔，此與債權人聲請民事強制執行須依執行名義為之有所不同，與憲法第七條規定，尚無牴觸。

解釋理由書：強制執行須依執行名義為之。強制執程序開始後，除法律另有規定外，不停止執行，必至執行名義實現而後已。此觀強制執行法第四條、第十八條第一項規定自明。惟於債務人有回復原狀之聲請，或提起再審或異議之訴，或對於和解為繼續審判之請求，或提起宣告調解無效之訴、撤銷調解之訴，或對於第四條第一項第五款

sory Enforcement Act. However, where a debtor files an application for restitution, appeals or disputes the judgment, requests for continuation of litigation after settlement, files a suit for voiding a mediation, files a suit for cancellation of mediation, or appeals a ruling under Article 4, Paragraph 1, Subparagraph 5, in accordance with enforcement titles to prevent damages to the debtor from the continuance of the compulsory enforcement process on the one hand, and to ensure that the creditor is compensated for damages due to the debtor applying for suspension of the enforcement process on the other hand, Article 18, Paragraph 2, of the Compulsory Enforcement Act provides that the court can, in necessary circumstances or based on applications by debtors, after the posting of adequate bond, cease the compulsory enforcement process to ensure the interests of both creditor and debtor. The provision of such bond does not guarantee the performance of the original debt and therefore does not increase the obligation of the debtor. As to whether applications made by creditors for compulsory enforcement must be carried out in accor-

之裁定提起抗告時，一方面為避免債務人因繼續強制執行而有受害之虞；一方面為確保債權人因債務人聲請停止強制執行不當可能遭受之損害得獲賠償，強制執行法第十八條第二項乃規定法院因必要情形或依債務人之聲請定相當並確實之擔保，得為停止強制執行之裁定，以兼顧債權人與債務人雙方之權益。此項擔保之提供，既非擔保債務人所負之原債務得予履行，自未增加債務人額外之負擔。至於債權人聲請民事強制執行須依執行名義為之，此與法院因債務人聲請定相當並確實之擔保裁定准予停止強制執行較之，一為債權人本於執行名義聲請強制執行，一為債務人主張有停止強制執行之原因而命供擔保，二者主張之原因事實不同，難謂與憲法第七條規定有違。

dance with enforcement titles, compared to the case where the court, due to applications by the debtor, after the posting of adequate bond and suspending the enforcement process, one being a compulsory execution filed by the creditor in accordance with enforcement titles, and the other being that of the debtor contending the causes for suspension of compulsory enforcement and providing bond, the two contentions and facts are distinct and, hence, there is no conflict with Article 7 of the Constitution.

Justice Young-Mou Lin filed concurring opinion.

本號解釋林大法官永謀提出協同意見書。