

法官说法

突然飞来一笔“夫妻共同债务”
已离婚十多年的陈女士差点败诉

孔玲 郑珊珊

离婚10多年来,宁波的陈女士与前夫并无半点往来,经济方面更是彼此独立。没想到,不久前,她却遭遇了一笔“飞来横债”,被人告上了法庭,要求她与前夫共同偿还10万元债务。这是怎么回事呢?

案子还得从十几年前说起。今年40多岁的陈女士,1990年初与赵某结婚,经历了10多年的风风雨雨后,因感情问题离婚。之后,陈女士便与赵某断了联系,平静生活,直至接到了法院的一张传票。

今年2月,宁海人葛某向宁海法院递交了一份诉状,要求陈女士和前夫赵某共同归还10万元借款及利息。在葛某的举证材料中,除了一张由赵某签字的10万元借条之外,还有一份关键证据,就是陈女士和赵某的结婚登记审批表,这是葛某特意去民政局查询而来的。

审理过程中,葛某坚持认为,10万元借款是赵某2013年借的,当时赵某并没有说明与陈女士已经离婚。而民政局的结婚登记证明也显示他们仍是夫妻关系。既然这笔借款属于夫妻共同债务,陈女士理应与赵某一起承担还款义务。

陈女士一头雾水,2013年那时候,她和赵某已经离婚十多年了。
在案件审理的举证环节,双方更是各执一词。葛某坚称以结婚审批表上的夫妻关系为准;陈女士则称,自己早与赵某离婚,却苦于无法提供支持自己说法的证据。

进入调解程序后,承办法官认为,从表面证据看,葛某提供的证据更为充分,而陈女士却有些口说无凭。原来,陈女士与赵某是在法院调解离婚的,离婚之后,没有及时去民政局办理离婚手续,导致民政局的婚姻档案没有变更。这么多年过去了,陈女士所持有的离婚调解书已经丢失。

难道陈女士要因此败诉?所幸,承办法官查阅了相关档案,找到了陈女士的离婚调解书原件,证实了陈女士十几年前就已经与赵某离婚的事实,也说明这笔债务确实不是在夫妻关系存续期间产生的。

经法院调解,原告葛某最终撤回了对陈女士的起诉,这笔债务还是由赵某个人承担。

法官说法:

离婚调解书可作为婚姻解除的证据。

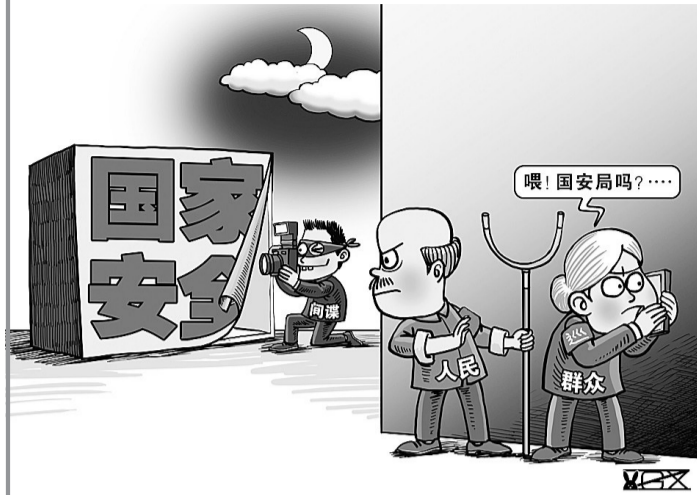
承办法官介绍,债务承担是离婚的一个敏感问题,类似夫妻承担共同债务的案例不在少数。共同债务是指夫妻双方为了共同的生活或经营所承担,应该共同承担的清偿责任,这种清偿责任不因当事人离婚而改变。本案中的债务是发生在夫妻关系存续之外,属于一方行为,陈女士如果不能提供证明双方离婚的证据,仍旧需要担责。婚姻法也规定,即便是夫妻关系解除,有关抚养子女等所致债务,还是需要双方共同承担的。

