## 第三人撤銷訴訟當事人適格及其他 起訴問題之研究\*

林 家 慶\*\*、徐 崧 博\*\*\*

## 目 次

壹、前言

貳、第三人撤銷訴訟制度介紹及實務運作情形

參、第三人撤銷訴訟當事人適格之研究

- 一、「有法律上利害關係之第三人」內涵之爭議
- 二、「應循其他法定程序請求救濟者」內涵之爭議
- 三、選定人能否提起之爭議

肆、第三人撤銷訴訟起訴之其他爭議

- 一、判決於本編增訂前已確定者能否提起本訴?
- 二、對已確定之「裁定」能否提起本訴?
- 三、本訴訴訟標的價額如何核定?

伍、結語

**關鍵字**:第三人撤銷訴訟、有法律上利害關係、既判力、應循其他法定程序請求救濟、判決、 當事人適格。

**Keywords**: Third-Party Opposition Proceeding, legally interested, binding force, should seek remedies through other legal proceedings, judgment, standing of plaintiff.

<sup>\*</sup> 本文之完成,感謝兩位匿名審查人提供寶貴意見。

<sup>\*\*</sup> 林家慶,慶鴻法律事務所所長,臺北市政府法律諮詢律師、新北市政府法律諮詢律師、 致理技術學院法律諮詢律師,前遠東聯合法律事務所律師。國立政治大學法律系、經濟系雙學士學位,國立政治大學法律研究所(財經法組)碩士。

<sup>\*\*\*</sup> 徐崧博,中華民國律師高考及格,國立政治大學法律系畢業,國立臺灣大學法律研究 所(民商法組)碩士生。



2003年我國民事訴訟法增訂「第三人撤銷訴訟程序」(民事訴訟法第507條之1至第507條之5),此一全新的制度乃我國所繼受之德國法所全無,而究竟應否於我國民事訴訟法中增訂此一第三人撤銷之訴,在立法之初即備受爭議,且此一制度的定位、構成要件之解釋更是經過討論熱烈。本文擬就近年來之實務判決,分析第三人撤銷之訴在法律解釋上與實務運作間之異同,並嘗試提出解釋論上之看法,俾供參考。

## STUDIES ON STANDING OF PLAINTIFF AND OTHER DISPUTES OF PROSECUTION OF THE THIRD-PARTY OPPOSITION PROCEEDING

Lin, Chia-Ching Hsu, Sung-Po

## **Abstract**

In 2003, the Taiwan Code of Civil Procedure was revised, and augmented with section V-I Third-Party Opposition Proceeding. (Code of Civil Procedure article 507-1 to article 507-5) However, this proceeding of Third-Party Opposition has not been used in the German Civil Procedure Rules which Taiwanese Code largely derived from. Therefore, the characteristic of this proceeding, the criteria of proceeding, and also the interpretation of the articles governing this proceeding have been widely debated ever since the legislation stage. This article would focus upon analyzing judicial decisions of the court, and further make comparison between the actual manipulations of the Third-party Opposition Proceeding by the court and the logical interpretation of the regulation. Lastly, by using these analyses, this article would also bring out suggestions about how to interpret and manipulate this regulation, and try to contribute to the construction of this newly formed Civil Procedure proceeding.