



Shanghai Kai-Rong Law Firm

Forwarder / October 2011

CTS vs ZIM INTEGRATED SHIPPING

Fact

In July 2010, CTS International Transportation Co., Ltd (hereinafter referred as CTS) was entrusted by Jiangsu Holly Corporation (hereinafter referred as Jiangsu Holly) to transport goods from Shanghai, China to Atlanta, USA and issued relevant B/L to the latter. Then CTS forwarded the goods to Zim Integrated Shipping Services Co., Ltd (hereinafter referred as Zim Integrated Shipping) which issued the whole set of documents under No. ZIMUSNH4811545.

In February 2011, Jiangsu Holly made a claim against CTS requesting CTS to bear its responsibility for releasing goods without B/L and also make a compensation for USD 47,764.60. The court finally decided CTS had fully compensated Jiangsu Holly and paid for the litigation fee in amount of RMB 3,157.50.

After the closing of the above case, CTS brought a legal action against Zim Integrated Shipping before Shanghai Maritime Court, on the grounds that Zim Integrated Shipping was the actual carrier in this transportation but released the goods without B/L and/or instructions when the whole set of the documents were still held by CTS, claiming for its corresponding losses for its compensation to Jiangsu Holly in amount of USD 47,764.60 and its payment for the litigation fees occurred in previous cases in amount of RMB 3,157.50.

Issues

1. whether the documents under No. ZIMUSNH4811545 issued by Zim Integrated Shipping

Contents:

Fact	1
Issues	1
Decisions	4



were B/L or sea waybill?

B/L and sea waybill are different in nature, function and carrier's obligation. Identifying the category of the documents in the case may greatly impact the final result of the case. If the documents were recognized as sea waybills, then Zim Integrated Shipping may be entitled to release the goods without documents and need not to bear any legal liability.

CTS held that the documents were in nature of B/L. Its argument was based on the following points: 1) the title of the issued documents showed clearly the words "Bill OF LADING". What is more, in practice, sea waybill is generally issued for one copy, but B/L must be issued for three original copies. But in this case there were three original copies, which partially evidenced the documents belonged to the category of B/L rather than sea waybill; 2) CTS submitted two sea waybills, one under No. ZIMUSNH4811545 (copy) was related the case, but the other one under No. ZIMUSNH4811464 (original) had nothing to do with the case but was issued for goods shipped out by the same vessel and voyage. However, by comparing these two sea waybills, it is apparently that they are identical in form. So it proved that Zim Integrated Shipping did issue to CTS the involved sea waybill (the former one). In addition, the correction guarantee (copy) submitted by CTS also proved that CTS had required Zim Integrated Shipping to change the sea waybill into bill of lading.

Zim Integrated Shipping argued that this document was a sea waybill in nature and they were entitled to deliver goods without this document, so they need not to bear corresponding compensation liability. Zim Integrated Shipping hereby submitted the correction guarantee (original) to the court, and attempted to demonstrate although CTS had asked for changing the sea waybill into bill of lading, Zim Integrated Shipping eventually did not follow the instruction.

In consideration of the two sides' evidences and viewpoints, the judge, in favor of CTS' arguments, regarded the involved document as bill of lading based on the points as follows: the correction guarantee (original) submitted by Zim Integrated Shipping and the sea waybill under No. ZIMUSNH4811545 (copy) provided by CTS were of effectiveness. Moreover, in the light of the fact confirmed by both parties that Zim Integrated Shipping issued the sea waybill and CTS then asked the former to change the sea waybill into bill of lading, together with the fact that the bill of lading was identical to the sea waybill in the record "SEAWAY B/L NO ORIGINAL





ISSUED” , the judge concluded that Zim Integrated Shipping had issued the sea waybill under No. ZIMUSNH4811545 and then changed the sea waybill into the B/L with the same number.

2. is it proper to apply U.S. law in the case?

As Zim Integrated Shipping was domiciled abroad, this case involved foreign interest and both parties were entitled to choose the applicable law of the contract. On the ground that the clause on the back of B/L stated that the said B/L should apply U.S. law, whether the American Law should be applicable to this case or not was of great importance, because, even if the involved documents was identified as B/L, but due to it was straight B/L, then under existing U.S. law, the carrier was entitled to deliver goods without original B/L, therefore Zim Integrated Shipping would naturally bear no burden of corresponding responsibility.

Zim Integrated Shipping submitted the evidence in terms of Article 4.II. (b) on the back of the transport document to certify that U.S. law was applied to the said document. CTS, however, did not challenge the validity of evidence, but claimed that the application of law should be judged by the court.

The court held that U.S. law was not applicable to this case, because the article of applicable law on the back of B/L was pre-produced standard term and the term that may have a significant impact on the right of the shipper was not specified on the front of B/L, nor given special reminder. Therefore, passive acceptance of B/L by CTS could not be considered as the acceptance and recognition of the said provision. In accordance with Article 5 “the Most Significant Relationship Principle” of “Regulations by Supreme People's Court on Issues of Law Application in Hearing Foreign-related Civil or Commercial Contract Disputes”, the judge deemed Chinese Law as applicable law of the contract.

3. whether CTS should bear liability by itself according to the correction guarantee?

By submitting the correction guarantee (original), Zim Integrated Shipping argued that CTS had promised to assume the responsibility caused by changing the sea waybill into B/L and consequently, then CTS should bear the liability of involved dispute.





CTS also provided the correction guarantee (copy) but questioned the authenticity of defendant's previous evidence. It held that, though CTS had promised to assume the responsibility of application, the compensation responsibility should be clearly strictly limited by the law instead of any expansion explanation, that is, carrier's loss arising from CTS' improper application (such as no right to apply for modification), or carrier's additional costs owing to CTS' application for modification.

Although the judge ultimately affirmed the effectiveness of the correction guarantee (original) offered by Zim Integrated Shipping, but he dismissed its relevant arguments on this point. The judge believed that the guarantee responsibility promised by CTS was merely limited to defendant's external obligation resulting from the modification of transport document. The damage caused by Zim Integrated Shipping due to its delivery of goods without documents was beyond the scope of guarantee liability promised by the plaintiff and hence, the defendant should bear the corresponding compensation liability for their breach of contract.

Decisions

After trial, Shanghai Maritime Court, in accordance with relevant legal provisions, eventually made first trial decision in favor of CTS in the following:

- A) The defendant, ZIM INTEGRATED SHIPPING shall compensate \$47,764. 60 to the plaintiff, CTS International Transportation Co., Ltd within ten days from the date of effectiveness of the judgment;
- B) Other claims requests by the plaintiff, CTS International Transportation Co., Ltd. was overruled.

Shanghai Kai-Rong Law Firm, a leading law firm specializes in international trade, shipping and aviation, insurance, finance and commerce, has been and will continue to be committed to serving clients both domestic and overseas with unmitigated zeal and great professionalism.

For further information concerning this topic, please contact:

Mr. Jin Yu-Lai / Managing Partner
Tel: 86 21 5396 1065
Fax: 86 21 5396 1204
jinyulai@skrjf.com

This newsletter is intended to provide general information on issues which may be of interest. It is not intended to provide specific legal advice. Further advice should be taken before relying on the contents of this summary.