婚姻法规定,离婚形式有协议离婚和诉讼离婚两种。协议离婚是指夫妻双方合意解除婚姻关系的,可到民政局办理离婚手续。诉讼离婚是指夫妻双方就离婚等问题无法达成一致意见的,可向人民法院起诉,由法院调解或判决解除婚姻关系,并依法出具离婚调解书或民事判决书。

法官因此提醒:由法院出具的离婚判决书或调解书,与民政部门办理的离婚证具有同等法律效力。但要注意的是,在法院调解离婚之后,当事人要及时去民政部门办理离婚登记手续,及时变更自己的婚姻关系。此外,要妥善保管离婚调解书,一旦发生债务纠纷,就可以作为夫妻关系已经解除的证据使用。



法治漫画



人民防线

翟桂溪 陈聪颖

近日,北京市国家安全局制定的《公民举报间谍行为线索奖励办法》正式实施。此举旨在构筑人民防线和社会堤坝,激励每位公民当好守护国家安全的“朝阳群众”。

消费与法

买车却上不了牌
能退订金吗?

程露佳 林冰颖

交了订金,却发现车子无法上牌,这车还买不买?近日,温岭的陈先生就遇到了这麻烦事。

陈先生刚来温岭1个月,为了工作方便,便把买车计划提上了日程。“我在4S店看中了一辆车,当时就付了2000元订金。”陈先生说,他与4S店约定好,两周后提车。

没想到,新车上牌需要陈先生办理居住证。“我的居住证还没办,也不知道什么时候能办下来,车子不能上牌就只能停在家里,太浪费了,这买车的计划肯定得往后推了。”于是,陈先生希望4S店能够退还他之前交付的订金。

面对陈先生提出的退订金的要求,4S店负责人王先生很无奈:“因为新车无法上牌,陈先生不想买车的心情我们可以理解,但是陈先生由于个人原因违反合同,4S店有权利不退还订金。”王先生表示,这辆车是为了陈先生特地调过来的,运费也花了不少。

由于陈先生退车理由实属无奈,而其购买的车型为畅销款,最后,经过消保委工作人员的调解,4S店同意退还陈先生2000元订金,而陈先生同意支付新车运输费,双方对此表示满意。

在此,市场监管部门提醒广大消费者:在付订金之前,一定要仔细阅读相关合同条款,避免不必要的消费纠纷。

中国东方资产管理股份有限公司浙江省分公司与杭州宏农投资管理合伙企业(有限合伙)债权转让通知暨债务催收联合公告

根据中国东方资产管理股份有限公司浙江省分公司与杭州宏农投资管理合伙企业(有限合伙)签署的《债权转让协议》,中国东方资产管理股份有限公司浙江省分公司已将其对下列借款人及其担保人享有的权利(包括但不限于担保债权、违约金债权、损失赔偿权、利息债权)依法转让给杭州宏农投资管理合伙企业(有限合伙)。中国东方资产管理股份有限公司浙江省分公司与杭州宏农投资管理合伙企业(有限合伙)联合公告通知各借款人及担保人以及其他相关各方。

杭州宏农投资管理合伙企业(有限合伙)作为上述债权的受让方,现公告要求下列借款人及其担保人,从公告之日起立即向杭州宏农投资管理合伙企业(有限合伙)履行主债权合同及担保合同约定的偿付义务或相应的担保责任。

特此公告
联系电话:
1、中国东方资产管理股份有限公司浙江省分公司 0571-87163432
2、杭州宏农投资管理合伙企业(有限合伙) 0571-86702784

