

Supreme People's Court of the People's Republic of China

Civil Ruling

(2021) Zui Gao Fa Min Shen No.318

Applicant for Retrial (Defendant in the first instance and Appellant in the second Instance):

China Pacific Property Insurance Co., Ltd. Fujian Branch

Domicile: 02#, 1/F, and 5-8F, Tower 1, and Suites 02&03, 5F, Suites 0203B, 9F, Suites 02&03, 10F, Tower 2, and Suite 04, 10F, Tower 3, Jiansanqiao Building, No.558 Liuyi North Road, Gulou District, Fuzhou, Fujian Province, China

Legal Representative: PAN Feng, General Manager

Agent *ad litem*: CHEN Youmu, lawyer of Wintell & Co.

Agent *ad litem*: LI Lan, lawyer of Wang Jing & Co.

Respondent (Plaintiff in the first instance and Appellee in the second instance):

Fujian Yuan Cheng Bean Co., Ltd.

Domicile: No.7, Songxia Avenue, Shouzhi Village, Songxia Town, Changle City, Fujian Province, China

Legal Representative: CHEN Pinhua, Chairman

Agent *ad litem*: CHEN Zhiming, lawyer of Fujian Xiamen Mingjia Law Office

Agent *ad litem*: XIE Dasheng, lawyer of Fujian Xiamen Mingjia Law Office

With respect to the case of dispute over contract of insurance for carriage of goods by sea or by waters leading to sea between the Applicant for Retrial China Pacific Property Insurance Co., Ltd. Fujian Branch (hereinafter referred to as "CPIC") and the Respondent Fujian Yuan Cheng Bean Co., Ltd. (hereinafter referred to as "Yuan Cheng"), CPIC was unsatisfied with the Civil Judgment (2019) Min Min Zhong No.536 issued by Fujian Higher People's Court and filed an Application for Retrial before this court. A collegiate bench was therefore constituted by this court in accordance with law to examine the application, and now the examination is concluded.

In the Application for Retrial, CPIC asserted that: (I) the findings as to essential facts in the Judgment of Second Instance lacked supporting evidence. To be specific, 1. the findings in the Judgment of Second Instance as to essential facts such as the existence of cargo loss and the basis for calculation of any cargo loss amount; 2. the "LAPAN Formula" used by the Inspection and Quarantine Technique Center of Xiamen Entry-

Exist Inspection and Quarantine Bureau (hereinafter referred to as “Xiamen IQTC”) in its Test Report and admitted by the Judgment of Second Instance was intended to simulate the loss that would have been incurred if the heat damaged soybeans concerned had been put into direct production, but cannot reflect the loss in the case that they were put into mixed production; and moreover, the “LAPAN Formula” as a wrong formula with expressions on the two sides not equated cannot serve as the basis of loss assessment in this case; 3. the Court of Second Instance omitted to analyze and make determination on critical evidence, while unfairly trusting the wrong formula provided by Yuan Cheng in lack of theoretical and evidential support, and thus should be corrected in accordance with law; (II) it was wrong application of law for the Judgment of Second Instance to refer to the so-called “precedent”; the “precedent” referred to in the Judgment of First Instance is an isolated case in the Chinese judicial practice, that is, the Case LAPAN (2005) Xia Hai Fa Shang Chu Zi No.353 of Xiamen Maritime Court which is not a guiding case; therefore, the adjudication of the Court of Second Instance wrongfully referring to the so-called “precedent” should be corrected. (III) the Judgment of Second Instance omitted to examine and make determination as to the 18 pieces of evidence submitted by CPIC, and mentioned not any word about the attendance of expert witnesses appointed by CPIC in the second instance of proceedings, which constituted serious violation of procedural law; (IV) the cargo loss in this case should be determined strictly on the basis of facts and evidence, rather than a theoretical formula. Based on the above grounds, CPIC applied for retrial of the case in accordance with Subparagraphs 2 and 6 of Article 200 of the *Civil Procedure Law of the People’s Republic of China*.

Yuan Cheng argued that the Application for Retrial filed by CPIC was time barred by the 6-month statute of limitation, and thus should be rejected. Further, against the grounds based on which CPIC petitioned for retrial, Yuan Cheng further argued that: (I) the cargo damage in this case was a clear and undoubtful fact, and the determination of the cargo loss amount by the Court of Second Instance based on the Xiamen IQTC’s Test Report complied with the insurance contract and applied correct law; and CPIC’s assertion that Yuan Cheng should have proven the loss in the case of mixed production violated the insurance contract and should not be supported; (II) the method to determine cargo loss and the loss amount in the Xiamen IQTC’s Test Report were reasonable and feasible, and the CPIC’s doubt was groundless without sufficient evidential support; and the opinions of the expert witnesses appointed by CPIC to refute the Xiamen IQTC’s Test Report were not sufficient to overrule the conclusion therein. (III) when analyzing and commenting the probative force of the Xiamen IQTC’s Test Report, the Court of Second Instance referred to the fact that the same appraisal method

had been adopted in another case, which was not equal to adjudication by referring to “precedents”, not to mention wrong application of law; (IV) the Court of Second Instance had no omission in examining evidence. Therefore, Yuan Cheng requested rejection of the Application for Retrial submitted by CPIC.

