Shanghai Maritime Court of PRC

Civil Judgment

(2014) H.H.F.S.C.Z. No. 1159

Plaintiff: Shanghai Changying Industry Co., Ltd. Address: Room C, 1F, Building 3#, 701 Gonglu Highway, Pudong New District, Shanghai, PRC

Legal representative: Fang Xishun, Executive Director of the Company

Entrusted agent: Luo Benjian, lawyer from Shanghai Kaizheng Law Firm

Defendant: Pacific International Lines (Pte) Ltd. Address: 140 Cecil Street #03-00, PIL Building, Singapore

Representative: William Tay Kian Phuan, Executive Director of the Company

Entrusted agent: Wang Hongyu, lawyer from Guangdong Wang Jing & Co. Shanghai Branch

Entrusted agent: Xie Yihan, lawyer from Guangdong Wang Jing & Co. Shanghai Branch

The Plaintiff, Shanghai Changying Industry Co., Ltd. instituted legal proceedings in our court against the Defendant, Pacific International Lines (Pte) Ltd on September 5, 2014 for the dispute of marine cargo transport contract. Our court formed a collegiate bench legally to hear the case after accepting the case on the same day. On January 30, 2015, our court organized both parties to exchange evidences. On July 30, 2015, our court held a public hearing of this case. Lawyer Luo Benjian, entrusted agent of the Plaintiff, lawyer Wang Hongyu and Xie Yihan, entrusted agents of the Defendant appeared in court for intervention. The hearing of case has been completed now.

The Plaintiff claimed that it entrusted the Defendant in April, 2014 to transport a batch of banana from Panabo Port of the Philippines to Shanghai Port of China and signed and issued a clean bill of lading with the number of DCTSHA140000692. The cargo was delivered to the Plaintiff's warehouse on April 29. The banana had suffered freezing damage after unpacking, so the Plaintiff asked our court to order the Defendant to compensate 10,465.50 USD for cargo losses and bear the litigation fee of this case.

The Defendant argued that cargo damage was not happened during the responsible period of the carrier. And the Defendant had done its duty of careful treatment and proper management of involved container and cargo. It had no fault in cargo damage and should not bear the compensation liability. It asked the court to dismiss the claim of the Plaintiff.

Based on the facts of this case, the Plaintiff's proof, the Defendant's cross-examination and our court's authentication are shown as follows:

1. The bill of lading was used to prove the establishment of marine cargo transport contract relationship between the Plaintiff and the Defendant. The Defendant confirmed the authenticity, validity, relevance and probative force of such evidence.

2. Inquiry records of container movements was used to prove the cargo transport process. The

Defendant confirmed the authenticity of such evidence, but it claimed that only container movement conditions between April 2 and April 22 were related to the facts to be proved in this case.

3. Survey records and photos were used to prove that all cargo suffered from freezing damage. The Defendant had no objection to the authenticity of such evidences and it claimed that container temperature setting was normal according to such evidences.

4. Customs declaration was used to prove that cargo damage amount was 10,465.50 USD. The Defendant confirmed the authenticity, validity, relevance and probative force of such evidence.

5. Invoice of waste disposal fee; and 6. Statement of facts were used to prove that all cargo damage led to 5,000 Yuan of waste disposal fee spent by the Plaintiff. The Defendant confirmed the authenticity of the above-mentioned two evidences, but it claimed that waste disposal fee had no direct relation with cargo damage.

7. Import VAT Special payment voucher was used to prove that the Plaintiff suffered from 8,346.91 Yuan of losses in value-added tax on imports due to all cargo damage. The Defendant confirmed the authenticity of such evidence, but it thought the tax was unrelated to cargo damage.

8. Invoice of agency fee for customs clearance was used to prove that the Plaintiff suffered from 8,422.37 Yuan of losses in agency fee for customs clearance due to all cargo damage. The Defendant confirmed the authenticity of such evidence, but it thought customs clearance expenditure was normal trade cost, which was unrelated to cargo damage.

