

Ningbo Maritime Court, the People's Republic of China

**Civil Judgment**

(2008) Yong Hai Fa Shang Chu Zi No. 124

Plaintiff: Newtech International Co.

Domicile: 39541 Canyon Heights Dr., Fremont, CA 94539, USA

Legal representative: Lynn Zeng, owner of the said company

Agent ad litem (with special power of attorney): Benjamin Luo

Defendant: China Shipping Container Lines (Hong Kong) Co., Ltd.

Domicile: 69/F, the Center, 99 Queen's Road Central, HKSAR, PRC

Legal representative: Li Xiaobing, director of the said company

Agent ad litem (with special power of attorney): Victoria Wei

The Plaintiff, Newtech International Co., resorted to this Court on May 19, 2008 against the Defendant, China Shipping Container Lines (Hong Kong) Co., Ltd., in a cause of action for delivery of goods without B/L under an ocean shipping contract. Upon accepting the action on the same day, this Court duly formed a collegial panel. The Defendant raised an objection to jurisdiction during the period of lodging a statement of defense. On September 20, 2008, the Court ruled to dismiss the objection. The Defendant appealed against the ruling and the Higher People's Court of Zhejiang Province dismissed the appeal and sustained the original ruling on May 5, 2009. This Court tried the case in public on June 10 and July 9, 2009, and Benjamin Lau, Agent ad litem of the Plaintiff, and Victoria Wei, Agent ad litem of the Defendant, appeared in the Court to participate in the proceedings. Trial of the Case has been concluded so far.

The Plaintiff, Newtech International Co., alleges that in May 2007 the Plaintiff purchased from Chicago-based U S Motor Recycling Inc. (hereinafter referred to as the "Motor Recycling") mixed metal scraps valued US\$71,552.03 and resold them to Ningbo Laishun Trading Co., Ltd. (hereinafter referred to as "Laishun Company") at a price of US\$76,375.25. As entrusted by the Plaintiff, Motor Recycling went through the formalities of booking space and consignment with China Shipping Container Lines (North America) Co., Ltd. (hereinafter referred to as the "China Shipping North America"), agent of the Defendant in the United States. China Shipping North America issued a full set of on board straight B/Ls in triplicate with No.LAXNGB000887 in the name of the Defendant's agent on June 22, 2007. The B/L specified that the goods in question were 177,240 pounds of mixed metal scraps, the shipper was the Plaintiff, the consignee was Ningbo Zhiwen Industry-Commerce Co., Ltd., the notify party was Laishun Company, the carrier was the Defendant, the place of receipt was Chicago, the carrying vessel was CMA CGM YANTIAN, the port of loading was Los Angeles, the port of discharge was Ningbo, the place of delivery was Ningbo, and the means of transportation was CY to CY. The said goods were shipped to Shanghai ex CMA CGM YANTIAN on about July 3, 2007, and then were forwarded to Ningbo per CSCL ASIA on about July 7, 2007. After the goods were

forwarded to Ningbo, Laishun Company failed to go through formality of D/P with the Plaintiff as agreed upon, however, the Defendant delivered the goods without withdrawing the original B/L, which caused serious economic losses to the Plaintiff. Since the Defendant was in breach of its contractual obligation of delivering goods against original B/L, it shall be liable for all the losses incurred to the Plaintiff therefrom. The Plaintiff asked the Court to order the Defendant to indemnify the Plaintiff for the economic losses of US\$76,375.25 and the interest calculated from July 11, 2007 to the actual date of payment determined by the judgment at the rate issued by the Bank of China for a loan of the kind.

The Defendant, China Shipping Container Lines (Hong Kong) Co., Ltd., answers that the Plaintiff failed to certify that it was the shipper of the goods in question, and that it shall be entitled to claim damages for the payment for goods; the Plaintiff failed to certify the value of the goods in question; the domestic consignee of the goods in question has made payment for goods in full through its agent, therefore the Plaintiff hasn't suffered any loss of payment for goods.

In order to justify its claims, the Plaintiff has submitted the following as evidence: 1. B/L, to substantiate the Plaintiff and Defendant were the parties of ocean shipping contract; 2. Container information follow-up web page of China Shipping Container Lines Co., Ltd., to substantiate that after the goods in question were shipped to Ningbo Port on about July 7, 2007, the Defendant delivered the goods without withdrawing the original B/L; 3. Invoice faxed by Motor Recycling to the Plaintiff, to substantiate the value of the goods purchased by the Plaintiff from Motor Recycling was US\$71,552.03; 4. Invoice issued by the Plaintiff to Laishun Company, to substantiate the Plaintiff resold the goods in question to Laishun Company at a price of US\$76,375.25; 5. Sales Confirmation, to substantiate the goods in question was purchased by the Plaintiff from Motor Recycling and exported to China, and Motor Recycling was entrusted by the Plaintiff to go through the formalities of export and consignment for it; 6. Records of export cargoes at the U.S. Customs, to substantiate the Plaintiff has ever entrusted Motor Recycling to go through the formalities of export filing of the goods and the goods were exported to China; 7. Declaration issued by Motor Recycling, to substantiate that Motor Recycling confirmed its capacity of the Plaintiff's agent under the B/L in question; 8. Freight Invoice, to substantiate the Defendant charged US\$2,825 as freight of the goods in question and the freight was paid by Motor Recycling by check; 9. E-mails between the Plaintiff and the Defendant in respect of claims of the goods, to substantiate that in addition to B/L, the Defendant issued waybill and delivered the goods to the consignee thereby, which caused serious economic losses to the Plaintiff.

