SPC Guiding Case No. 107: Sinochem International (Singapore) Co., Ltd. v. ThyssenKrupp Metallurgical Products Co., Ltd. (International Sale of Goods Contract Dispute)

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Keywords

Civil / international sale of goods contract / United Nations Convention on Contracts for the International Sale of Goods / application of law / fundamental breach

Holding

1. Where the countries of the parties to an international sale of goods contract are contracting states of the United Nations Convention on Contracts for the International Sale of Goods, the provisions of the Convention shall apply with priority; for matters not provided for in the Convention, the law agreed to be applied in the contract shall apply. Where the parties to an international sale of goods contract expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods, the Convention shall not apply.

2. In an international sale of goods contract, even if the goods delivered by the seller have defects, as long as the buyer can use the goods or resell the goods through reasonable efforts, this shall not be deemed to constitute a fundamental breach prescribed by the United Nations Convention on Contracts for the International Sale of Goods.

Basic Facts

On April 11, 2008, Sinochem International (Singapore) Co., Ltd. ("Sinochem Singapore") and ThyssenKrupp Metallurgical Products Co., Ltd. ("German Krupp Company") entered into a Purchase Contract for the purchase of petroleum coke, agreeing that the contract should be concluded, governed, and interpreted in accordance with the law then in force in the State of New York, United States. Sinochem Singapore paid the full purchase price as agreed, but the HGI index of the petroleum coke delivered by German Krupp Company was only 32, which did not conform to the typical HGI index of 36 to 46 agreed in the contract. Sinochem Singapore argued that German Krupp Company had committed a fundamental breach, and requested an order rescinding the contract and requiring German Krupp Company to return the purchase price and compensate for losses.

Judgment

The Jiangsu High People's Court held at first instance that, according to the relevant provisions of the United Nations Convention on Contracts for the International Sale of Goods, the HGI index of the petroleum coke provided by German Krupp Company was far below the standard agreed in the contract, causing the petroleum coke to be difficult to sell in the domestic market, so that the expected purpose at the time of entering into the sales contract could not be realized; therefore German Krupp Company's conduct constituted a fundamental breach. On December 19, 2012, the Jiangsu High People's Court rendered Civil Judgment (2009) Su Min San Chu Zi No. 0004: (1) declaring the Purchase Contract entered into on April 11, 2008 between ThyssenKrupp Metallurgical Products Co., Ltd. and Sinochem International (Singapore) Co., Ltd. invalid; (2) ordering ThyssenKrupp Metallurgical Products Co., Ltd. to return to Sinochem International (Singapore) Co., Ltd. the purchase price of USD 2,684,302.9 within thirty days of the effective date of the

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judgment and pay interest from September 25, 2008 until the date of payment determined by the judgment; and (3) ordering ThyssenKrupp Metallurgical Products Co., Ltd. to compensate Sinochem International (Singapore) Co., Ltd. for losses of USD 520,339.77 within thirty days of the effective date of the judgment.

After the judgment was pronounced, German Krupp Company was dissatisfied with the first-instance judgment and appealed to the Supreme People's Court, arguing that the first-instance judgment erred in the application of law. The Supreme People's Court held that the first-instance judgment's findings of fact were basically clear, but part of the application of law was erroneous and the determination of liability was improper, which should be corrected. On June 30, 2014, the Supreme People's Court rendered Civil Judgment (2013) Min Si Zhong Zi No. 35: (1) revoking item (1) of Civil Judgment (2009) Su Min San Chu Zi No. 0004 of the Jiangsu High People's Court; (2) modifying item (2) of Civil Judgment (2009) Su Min San Chu Zi No. 0004 of the Jiangsu High People's Court to: ThyssenKrupp Metallurgical Products Co., Ltd. shall compensate Sinochem International (Singapore) Co., Ltd. for goods-price losses of USD 1,610,581.74 within thirty days of the effective date of the judgment and pay interest from September 25, 2008 until the date of payment determined by the judgment; (3) modifying item (3) of Civil Judgment (2009) Su Min San Chu Zi No. 0004 of the Jiangsu High People's Court to: ThyssenKrupp Metallurgical Products Co., Ltd. shall compensate Sinochem International (Singapore) Co., Ltd. for storage-fee losses of USD 98,442.79 within thirty days of the effective date of the judgment; and (4) dismissing the other claims of Sinochem International (Singapore) Co., Ltd.