Through examination, this court holds that, in light of the grounds for CPIC to file the Application for Retrial, what should be primarily examined is whether the findings of essential facts in the Judgment of Second Instance lacked support of evidence and whether the application of law therein was wrong.

This case concerns a dispute over contract of insurance for carriage of goods by sea. As ascertained in the Judgment of Second Instance, the soybeans concerned were in good and sound condition at the time of loading, but were found discolored, caked, moulded and seriously heat damaged when discharged at the port of destination. As proven by the Inspection Report of SGS-CSTC Standards Technical Services Co., Ltd., Xiamen Branch appointed by the seller of the soybeans concerned, the Test Report of Xiamen IQTC appointed by Yuan Cheng, and the Survey Report of Fujian New-Ocean Insurance Surveyors & Loss Adjusters Co., Ltd., the soybeans were indeed heat damaged. Yuan Cheng put the heat damaged soybeans into mixed production with sound soybeans. In the Judgment of Second Instance, it was held that, at the production end, the mixed production that deviated from the regular production and processing course might require extra steps and additional costs, and at the sale end, according to the market rule that quality decides price, though the soybean oil and meals produced from the heat damaged soybeans by means of mixed production in a certain proportion might conform to the Chinese national standards, it is not enough to deny the actual incurrence of cargo loss. It was based on the above facts and grounds that the Judgment of Second Instance held the cargo loss were actually incurred, and this was proven by sufficient evidence.

As to the dispute between the Parties over how to determine the amount of cargo loss caused by the increase of acid value, in the Judgment of Second Instance, it was held that the calculation formula used by Xiamen IQTC was based on the requirement of the Chinese national standard GB 1535-2003 *Soybean Oil* on the indicator of acid value of crude soybean oil, to work out the loss caused by the increase of acid value and further the quantity of the lost soybeans in the whole shipment, and it was highly technical; and as CPIC failed to adduce sufficient effective evidence to overrule the formula, the formula used by Xiamen IQTC should be admitted. This court holds that there is no obvious imperpness in the above holding of the Court of Second Instance. With

regard to the doubts raised by CPIC against the formula used by Xiamen IQTC, the Court of Second Instance summoned the expert witnesses appointed by CPIC to respond to inquiries from both Parties and the court, convened evidence cross-examinations between the Parties on the evidence submitted by CPIC in the second instance proceedings, conducted a special investigation into the specific surveyor of Xiamen IQTC involved in this case and provided the investigation results for both Parties' examination. The assertion of CPIC that the Court of Second Instance omitted to examine and make determination as to the evidence submitted by CPIC is not true. Therefore, the determination of loss of the soybeans concerned in the Judgment of Second Instance based on the Xiamen IQTC's Test Report does not fall within the circumstance requiring retrial under law that fact finding lacks support of evidence. The Judgment of Second Instance concluded that the calculation formula was not used by Xiamen IQTC in this case for the first time, but had been used by Xiamen IQTC early in the case (2005) Xia Hai Fa Shang Chu Zi No.353 of Xiamen Maritime Court to calculate the quantity of damaged soybeans which is of reference value for this case. Therefore, the Court of Second Instance did not apply wrong laws in rendering the judgment.

As regards the argument of Yuan Cheng that the CPIC's application for retrial was time barred, according to the Certificate of Effectiveness of Legal Document issued by Fujian Higher People's Court, the Civil Judgment (2019) Min Min Zhong No.536 came into legal force and effectiveness on 14 July 2020, and CPIC filed the Application for Retrial on 12 January 2021, so the Application for Retrial filed by CPIC was not time barred by the 6-month statute of limitation.

In summary, the Application for Retrial filed by CPIC does not comply with the provisions of Subparagraphs 2 and 6 of Article 200 of the *Civil Procedure Law of the People's Republic of China*. In accordance with Paragraph 1 of Article 204 of the *Civil Procedure Law of the People's Republic of China* and Paragraph 2 of Article 395 of the *Interpretations of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China*, the following ruling is hereby rendered:

Reject the Application for Retrial filed by China Pacific Property Insurance Co., Ltd. Fujian Branch.

Presiding Judge: MA Dongxu

Judge: LI Guishun

Judge: GUO Zaiyu

(Official stamp of the Supreme People's Court of China)

2 April 2021

Certified True Copy

Judge Assistant: MA Zheyuan

Court Clerk: ZHANG Yixin