2017年4月17日

序号	债权行	借款人名称	债务情况(截至2016年8月31日24时) 单位:元				担保人	
			借款合同编号	担保合同编号(签订时间)		本金		欠息
1	舟山分行	舟山市睿金市场管理有限责任公司	X70626012332015007 X70626012332015008	X7062609992015007-1 X7062609992015007-2 X7062609992015007-3 X7062609250102015007		7928592.06 8000000.00	360488.16 363614.26	舟山市定海乾泰材料复合厂、张爱琴、胡彭庆、舟山市定海乾泰复合材料厂
2	舟山分行	舟山隆运石油有限公司	X70626012332015016	X7062609992014026-1 X7062609992014026 X7062609250102014026-3 X7062609250102014026-2 X7062609250102014026-5 X7062609250102014026-4 X7062609250102014026-6 X7062609250102014026-7 X7062609250102014026-8 X7062609250102014026-9 X7062609250102014026-10 X7062609250102014026-11 X7062609250102014026-12 X7062609250102014026-13 X7062609250102014026-14 X7062609250102014026-15 X7062609250102014026-16 X7062609250102014026-17 X7062609250102014026-18 X7062609250102014026-19 X7062609250102014026-20 X7062609250102014026-21 X7062609250102014026-22 X7062609250102014026-23 X7062609250102014026-24 X7062609250102014026-25 X7062609250102014026-26 X7062609250102014026-27 X7062609250102014026-28 X7062609250102014026-29 X7062609250102014026-30 X7062609250102014026-31 X7062609250102014026-32 X7062609250102014026-33 X7062609250102014026-34 X7062609250102014026-35 X7062609250102014026-36 X7062609250102014026-37 X7062609250102014026-38 X7062609250102014026-39 X7062609250102014026-40 X7062609250102014026-41 X7062609250102014026-42 X7062609250102014026-43 X7062609250102014026-44 X7062609250102014026-45 X7062609250102014026-46 X7062609250102014026-47 X7062609250102014026-48 X7062609250102014026-49 X7062609250102014026-50 X7062609250102014026-51 X7062609250102014026-52 X7062609250102014026-53 X7062609250102014026-54 X7062609250102014026-55 X7062609250102014026-56 X7062609250102014026-57 X7062609250102014026-58 X7062609250102014026-59 X7062609250102014026-60 X7062609250102014026-61 X7062609250102014026-62 X7062609250102014026-63 X7062609250102014026-64 X7062609250102014026-65 X7062609250102014026-66 X7062609250102014026-67 X7062609250102014026-68 X7062609250102014026-69 X7062609250102014026-70 X7062609250102014026-71 X7062609250102014026-72 X7062609250102014026-73 X7062609250102014026-74 X7062609250102014026-75 X7062609250102014026-76 X7062609250102014026-77 X7062609250102014026-78 X7062609250102014026-79 X7062609250102014026-80 X7062609250102014026-81 X7062609250102014026-82 X7062609250102014026-83 X7062609250102014026-84 X7062609250102014026-85 X7062609250102014026-86 X7062609250102014026-87 X7062609250102014026-88 X7062609250102014026-89 X7062609250102014026-90 X7062609250102014026-91 X7062609250102014026-92 X7062609250102014026-93 X7062609250102014026-94 X7062609250102014026-95 X7062609250102014026-96 X7062609250102014026-97 X7062609250102014026-98 X7062609250102014026-99 X7062609250102014026-100		11499953.90 179577.23		张国平、张哲玮、舟山润兴房地产有限公司、诸葛吉芝、余菊叶、余亚文、余宣、张松耀
3	舟山分行	舟山隆发贸易有限公司	X70626012332015029	X7062609250102015029 X7062609992014037 X7062609992014037		18300000.00	192696.51	舟山润兴房地产有限公司、郑木土、张哲玮
4	舟山分行	岱山县兴莱工贸有限公司	X70712712332015039	X7071279992015068 X7071279992015067 X7071279992015069 X7071279992015070 X7071279250102015026 X7071279250102015025 X7071279250102015028 X7071279250102015027 X7071279250102015029 X7071279250102015030 X7071279250102015031 X7071279250102015032 X7071279250102015033 X7071279250102015034 X7071279250102015035 X7071279250102015036 X7071279250102015037 X7071279250102015038 X7071279250102015039 X7071279250102015040 X7071279250102015041 X7071279250102015042 X7071279250102015043 X7071279250102015044 X7071279250102015045 X7071279250102015046 X7071279250102015047 X7071279250102015048 X7071279250102015049 X7071279250102015050 X7071279250102015051 X7071279250102015052 X7071279250102015053 X7071279250102015054 X7071279250102015055 X7071279250102015056 X7071279250102015057 X7071279250102015058 X7071279250102015059 X7071279250102015060 X7071279250102015061 X7071279250102015062 X7071279250102015063 X7071279250102015064 X7071279250102015065 X7071279250102015066 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