As regards the foregoing evidences submitted by the Plaintiff, the Defendant has no objection to Evidence 1 (B/L) and Evidence 2 (container information follow-up web page), but for the rest 7 evidences, the Defendant deems they are not originals, and what the

notary public certified is not the authenticity of the contents of the foregoing evidences but just the submission thereof by the Plaintiff.

In order to substantiate the consignee has made payment for the goods in question, the Defendant has submitted to this Court the offshore remittance application, overseas remittance application, client's payment order, customs declaration and import license. The Plaintiff acknowledges its receipt of payment of US\$65,924.34 for goods, but it deems that the evidence submitted can't prove such payment is for the goods in question. In order to justify its allegation, the Plaintiff has submitted to this Court the invoice No. 6602025, historical records of the Plaintiff account, two B/Ls issued by the Defendant in May 2007, the inspection certificate issued before the metal scraps were shipped to China, to substantiate that Plaintiff ever sold other 5 containers of metal scraps to Laishun Company in May 2007, with payments for goods of US\$95,603.25 in total, which were paid by Laishun Company in twice. The Plaintiff received US\$30,274.80 on June 15, 2007 and US\$65,906.34 on July 5, 2007. The Defendant answers the said invoice and historical account records were self-prepared by the Plaintiff, and the inspection certificate is evidence formed abroad and fails to be certified by notary public, thus their authenticity should not be acknowledged. The authenticity of the two B/Ls should be ascertained after the hearing.

Upon trial, this Court finds that since the Defendant has no objection to Evidence 1 (B/L) and Evidence 2 (container information follow-up web page) submitted by the Plaintiff, this Court admits them into evidence and confirms the fact that the Defendant delivered the goods without withdrawing the original B/L. Although Evidence 5 (S/C) and Evidence 6 (records of export cargoes at the U.S. Customs) are photocopies, the information thereon is public, and the Defendant can ascertain their authenticity with the U.S. Customs, therefore, the Defendant can't deny their authenticity only on the ground that they are photocopies. In addition, Evidence 7 (Declaration) submitted by the Plaintiff is original, on which Motor Recycling confirmed the fact that it went through the formalities of export and consignment on behalf of the Plaintiff, so this Court admits such three evidences, and in combination with Evidence 1 (B/L) the Court confirms the fact that Motor Recycling consigned the cargo to the Defendant on behalf of the Plaintiff. Since Evidence 4 (invoice issued by the Plaintiff to Laishun Company) is not original and there is no other proof to support its authenticity, this Court will not admit it. The value determined by this Court for the goods in question is US\$71,552 in light of Evidence 6 (records of export cargoes at the U.S. Customs). The submission of Evidence 8 (Freight Invoice) and Evidence 9 (e-mails between both parties) by the Plaintiff is to substantiate the facts that Motor Recycling has made payment for freight to the Defendant and that the Defendant has delivered the goods without B/L respectively. Since the Defendant has acknowledged the said facts, this Court makes no comment on such two evidences.

In respect of the evidences submitted by the Defendant on payment for goods, for the offshore remittance application, overseas remittance application, client's payment order,

customs declaration and import license, as the Plaintiff acknowledges the fact that it has received US\$65,924.34 and just deems such payment is not for the goods in question, this Court admits the authenticity of the said evidences. The invoice, historical account records and inspection certificate submitted by the Plaintiff were formed abroad and failed to be certified by notary public, so this Court will not admit them into evidence. As for the extra two B/Ls issued by the Defendant and submitted to this Court by the Plaintiff, since the Defendant fails to deny their authenticity expressly, this Court admits them into evidence and finds that there ever were many transactions between the Plaintiff and Laishun Company.

