SPC Guiding Case No. 232: [X]mu Industrial Co., Ltd. v. Pa [X] Shipping Co. (Contract Dispute over Carriage of Goods by Sea)

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

Keywords

Civil; contract for carriage of goods by sea; burden of proof for cargo damage; bill of lading remarks

Holding

According to Article 76 of the Maritime Law of the People's Republic of China, where a carrier, when issuing a bill of lading, fails to make remarks about the defective apparent condition of the loaded goods, the carrier shall bear the adverse consequences arising therefrom. However, whether the carrier has truthfully made remarks about the apparent condition of the goods should be comprehensively considered based on whether the carrier had objective conditions for observing the apparent condition of the goods when issuing the bill of lading, and whether the judgment made conformed to ordinary standards.

Basic Facts

The plaintiff [X]mu Industrial Co., Ltd. (hereinafter "[X]mu Industrial Company") alleged that it imported a batch of corn distillers' dried grains with solubles (hereinafter "DDGS") from the United States, carried by the vessel "Mou Ba" owned by Pa [X] Shipping Co. Pa [X] Shipping Co. issued the bill of lading for the goods in question, recording a weight of 54,999.642 tons. When the goods arrived at Guangzhou Xinsha Port, it was discovered during discharge that some of the goods in the cargo holds had severe discoloration, caking, and a burnt smell. Upon survey and testing entrusted to relevant testing institutions, the Hunter color L value (hereinafter "Hunter color L value") and crude protein content of the goods seriously failed to conform to the original quality of the goods, and the damaged quantity totaled 20,931.98 tons. Therefore, it requested that Pa [X] Shipping Co. be ordered to compensate for losses and interest and bear the litigation costs.

The defendant Pa [X] Shipping Co. argued that there was no discoloration or cargo damage to the goods in question. The Hunter color L value required testing by a professional laboratory, and the master and the carrier had no obligation to test this quality indicator of the goods, nor any obligation to make remarks on the bill of lading. The goods in question had already shown different colors at the time of loading, and the crew had fulfilled their duty of reasonable care for the goods and had not caused the goods to discolor or deepen in color during transport. [X]mu Industrial Company's claimed losses had no factual basis, and it therefore requested dismissal of [X]mu Industrial Company's claims.

Upon hearing, the court ascertained that [X]mu Industrial Company concluded a sales contract with Mou Liang (USA) Co., Ltd. to purchase DDGS with a total weight of 50,000 tons and a Hunter color L value of 50 or above. On August 26, 2015, Nan [X] Agency Company issued the bill of lading on behalf of the master of the "Mou Ba", the bill of lading being headed as a North American Grain Bill of Lading, used together with the North American Grain 1973 form voyage charter party. Loading was carried out by Lan [X] Trading Group Company on behalf of Mou Liang (USA) Co., Ltd., and the apparent condition of the goods was good at the time of loading. Consignee to order, notify party [X]mu Industrial Company. Description of goods and loading condition: DDGS, 54,999.642 tons, loaded in holds 1 to 7, clean bill of lading, freight according to charter party, charter party dated March 11, 2015, terms of carriage on the reverse side, weight, quality and quantity as declared by the shipper unknown. Pa [X] Shipping Co. was the bareboat charterer of the vessel "Mou Ba" in question. La [X] Maritime Group issued a quality report on the DDGS on August 28, 2015, stating that through sampling at the loading port, the analysis result was that the Hunter color L value of the goods loaded on the "Mou Ba" was 50.8.

On October 14, 2015, the "Mou Ba" arrived at Guangzhou Xinsha Port and began discharge. During discharge, [X]mu Industrial Company, believing that cargo damage had occurred, lodged a claim with the ship side, and for this purpose applied to China [X] Certification Group Guangdong Co., Ltd. (hereinafter "China [X] Certification Company") for inspection of the 20,931.98 tons of DDGS in warehouses 6-2B and 7-4B. On March 14, 2016, China [X] Certification Company issued an inspection report recording that the inspectors went to the wharf warehouses of Guangzhou Xinsha Port on October 24, 2015 to conduct on-site inspection and collect representative samples of the 20,931.98 tons of DDGS declared by [X]mu Company as stored in warehouses 6-2B and 7-4B, and determined that the Hunter color L value was 42.5.

Dalian [X]jie Marine Insurance Survey Co., Ltd., entrusted, boarded the "Mou Ba" from October 16 to 24, 2015 to conduct inspection and investigation on behalf of the ship owner, and arranged for inspectors of Tong [X] Standard Technical Service Co., Ltd. (hereinafter "Tong [X] Standard Technical Company") to supervise discharge, inspect the condition of the goods and collect samples. During the inspection, the inspectors found no abnormal conditions affecting the seaworthiness and cargo-worthiness of the vessel, and the watertight integrity of the cargo holds of the vessel was good. Tong [X] Standard Technical Company issued an inspection report stating that its inspectors supervised the discharge of the goods in question at Guangzhou Xinsha Port from October 19 to 24, 2015 and systematically collected small samples in the warehouses, determining that the Hunter color L value of the whole-ship mixed cargo sample was 48.66.

In addition, according to the loading-port inspection report, loading records and loading photographs of August 2015, part of the goods in question was loaded at the wharf by conveyor belt, and another part was loaded from barges by grab; at the time of loading, the goods loaded by 42 barges differed in color, and the above goods were loaded into different cargo holds of the "Mou Ba".