9. E-mails were used to prove the whole story in which the Plaintiff informed the Defendant of cargo damage, asked the Defendant to arrange for inspection, asked for cargo treatment opinions and claimed for compensation. The Defendant confirmed the authenticity of such evidence, but it claimed that it had never confirmed to undertake compensation responsibility in e-mail exchange.

Our court held that Evidence 1-9 could prove each other. Since the Defendant had confirmed the authenticity of such evidences and such evidences were related to the facts to be proved, our court recognized the authenticity, validity, relevance and probative force of Evidence 1-9.

Based on the facts of this case, the Defendant's proof, the Plaintiff's cross-examination and our court's authentication are shown as follows:

1. Equipment interchange receipt of container at the loading port

2. Equipment interchange receipt of container at the discharging port

3. PTI inspection record on March 30, 2014

4. PTI inspection record on May 8, 2014

The above-mentioned evidences were used to prove that container involved in this case was in good conditions without abnormal conditions before the involved voyage number, throughout the transport process and at the end. The Plaintiff argued such four evidences were not the original copies according to their form. And evidences formed overseas had not been authenticated through notarization. As for the contents, Evidence 2, inquiry record of container movements submitted by the Plaintiff specified that the container were damaged in the storage yard on May 6, 2014. But Evidence 4 submitted by the Defendant did not reflect such fact. Therefore, the Plaintiff did not confirm the authenticity of the above-mentioned four evidences.

5. Container temperature records were used to prove that the container involved in this case was in good running conditions between April 14, 2014 when goods were loaded and April 22 when the consignee picked up the goods. The temperature within container met cargo requirements and the temperature dropped after the consignee picked up the goods. The Plaintiff argued such evidence was in txt format, which was easy to be tampered, so it did not confirm the authenticity of such evidence. Although the Defendant's computer displayed the original data afterwards, the Plaintiff still did not confirm the authenticity of such evidence. But the Plaintiff also claimed that temperature within container started to drop since April 25 according to the record of this evidence, which proved that the container was not in normal working conditions.

6. Maintenance records automatically stored by container were used to prove that supply air temperature sensor was in fault during PTI inspection on May 8, 2014. The Plaintiff argued such evidence did not have Chinese translation and its contents had contradictions with Evidence 7, maintenance certificate submitted by the Defendant, so it did not confirm the authenticity, validity and relevance of such evidence.

7. Equipment maintenance certificate of Greating Fortune (Shanghai) Container Service Co. (hereinafter referred to as "Greating Fortune") was used to prove that the temperature sensor in fault was replaced on May 8, 2014. The Plaintiff confirmed the authenticity, validity, relevance and probative force of such evidence.

8. Testimony of the witness, Dang Qiangmin was used to prove the export process of PTI inspection, temperature records and other inside storage data of container and the maintenance conditions. The Plaintiff had no objection to the authenticity, validity and relevance of such evidence, but it thought the witness's statement belonged to personal understanding, which could only be used as reference. But it could not determine the fact findings.

Our court thought Evidence 3 and Evidence 5 were data automatically stored by the built-in recorder of container, which could export original data through special software provided by container manufacturer. Original data could be read only through special software of the manufacturer and could not be modified. The original data could be modified only when it was converted into txt format. The Defendant displayed the original data of such two evidences on computer through special software of the manufacturer. Through comparison, it was the same as the txt document submitted by the Defendant and the Plaintiff also did not point out anything inconsistent after comparison, so it recognized the authenticity, validity, relevance and probative force of Evidence 3 and Evidence 5. But it would combine other evidences to confirm the probative force of them with respect to the good running conditions of container. Evidence 7 and Evidence 8 could prove mutually with other effective evidences involved in this case and the Plaintiff had no objection to the authenticity, validity and relevance of such evidences, so it recognized the authenticity, validity, relevance and probative force of Evidence 7 and Evidence 8. Evidence 1 was produced overseas without handling notarization procedures. Evidence 2 was only photocopy which reflected the surface conditions of container when it was handed over, so it was unrelated to the refrigeration conditions and working conditions of sensor inside the container to be investigated in

this case. Evidence 4 and Evidence 6 were electronic data hard copies. The Defendant did not display the original data and the authenticity could not be verified, so the Plaintiff did not recognize the authenticity, validity and relevance of Evidence 1, Evidence 2, Evidence 4 and Evidence 6.