In light of the said evidences and finding of facts, and in combination with the statements of the parties during the trial, this Court affirms the following facts:

In May 2007, the Plaintiff purchased a batch of mixed metal scraps from Chicago-based Motor Recycling and resold them to Laishun Company at a price of US\$71,552. As entrusted by the Plaintiff, Motor Recycling went through the formalities of booking space and consignment with China Shipping North America, Agent of the Defendant in the United States. China Shipping North America issued a full set of on board straight B/Ls in triplicate with No.LAXNGB000887 in the name of agent on June 22, 2007. The B/L specified that the goods in question were 177,240 pounds of mixed metal scraps, the shipper was Motor Recycling, the consignee was Ningbo Zhiwen Industry-Commerce Co. Ltd., the notify party was Laishun Company, the carrier was the Defendant, the place of receipt was Chicago, the carrying vessel was CMA CGM YANTIAN, the port of loading was Los Angeles, the port of discharge was Ningbo, the place of delivery was Ningbo, and the means of transportation was CY to CY. The said goods were shipped to Shanghai ex CMA CGM YANTIAN on about July 3, 2007, and then were forwarded to Ningbo per CSCL ASIA on about July 7, 2007. After the goods were forwarded to Ningbo, Laishun Company failed to go through formality of D/P with the Plaintiff as agreed upon, however, the Defendant delivered the goods without withdrawing the original B/L.

This Court further finds that there ever were many transactions between the Plaintiff and Laishun Company. The Plaintiff ever sold another batch of mixed metal scraps to Laishun Company in May 2007, and Laishun Company paid US\$65,924.34 to the Plaintiff through Ningbo Zhiwen Industry-Commerce Co. Ltd. on July 4, 2007.

This Court deems that the Plaintiff under this case is a company registered in the United States, so this case is a case involving foreign interests. Since both the Plaintiff and the Defendant have expressly stated to submit the case to Chinese laws, this Court employs Chinese Laws to settle this case. Although the shipper specified in the B/L in question was Motor Recycling, Motor Recycling consigned the goods to the Defendant in the name of the Plaintiff's agent, thus the Plaintiff should be the actual shipper of the B/L under the ocean shipping contract in question and shall be entitled to claim contractual rights. The

Defendant, as the carrier of the goods in question, was obliged to deliver goods against original B/L. The Defendant delivered the goods without withdrawing the original B/L at the port of destination, which was in breach of the contract, and the Defendant shall indemnify the Plaintiff for the losses incurred therefrom. Since the Plaintiff has had many transactions with Laishun Company, the buyer of the goods in question, if the Defendant desires to exempt the Plaintiff of liability for indemnification, the Defendant shall produce enough evidence to substantiate that the payment made by Laishun Company directly or through a third party was just for the goods in question. However, relevant records in the payment certificate submitted by the Defendant fail to substantiate that US\$65,924.34 paid by Ningbo Zhiwen Industry-Commerce Co. Ltd. was for the goods in question, so the Defendant shall not be exempted of its liability for indemnification. This Court supports the reasonable claims by the Plaintiff. Pursuant to the provisions of Article 403 (1) of the Contract Law of the People's Republic of China, Article 55 (1) and (2), Article 71 of the Maritime Code of the People's Republic of China, Article 64 (1) of the Civil Procedure Law of the People's Republic of China, this Court makes judgment as follows:

- i. The Defendant, China Shipping Container Lines (Hong Kong) Co., Ltd., shall pay the Plaintiff, Newtech International Co., damages of US\$71,552 for the loss of payment for goods and the interest of such damages calculated from July 11, 2007 to the actual date of payment determined by the Judgment at the rate issued by the People's Bank of China for a loan of the kind within ten (10) days from the effective date of this Judgment.
- ii. Dismiss other claims from the Plaintiff, Newtech International Co..

Should the Defendant fail to perform its obligation to make payment during the period as prescribed in this Judgment, it shall pay double debt interest accruing during the period of delay in accordance with Article 229 of the Civil Procedure Law of the People's Republic of China.

The Plaintiff, Newtech International Co., shall bear RMB 580, and the Defendant, China Shipping Container Lines (Hong Kong) Co., Ltd., shall bear RMB 8,550 of the court acceptance fee, which totals RMB 9,130.

In case any party to this case challenges this Judgment, such party may lodge a petition for appeal to the Higher People's Court of Zhejiang Province within thirty (30) days from the date of service of this Judgment by submitting duplicate of such petition to this Court. [The court acceptance fee for appeal of RMB 9,130 shall be prepaid within seven (7) days from the date of submission of such petition for appeal (the actual amount will be determined by the Higher People's Court of Zhejiang Province, and the overcharge will be returned later) Such prepayment shall be remitted to the settlement account of non-tax revenue opened by the Finance Department of Zhejiang Province, Account No.: 398000101040006575, Unit Code: 515001, Bank: ABC Xihu Sub-branch. Failure to remit

the prepayment in the given time shall be deemed as the appellant withdrawing the appeal.]

Chief Judge: Hu Shixin

Judge: Xu Yangyong

Judge: Wang Peifen

Ningbo Maritime Court (seal)

August 24, 2009

Clerk: Chen Yujie