Reasoning

The Supreme People's Court held that this case was a dispute over an international sale of goods contract, both parties were foreign companies, and the case had foreign-related elements. Article 2 of the Interpretation (I) of the Supreme People's Court on Several Issues Concerning the Application of the Law of the People's Republic of China on the Application of Laws to Foreign-Related Civil Relations provides: "For a foreign-related civil relation that arose before the implementation of the Law on the Application of Laws to Foreign-Related Civil Relations, the people's court shall determine the applicable law according to the relevant legal provisions at the time the foreign-related civil relation arose; where the law at that time had no provisions, reference may be made to the provisions of the Law on the Application of Laws to Foreign-Related Civil Relations." The Purchase Contract in issue was entered into on April 11, 2008, before the implementation of the Law of the People's Republic of China on the Application of Laws to Foreign-Related Civil Relations. Article 145 of the General Principles of the Civil Law of the People's Republic of China, which was in force when the parties entered into the Purchase Contract, provided: "The parties to a foreign-related contract may choose the law applicable to the settlement of contract disputes, unless otherwise provided by law. Where the parties to a foreign-related contract have not made a choice, the law of the country with the closest connection to the contract shall apply." The parties in this case agreed in the contract that it should be concluded, governed, and interpreted in accordance with the law then in force in the State of New York, United States, and that agreement did not violate legal provisions and should be found valid. Because Singapore and Germany, the countries where the places of business of the parties in this case were located, were both contracting states of the United Nations Convention on Contracts for the International Sale of Goods, and the United States was also a contracting state of the Convention, and during the first-instance trial the parties unanimously chose to apply the Convention as the basis for determining their rights and obligations without excluding the application of the Convention, the Jiangsu High People's Court's application of the Convention to try this case was correct. For issues involved in the trial that were not provided for in the Convention, the law of the State of New York chosen by the parties should apply. The Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods is not part of the Convention and cannot serve as the legal basis for trying this case. However, it can serve as an appropriate reference material for how to accurately understand the meaning of the relevant provisions of the Convention.

The typical HGI index of the petroleum coke agreed by the parties in the Purchase Contract was between 36 and 46, while the HGI index of the petroleum coke actually delivered by German Krupp Company was 32, lower than the minimum value of the typical HGI index agreed by the parties, and did not conform to the contract. The Jiangsu High People's Court's finding that German Krupp Company constituted a breach of contract was correct.

On the question whether German Krupp Company's above breach of contract constituted a fundamental breach. First, from the content of the parties' agreement in the contract on the chemical and physical property specifications that the petroleum coke should meet, the contract made agreements on seven aspects of the petroleum coke: moisture rate, sulfur content, ash content, volatile matter content, size, calorific value, and hardness (HGI value). From the current facts, with respect to the petroleum coke delivered by German Krupp Company, Sinochem Singapore only considered that the HGI index did not conform to the contract, and did not raise objections to the other six indicators. In light of the witness testimony submitted by the parties and the statements of the witnesses in court, the HGI index represents the grinding index of petroleum coke; the lower the index, the greater the hardness of the petroleum coke and the greater the difficulty of grinding. However, the explanation issued by the School of Materials Science and Engineering of Shanghai University, submitted by Sinochem Singapore, also did not deny that petroleum coke with an HGI index of 32 could be used, but only considered that its use was limited. Therefore, it could be found that although the HGI index of the petroleum coke in issue did not conform to the contract, that batch of petroleum coke still had use value. Second, during the first-instance trial of this case, Sinochem Singapore, in order to reduce losses, resold the petroleum coke in issue through active efforts, and in its letter to German Krupp Company concerning the relevant issues, expressly stated that the resale price of the batch of petroleum coke was "not lower than the reasonable market price." This fact shows that the petroleum coke in issue could be sold at a reasonable price. Third, comprehensively considering the understanding of the provisions on fundamental breach in the United Nations Convention on Contracts for the International Sale of Goods in the judgments of other countries, as long as the buyer can use the goods or resell the goods through reasonable efforts, even with some discount, non-conformity of quality is still not a fundamental breach. Therefore, it should be found that German Krupp Company's delivery of petroleum coke with an HGI index of 32 did not constitute a fundamental breach. The Jiangsu High People's Court's finding that German Krupp Company constituted a fundamental breach and its judgment declaring the Purchase Contract invalid was an erroneous application of law, which should be corrected.

Relevant Legal Provisions

Article 145 of the General Principles of the Civil Law of the People's Republic of China

Articles 1 and 25 of the United Nations Convention on Contracts for the International Sale of Goods

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