Our court found out that:

The Plaintiff imported a batch of fresh banana from the Philippines in April, 2014, which was transported by the Defendant. To perform the transport, the Defendant provided one refrigerated container of 40 feet with the container number of PCIU6039611.

The empty refrigerated container was drawn to load the goods on April 2. The temperature was set as 13.5℃ when the container was picked up. Afterwards until the container was returned, the set temperature was always 13.5℃ without modification. The container full of goods entered the storage yard of loading port on April 13. Since the goods were loaded until the delivery on the storage yard of the loading port, temperature data within the refrigerated container kept normal.

Goods were loaded on board on April 14 and the Defendant signed and issued an on board bill of lading with the number of DCTSHA140000692. According to the bill, the consignor was LIBERTY BANANA GROWERS MULTIPURPOSE COOPERATIVE and the consignee was the Plaintiff. The ship name and voyage number was KOTA KAMIL KMI089 and the goods were 1,540 cases of banana with the total weight of 22,330 kg. Place of receipt was Panabo Storage Yard. Loading port was Panabo. Discharging port was Shanghai and delivery place was Shanghai Storage Yard. Receiving and delivery condition was CY/CY. The bill also specified that temperature setting was 13.5℃. During marine transport, temperature data within the refrigerated container was basically normal. However, at 5:00 on April 18, temperature record of the refrigerated container showed a code “H006”, which indicated to check the temperature sensor. At that time supply air temperature of the recorder (hereinafter referred to as “DSS”) was 16.3℃ and return air temperature of the recorder (hereinafter referred to as “DRS”) was 15.3℃. Spot supply air temperature (hereinafter referred to as “SPOT SS”) was 13.5℃ and spot return air temperature (hereinafter referred to as “SPOT RS”) was 15.1℃. The code was eliminated automatically at 5:09 on that day. Afterwards until the goods were delivered on the storage yard at the discharging port, temperature within the refrigerated container also kept within normal range without obvious abnormal conditions.

The goods arrived and were unloaded at Shanghai Port on April 21. The goods were delivered to the Plaintiff on Shanghai Port Storage Yard on April 22. After delivery, the goods were still loaded in the refrigerated container provided by the Defendant and was transported to the Plaintiff’s warehouse after entry inspection and quarantine. Since 12:00 on April 25, SPOT SS data was abnormal and showed “***”, indicating that temperature within the container detected by SPOT SS sensor was very high. Afterwards, SPOT RS, DSS, DRS and other temperature data kept dropping and kept at about 0℃ since 1:00 on April 28. The goods arrived at the Plaintiff’s warehouse on April 29 and the banana was found frozen upon unpacking. On April 30, the Defendant entrusted Shanghai Reasun Insurance Surveyors & Adjusters Co., Ltd. (hereinafter referred to as “Reasun”) to survey the goods. The company found that the banana had frost and ice pellets on the surface. Temperature inside banana was below 0℃ with serious cold injury. Banana with freezing damage

was finally disposed as wastes. The empty refrigerated container returned to the storage yard on May 6.

Besides, we also found out that the Defendant carried out PTI inspection on the refrigerated container on March 30, 2014 before picking up the container by consignor. The result was "Pass". After the container returned, the Defendant carried out PTI inspection on the refrigerated container on May 6. The result was "Unqualified". On May 8, Greating Fortune repaired the refrigerated container and issued an equipment maintenance certificate, which specified that the fault was J121 alarm. SPOT SS displayed 83.5℃. Repair method was to replace one supply air temperature sensor.