Judgment

On December 29, 2018, the Guangzhou Maritime Court rendered the civil judgment (2016) Yue 72 Min Chu No. 705: (1) Pa [X] Shipping Co. shall compensate [X]mu Industrial Co., Ltd. for cargo losses of RMB 9,862,112.57 plus interest; and (2) the other claims of [X]mu Industrial Co., Ltd. are dismissed. After the first-instance judgment was pronounced, Pa [X] Shipping Co. was dissatisfied and appealed. On April 8, 2020, the Guangdong Provincial High People's Court rendered the civil judgment (2019) Yue Min Zhong No. 807: dismissing the appeal and affirming the original judgment. After the second-instance judgment was pronounced, Pa [X] Shipping Co. applied for retrial. The Supreme People's Court accepted the case for retrial and, on June 21, 2023, rendered the civil judgment (2022) Zui Gao Fa Min Zai No. 14: (1) revoking the civil judgment (2019) Yue Min Zhong No. 807 of the Guangdong Provincial High People's Court and the civil judgment (2016) Yue 72 Min Chu No. 705 of the Guangzhou Maritime Court; and (2) dismissing the claims of [X]mu Industrial Co., Ltd.

Reasoning

This case was a cargo damage dispute under a contract for carriage of goods by sea, with two focuses of dispute: first, whether the goods in question suffered damage during the carrier's period of responsibility; and second, whether Pa [X] Shipping Co. should bear compensation liability for failing to truthfully make remarks on the bill of lading.

I. Whether the goods in question suffered damage during the carrier's period of responsibility

[X]mu Industrial Company failed to effectively prove that the color and quality of the goods in question changed and caused losses during the transport period of responsibility of the carrier Pa [X] Shipping Co. Specifically: 1. There was no internationally unified grading system or quality standard for DDGS; the Hunter color L value was a test value reflecting the brightness of the color of the goods. The depth of color was related to raw materials, production process, temperature and the like, and could also darken due to heat source heating or excessive moisture content during transport. Therefore, different colors did not necessarily

indicate the existence of quality problems. 2. China [X] Certification Company and La [X] Maritime Group respectively conducted inspections over different scopes of goods, different sampling and sample preparation methods, and different testing standards, so their conclusions were not absolutely comparable. The inspection report of China [X] Certification Company was insufficient to prove that the color of the goods in question changed during transport and caused cargo damage. 3. The evidence submitted by Pa [X] Shipping Co. could prove that the goods in question had already shown different colors at the time of loading and were loaded into different cargo holds of the vessel, and that the condition of the goods at the discharge port was basically consistent with that at the loading port. 4. There was no evidence proving that the vessel in question had any defect of being unfit for cargo, nor evidence proving that the carrier failed to properly care for the goods, causing the color of the goods to darken due to heat source heating or excessive moisture content.

II. Whether Pa [X] Shipping Co. should bear compensation liability for failing to truthfully make remarks on the bill of lading

[X]mu Industrial Company argued that Pa [X] Shipping Co. failed to prudently verify the apparent condition of the goods at the loading port and failed to truthfully remark on the bill of lading that the goods in question already had a bad condition of mixed light and dark colors at the time of loading, and should bear the losses caused to [X]mu Industrial Company by the failure to truthfully make remarks. Article 76 of the Maritime Law provides: "Where the carrier or the person issuing the bill of lading on its behalf fails to make remarks on the apparent condition of the goods on the bill of lading, the apparent condition of the goods shall be deemed to be in good order." Accordingly, the carrier has the right to make remarks about what it considers to be the defective apparent condition of the loaded goods; if it fails to do so, it shall bear the adverse consequences arising therefrom. Therefore, the carrier should exercise the right to make remarks on the bill of lading appropriately and prudently. In this case, whether Pa [X] Shipping Co. should bear compensation liability for failing to truthfully make remarks on the bill of lading should be determined by comprehensively considering whether there were objective conditions for observing the apparent condition of the goods and whether the judgment made conformed to ordinary standards.

First, the goods in question were bulk cargo, and according to the loading-port records, they were loaded by conveyor belt and grab respectively. During loading, the cargo holds were full of dust, and the wharf covered the hatches with canvas to avoid dust pollution. Under these circumstances, it was difficult for the crew to clearly and comprehensively observe the apparent condition of all the goods, and there were no objective conditions for suspecting abnormalities in the apparent condition of the goods.

Second, the master and crew were not experts in DDGS appraisal and did not have the professional ability to judge color brightness; moreover, the Hunter color L value required testing by precision laboratory instruments, and where the values were similar, it was difficult to distinguish differences with the naked eye. It conformed to common sense for the carrier to judge that the apparent condition of the goods was good based on normal knowledge and ordinary judgment standards. The carrier Pa [X] Shipping Co., based on the loading conditions, issued a bill of lading recording "the apparent condition of the goods was good at the time of loading", which was not improper.

Third, DDGS may have various colors due to various factors such as raw materials and processing methods; different colors indicate different internal qualities, but do not constitute a manifestation of damage to the goods, nor do they represent a defective apparent condition of the goods. The law does not provide that the carrier has an obligation to make remarks about the internal quality of the transported goods; therefore, the color of the DDGS was not within the scope of the carrier's statutory obligation to make remarks. Moreover, the shipper did not specially declare the color requirements for the goods in question to Pa [X] Shipping Co. at the time of booking; even if the goods in question showed different colors at the loading port, it was not improper for Pa [X] Shipping Co. and its agents to accept the goods and issue a clean bill of lading recording "the apparent condition of the goods was good at the time of loading".

In summary, [X]mu Industrial Company's claim that Pa [X] Shipping Co. should bear liability for failing to truthfully make remarks lacked factual and legal basis, and Pa [X] Shipping Co. should not bear compensation liability for this.

Relevant Legal Provisions

Articles 46 and 76 of the Maritime Law of the People's Republic of China

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