SPC Guiding Case No. 230: Xin [X] Shipping Co., Ltd. v. China Ji [X] International Cooperation Co., Ltd. (Contract Dispute over Carriage of Goods by Sea)

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

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Keywords

Civil / contract of carriage of goods by sea / contractual shipper / actual shipper / failure to take delivery at the port of destination / liability for compensation

Holding

Under Article 42 of the Maritime Law of the People's Republic of China, the shipper includes both the contractual shipper who concludes a contract of carriage of goods by sea with the carrier and the actual shipper who delivers the goods to the carrier. Where the consignee has not claimed delivery of the goods from the carrier or exercised other rights, the expenses and risks arising from the failure to take delivery of the goods at the port of destination shall be borne by the contractual shipper, who is a contracting party to the contract of carriage of goods by sea, and the actual shipper shall not bear liability for compensation in respect thereof.

Basic Facts

Xin [X] Shipping Co., Ltd. ("Xin [X] Shipping") alleged that China Ji [X] International Cooperation Co., Ltd. ("China Ji [X] International") booked space with it for the carriage of a batch of goods, totaling 26 forty-foot containers, from the Port of Tianjin Xingang, China, to Laem Chabang Port, Thailand, and that Xin [X] Shipping accepted the booking. On July 2, 2018, the goods in question were loaded on board the M/V "C [X]" on voyage 031S, and Xin [X] Shipping issued an order bill of lading, with China Ji [X] International recorded as the shipper. The goods arrived at the port of destination on July 14, 2018, but no one ever took delivery of them, causing losses such as container demurrage and terminal storage fees. Xin [X] Shipping therefore requested an order that China Ji [X] International compensate for the losses such as container demurrage and terminal storage fees and return the containers.

China Ji [X] International contended that it was not the contractual shipper of the contract of carriage of goods by sea in question, but merely the actual shipper. China Ji [X] International had already delivered the goods in question pursuant to the trade contract it had concluded with a third party, Hai [X] Enterprise Co., Ltd. ("Hai [X] Company"), and had submitted the bill of lading and other negotiation documents in full to the bank and obtained payment for the goods; thereafter it neither enjoyed any rights in the goods in question nor should it bear any liability. China Ji [X] International was not at fault for the failure to take delivery at the port of destination. In the absence of actual possession of the containers in question by China Ji [X] International, Xin [X] Shipping's request that China Ji [X] International return the containers also had no legal basis.

The court ascertained after trial that in March 2018, Hai [X] Company and China Ji [X] International concluded a trade contract under which Hai [X] Company agreed to purchase a batch of goods (seamless steel pipes) from China Ji [X] International, with the port of loading being the Port of Tianjin Xingang, China, the port of destination being Laem Chabang Port, Thailand, and the payment terms being an irrevocable sight letter of credit. To perform the above trade contract, on May 11, 2018, Hai [X] Company concluded a

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container agency agreement with Tianjin Sheng [X] International Logistics Co., Ltd. (“Sheng [X] Company”), entrusting Sheng [X] Company to provide freight forwarding services for the goods in question. After accepting the entrustment, Sheng [X] Company entrusted Tianjin Fu [X] International Freight Forwarding Co., Ltd. (“Fu [X] Company”) to book space, and Fu [X] Company in turn booked space with Xin [X] Shipping. After accepting the booking, on July 2, 2018, Xin [X] Shipping shipped the goods in question loaded in 26 forty-foot containers. The trade was concluded on FOB (Free On Board) price terms, under which the buyer of the goods, Hai [X] Company, was responsible for concluding the contract for carriage of the goods, and the seller, China Ji [X] International, was responsible for loading the goods onto the vessel designated by the buyer. The order bill of lading in question recorded the shipper as China Ji [X] International, the consignee as to order, the carrier as Xin [X] Shipping, and the notify party as Hai [X] Company. Xin [X] Shipping collected the freight and related expenses through the booking company. On July 14, 2018, the goods in question arrived at the port of destination, Laem Chabang Port, Thailand, and were discharged, and they remained at the port of destination unclaimed up to the time of trial.

It was further ascertained that China Ji [X] International had received the full payment for the goods by presenting the bill of lading to the issuing bank for negotiation.

Judgment

On December 26, 2019, the Tianjin Maritime Court rendered Civil Judgment (2019) Jin 72 Min Chu No. 1012, dismissing all of the claims of the plaintiff Xin [X] Shipping Co., Ltd. After the first-instance judgment was pronounced, Xin [X] Shipping Co., Ltd. was dissatisfied and appealed. On November 27, 2020, the Tianjin Municipal High People’s Court rendered Civil Judgment (2020) Jin Min Zhong No. 466, dismissing the appeal and affirming the original judgment. After the second-instance judgment was pronounced, Xin [X] Shipping Co., Ltd. applied for retrial. On December 9, 2021, the Supreme People’s Court rendered Civil Ruling (2021) Zui Gao Fa Min Shen No. 5588, dismissing the retrial application of Xin [X] Shipping Co., Ltd.

Reasoning

It is the obligation of the carrier under a contract of carriage of goods by sea to carry the goods safely to the port of destination and complete delivery. After the goods arrive at the port of destination, the consignee shall take delivery of the goods in a timely manner. Where the consignee has not claimed delivery of the goods from the carrier or exercised other rights, and the carrier sustains losses as a result of the failure to take delivery at the port of destination, the shipper shall bear liability for compensation. Under Article 42, item 3, of the Maritime Law, the shipper includes two types: one is “a person who concludes a contract of carriage of goods by sea with the carrier by himself, or who entrusts another person to conclude such a contract with the carrier in his name or on his behalf”, namely the contractual shipper; the other is “a person who delivers the goods to the carrier related to the contract of carriage of goods by sea by himself, or who entrusts another person to deliver the goods to the carrier in his name or on his behalf”, namely the actual shipper. The contractual shipper is the person who concludes the contract of carriage of goods by sea with the carrier, bears responsibility for ensuring that the goods can be taken delivery of by the consignee at the port of destination, and bears liability for compensation for the economic losses arising from the failure to take delivery at the port of destination. By contrast, the actual shipper is not the person who concludes the contract of carriage of goods by sea with the carrier, but merely the person who delivers the goods to the carrier; the consignee is likewise not designated by it, and it shall not bear liability for compensation for the economic losses arising from the failure to take delivery at the port of destination.

In this case, although the shipper recorded on the bill of lading in question was China Ji [X] International, the contract of carriage of goods by sea in question was concluded with Xin [X] Shipping by Hai [X] Company through the entrustment of another person, the freight was paid to Xin [X] Shipping by Hai [X] Company through the entrustment of another person, and the goods were delivered to Xin [X] Shipping by China Ji [X] International. It is evident that China Ji [X] International satisfies the legal characteristics of an actual shipper, rather than a contractual shipper, under Article 42, item 3, of the Maritime Law. The goods in question were

not taken delivery of at the port of destination. Under the principle of privity of contract, since no contract-of-carriage relationship existed between China Ji [X] International and Xin [X] Shipping, and since the bill of lading in question had already circulated with the letter of credit and China Ji [X] International neither held nor claimed rights under the bill of lading, China Ji [X] International was not required to bear liability for compensation toward Xin [X] Shipping for the losses arising from the failure to take delivery at the port of destination, and the relevant expenses and risks shall be borne by the contractual shipper. At the same time, China Ji [X] International did not possess or control the containers in question, and likewise was not required to bear liability for returning the containers.

Relevant Legal Provisions

Article 42 of the Maritime Law of the People's Republic of China.

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