Both the Plaintiff and the Defendant confirmed that the reason for cargo damage was cold injury. According to the witness's testimony provided by the Defendant, if the supply air temperature sensor was out of order, the sensor would still keep sending refrigeration order even if temperature within the container had reached or been lower than set temperature. Combining with the container temperature records provided by the Defendant, it could be affirmed that the supply air temperature sensor was out of order since 12:00 on April 25, which could not detect the actual temperature within the container. It took for high temperature within the container, so it kept sending refrigeration order so that temperature within the refrigerated container kept reducing to about 0℃, which led to cold injury of goods.

Both the Plaintiff and the Defendant agreed that cargo value was subject to CIF price recorded in the customs declaration, i.e. 10,465.50 USD.

Our court thought that:

This case was a contract dispute of marine cargo transport. Since the Defendant was a foreign legal person and the loading port of cargo was in the Philippines, this case was foreign-related. According to national laws, foreign parties can choose applicable law to deal with this case. In the court hearing, both the Plaintiff and the Defendant chose to apply Chinese laws to deal with this case, so Chinese laws were applied to hear this case.

According to Chinese laws, the establishment of the marine cargo transport contract between the Plaintiff and the Defendant was effective. The Plaintiff was the consignee and the Defendant was the carrier. Controversial focus of this case was whether the Defendant should bear the compensation responsibility. Our court thought the transport involved in this case was in refrigerated container, which transported fresh fruit. In this case, the refrigerated container was an important carrier and place to keep the goods. During the transport process, whether the goods were in good conditions relied on the normal operation of the container. Under the transport contract, the Defendant was both the carrier and the provider of refrigerated container. Its behavior to provide refrigerated container was the consideration to solicit business and earn freight, so it was one of its obligations to ensure that the refrigerated container met the use conditions for contract purpose. Whereas the refrigerated container could not run normally due to internal part fault, which led to cold injury of goods finally, the Defendant should be liable for breach of contract.

According to Article 46 of *Maritime Code of the People's Republic of China* (hereinafter referred to as "*Maritime Code*"), the Defendant claimed that cargo damage involved in this case did

not happen during the responsible period of the carrier, so the carrier had no need to compensate for the cargo damage. The article specifies that "Unless otherwise specified in this chapter, the carrier shall be responsible for the compensation if the goods are lost or damaged during the responsible period of the carrier". Our court thought, according to the meaning of this article, if cargo damage happened during the responsible period of the carrier, the carrier should be responsible for the compensation with no need of the Plaintiff to prove the reason for cargo damage, unless the carrier could prove the existence of liability exemption cause which met the provisions of *Maritime Code*. However, this article did not exempt the carrier from compensation liability to be undertaken by it when goods were lost or damaged outside the responsible period for the reason of the carrier. In this case, although cargo damage happened after the responsible period, the reason for cargo damage was found to be the fault in the refrigerated container provided by the Defendant. As the provider of refrigerated container, the Defendant should be responsible for the compensation since it failed to perform its duty to ensure that the refrigerated container was suitable to keep the cargo.

Besides, the Defendant as the carrier also failed to perform its duty specified in Article 48 of *Maritime Code* to keep the cargo properly during its responsible period, so it should be responsible for the compensation of cargo damage happened after the responsible period. When the cargo was controlled by the carrier, temperature record of the refrigerated container once showed a code, which indicated to check the temperature sensor. But the carrier did not check it or take other effective measures to avoid the fault or avoid cargo damage due to such fault. Finally the cargo suffered from freezing damage due to the fault in temperature sensor. Therefore, although the result that goods suffered from freezing damage happened after the responsible period of the carrier, temperature sensor of the refrigerated container should have been checked during the responsible period, but the carrier did not take measures to eliminate the fault and replace the container in time, or inform the consignee, which led to final freezing damage of the cargo due to sensor fault. The carrier failed to perform its duty to keep the goods properly during the responsible period, so the carrier should still be responsible for the compensation although the result of cargo damage happened after the responsible period. Therefore, our court did not support the defense of the Defendant.

