

Case 2141: CISG 1 (1)(a); 25; 26; 30; 33; 36; 45; 49; 51(2); 73(3); 74; 78; 81(1); 84(1)

People's Republic of China: Beijing City Intermediate People's Court No. 4

Case No.: (2022) Beijing 04 People's Court of First Instance No. 294

Shaphar Group LLC v. Baiqi Holdings (China) Co., Ltd.

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Abstract prepared by Zhang Bona, National Correspondent

This case deals with the avoidance of contracts for the international sale of goods and the legal consequences stemming therefrom. On 3 April 2020, Shaphar Group LLC (hereinafter referred to as Shaphar) and Baiqi Holdings (China) Co., Ltd. (hereinafter referred to as Baiqi) entered into a contract for the sale of gloves, agreeing that Shaphar purchase gloves from Baiqi. Shaphar claimed that Baiqi Company breached the contract with such actions as defective performance and delayed delivery, and it sued for invalidation of the contract, return of payment and interest and compensation for losses caused by Baiqi's breach of contract.

After hearing the case, the court held that the countries where the parties had their places of business were the People's Republic of China and the United States of America, both of which were CISG contracting parties; that there were no circumstances precluding the application of the provisions of the Convention in this case; and that the parties had not excluded the application of the Convention. Therefore, the CISG should be applicable in this case. Among the goods delivered by Baiqi, more than half were defective, of quality inferior to the agreement's standard. To date, Baiqi had still not delivered some goods, thus seriously exceeding the delivery time stipulated in the contract and frustrating Shaphar's purpose of earning profits through the contract, constituting a fundamental breach of contract as stipulated in article 25 CISG. Under articles 45, 51 (2) and 73 (3) CISG, Shaphar was entitled to cancel the contract, i.e., to declare the contract avoided.

With regard to the time of avoidance of the contract, article 26 CISG sets out the essential elements for a declaration of avoidance, namely that "a declaration of avoidance of the contract is effective if made by notice to the other party". The CISG does not apply the principle of "effect upon arrival" to such notifications, but rather the principle of "effect when posted". Shaphar issued a lawyer's letter to Baiqi on 20 May 2021 notifying it of the cancellation of the glove sales contract. Although Baiqi Company signed for the lawyer's letter on 22 May, the glove sales contract in this case is invalid from the date when Shaphar sent the above-mentioned lawyer's letter. Accordingly, the court upheld all the claims of Shaphar and ruled that Baiqi should return the payment of US\$ 945,000 to Shaphar and pay interest (as from 20 May 2021) and compensate an actual loss of US\$ 18,882.12.