SPC Guiding Case No. 236: Huan [X] Ship Leasing Co., Ltd. v. Tian [X] Fortune Co., Ltd. (Ship Collision Damage Liability Dispute)

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Keywords

Civil; ship collision damage liability; foreign-related; agreement on choice of law; governing law

Holding

According to Article 44 of the Law of the People's Republic of China on the Application of Law to Foreign-Related Civil Relations, where the parties to a foreign-related ship collision damage liability dispute agree on the applicable law after the ship collision accident occurs, the governing law for the dispute shall be determined according to their agreement.

Basic Facts

On September 27, 2022, the vessel "Mou Feng" (a Panamanian-flagged oil tanker) owned by Tian [X] Fortune Co., Ltd. collided with the vessel "Mou Ya" (a Liberian-flagged container ship) owned by Huan [X] Ship Leasing Co., Ltd. (hereinafter "Huan [X] Ship Company") while overtaking in the Strait of Malacca, due to a steering gear failure and improper maneuvering of the "Mou Feng". In December 2022, Huan [X] Ship Company applied to the Ningbo Maritime Court for arrest of the "Mou Feng", which was undergoing repairs at Ningbo Zhoushan Port, and filed a lawsuit in January 2023, requesting that Tian [X] Fortune Co., Ltd. be ordered to compensate for hull losses, loss of hire, and other losses totaling RMB 58,108,824.77 plus interest. Tian [X] Fortune Co., Ltd. filed a counterclaim, requesting that Huan [X] Ship Company be ordered to compensate its various losses in the amount of RMB 38,115,057.62 plus interest. The Ningbo Maritime Court consolidated the main action and the counterclaim. During the hearing, the plaintiff and the defendant unanimously chose to apply Chinese law.

Judgment

The Ningbo Maritime Court applied Chinese law to hear the case, and on February 7, 2024 rendered the civil judgment (2023) Zhe 72 Min Chu No. 314: (1) Tian [X] Fortune Co., Ltd. shall compensate Huan [X] Ship Leasing Co., Ltd. for losses in the amount of RMB 37,182,079.93; (2) Huan [X] Ship Leasing Co., Ltd. shall compensate Tian [X] Fortune Co., Ltd. for losses in the amount of RMB 3,094,472.96; (3) after offsetting the two amounts above, Tian [X] Fortune Co., Ltd. shall, within ten days from the effective date of this judgment, compensate Huan [X] Ship Leasing Co., Ltd. for losses in the amount of RMB 34,087,606.97 plus interest losses; (4) Tian [X] Fortune Co., Ltd. shall, within ten days from the effective date of this judgment, pay Huan [X] Ship Leasing Co., Ltd. the pre-litigation preservation application fee of RMB 4,500; (5) the other claims of Huan [X] Ship Leasing Co., Ltd. are dismissed; and (6) the other counterclaims of Tian [X] Fortune Co., Ltd. are dismissed. After the first-instance judgment was pronounced, neither party appealed, the judgment became legally effective, and Tian [X] Fortune Co., Ltd. voluntarily performed the obligations under the judgment.

Reasoning

This case was a foreign-related ship collision damage liability dispute. The Ningbo Maritime Court, based on the application of Huan [X] Ship Company and pursuant to the relevant provisions of the Special Maritime Procedure Law of the People's Republic of China, arrested the "Mou Feng". Article 19 of that Law provides: "After maritime claim preservation is enforced, where the relevant maritime dispute has not entered litigation

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or arbitration procedures, the party may, with respect to the maritime claim, file a lawsuit with the maritime court that took the maritime claim preservation measure or another maritime court with jurisdiction, except where the parties have concluded a litigation jurisdiction agreement or an arbitration agreement." Huan [X] Ship Company accordingly filed a lawsuit with the Ningbo Maritime Court, which had jurisdiction over the case.

Article 273(1) of the Maritime Law of the People's Republic of China provides: "Compensation for damage caused by ship collision shall be governed by the law of the place where the tortious act occurred." Article 44 of the Law on the Application of Law to Foreign-Related Civil Relations provides: "Tort liability shall be governed by the law of the place where the tortious act occurred, but where the parties have a common habitual residence, the law of their common habitual residence shall apply. Where, after the tortious act occurs, the parties agree on the applicable law, their agreement shall prevail." Although the Maritime Law, as a special law, does not expressly provide that the parties to a ship collision dispute may choose the applicable law, the Law on the Application of Law to Foreign-Related Civil Relations expressly provides for the parties' choice of the law governing tort liability. Therefore, the choice of law by the parties to a ship collision dispute does not fall within the circumstances of an invalid choice. In this case, both parties were companies registered in the Republic of the Marshall Islands, and the flag states of the two vessels in question were Panama and Liberia respectively. During the hearing, the plaintiff and the defendant unanimously proposed that Chinese law apply to the tort liability dispute in this case. Since the Law on the Application of Law to Foreign-Related Civil Relations has expressly provided for the parties' agreement to choose the law governing tort liability, the choice of Chinese law by both the plaintiff and the defendant in this case should be found valid.

Relevant Legal Provisions

Articles 3 and 44 of the Law of the People's Republic of China on the Application of Law to Foreign-Related Civil Relations

Article 273 of the Maritime Law of the People's Republic of China

Article 19 of the Special Maritime Procedure Law of the People's Republic of China

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