Moreover, the Defendant defensed that it had exercised due diligence of the refrigerated container before use according to Article 47 of *Maritime Code*. But it failed to submit sufficient evidence to prove that it had taken proper methods to check, maintain and repair the container cautiously, so our court did not support its defense.

In conclusion, according to Article 60.1 and Article 107 of *Contract Law of the People's Republic of China*, Article 46, Article 57, Article 48, Article 55.1 and Article 55.2 of *Maritime Code of the People's Republic of China*, Article 64.1 of *Civil Procedural Law of the People's Republic of China*, the judgment is made as follows:

The Defendant, Pacific International Lines (Pte) Ltd shall compensate for cargo damage of 10,465.50 USD of the Plaintiff, Shanghai Changying Industry Co., Ltd. within ten days after the judgment takes effect.

If the Defendant, Pacific International Lines (Pte) Ltd does not perform its duty to pay money

within the period specified in this judgment, the Defendant shall double the payment of the interest on debt during the delayed fulfillment period according to Article 253 of *Civil Procedural Law of the People's Republic of China*.

Case acceptance fee of this case is 1,509 Yuan, which shall be paid by Pacific International Lines (Pte) Ltd.

If either party disobeys the judgment, the Plaintiff, Shanghai Changying Industry Co., Ltd. can lodge an appeal to our court within 15 days after the written judgment is delivered. And the Defendant, Pacific International Lines (Pte) Ltd can lodge an appeal to our court within 30 days after the written judgment is delivered. Copies of appellate petition will be proposed according to the number of the other party and the case will be appealed to Shanghai High People's Court.

Chief Judge: Qian Xu
Acting Judge: Xu Wei
People's Assessor: Zhang Yi
Shanghai Maritime Court
February 5, 2016

This file is a certified copy of the original one.

Court Clerk: Tang Qin

Appendix Legal Provisions Cited in the Judgment

One. Contract Law Of The People's Republic Of China

Article 60

The parties shall fully perform their respective obligations in accordance with the contract.

The parties shall abide by the principle of good faith, and perform obligations such as notification, assistance and confidentiality, etc. in light of the nature and purpose of the contract and in accordance with the trading habits.

Article 107

If a party fails to perform its obligations under a contract, or rendered non-conforming performance, it shall bear the liabilities for breach of contract by specific performance, cure of non-conforming performance or payment of damages, etc.

TWO. Maritime Code Of The People's Republic Of China

Article 46

The responsibilities of the carrier with regard to the goods carried in containers covers the entire period during which the carrier is in charge of the goods, starting from the time the carrier has taken over the goods at the port of loading, until the goods have been delivered at the port of discharge. The responsibility of the carrier with respect to non-containerized goods covers the period during which the carrier is in charge of the goods, starting from the time of loading of the goods onto the ship until the time the goods are discharged therefrom. During the period the carrier is in charge of the goods, the carrier shall be liable for the loss of or damage to the goods, except as otherwise provided for in this Section.

The provisions of the preceding paragraph shall not prevent the carrier from entering into any agreement concerning carrier's responsibilities with regard to non-containerized goods prior to loading onto and after discharging from the ship.

Article 47

The carrier shall, before and at the beginning of the voyage, exercise due diligence to make the ship seaworthy, properly man, equip and supply the ship and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

Article 48

The carrier shall properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried.

Article 55

The amount of indemnity for the loss of the goods shall be calculated on the basis of the actual value of the goods so lost, while that for the damage to the goods shall be calculated on the basis of the difference between the values of the goods before and after the damage, or on the basis of the expenses for the repair.

The actual value shall be the value of the goods at the time of shipment plus insurance and freight.

From the actual value referred to in the preceding paragraph, deduction shall be made, at the time of compensation, of the expenses that had been reduced or avoided as a result of the loss or damage occurred.

Three. Civil Procedure Law of the People's Republic of China

Article 64

(1) It is the duty of a party to an action to provide evidence in support of his allegations.

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