

**Case 2140: CISG 1 (1)(a); 25; 51(2); 74; 81; 84**

People's Republic of China: Higher People's Court of Zhejiang Province

Case No.: (2022) Zhejiang People's Court of Final Instance Case No. 811

ARTPLAST Co., Ltd. v. Taizhou City Huangyan Smart Machinery Mould Co., Ltd.

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Abstract prepared by Zhang Bona, National Correspondent

This case involves the invalidation of a contract for the international sale of goods and the legal consequences stemming therefrom. In May and June 2020, ARTPLAST Co., Ltd. (hereinafter referred to as ARTPLAST) and Taizhou City Huangyan District Smart Mechanical Mould Co., Ltd. (hereinafter referred to as Smart) negotiated and concluded a sales contract, agreeing that ARTPLAST purchase mask machines and components from Smart. Subsequently, ARTPLAST asserted that Smart delivered goods that were not brand new and thus did not conform to the contract.

ARTPLAST sued for invalidation of the contract, restitution of the payment for the goods and compensation for lost interest and for shipping and insurance costs. Smart argued that the machinery it provided was new, that there was video proof that the equipment had not rusted prior to shipment and that the rusting of the machinery in shipping to Europe was most likely caused by rain or disinfectant liquids. The original transaction was FOB Ningbo, and it was subsequently changed to Ex Works delivery, with ARTPLAST itself shipping it to Bulgaria and Smart company bearing no liability for it during shipment.

The court of first instance held that the subject of the sales contract between the two parties was the mask machine and components, but that it was not clear whether the machinery must be brand new. It held that the fact that the mask machine provided by Smart to ARTPLAST had problems such as rust spots or scratches was insufficient to conclude that such problems reached the point of "effectively depriving the purchaser of what the purchaser was entitled to expect under the contract", thus rejecting all of the claims put forward by ARTPLAST.

ARTPLAST appealed against the decision. The Zhejiang Province Higher People's Court held that the parties' places of business in this case are located in China and Bulgaria, respectively, both of which are CISG contracting States, and that as the parties did not explicitly exclude application of the CISG in the contract, the CISG should be applied to resolve disputes. The mask machine delivered by Smart showed many signs of wear and tear, corrosion, scratches and rust, etc., rendering it impossible for ARTPLAST to realize the contractual purpose of using the equipment to produce masks in short supply during the pandemic, and constituting a fundamental breach of contract under article 25 CISG. Under article 51 (2) CISG, ARTPLAST had the right to declare the contract avoided and to claim restitution of the price paid and the corresponding interest under articles 81 and 84 CISG. In addition, in accordance with article 74 CISG, at the time of the conclusion of the contract, Smart ought to have been able to foresee the transportation expenses, insurance premiums and other losses borne by ARTPLAST. Taking this into consideration, the court found that Smart must therefore provide compensation for them.