CISG-online 7262	
Jurisdiction	China
Tribunal	The People's Court of Sanshui District, Foshan
Date of the decision	02 June 2023
Case no./docket no.	(2023) Yue Min Chu No.974
Case name	*Guangdong Ecocampor Vehicle Co., Ltd (CHINA Limited company (Ltd)) v.11319272 CANADA INC.*

Translation[*] *by Ruijia Zhang*[**]

Case Summary and Procedural History

This case concerns a dispute arising from an international sale of goods. Plaintiff [Seller] – a company domiciled in Guangdong, People's Republic of China – and the Canadian Defendant [Buyer], concluded a contract for the sale of eight semitrailers through email correspondence in September 2019. The [Seller]'s claims were for payment of the outstanding purchase price and legal costs. 1.1

After docketing the case on 9 February 2023, the Court conducted a public hearing in accordance with the ordinary procedure and the relevant provisions for foreign-related cases. The attorney of the [Seller] appeared at the hearing, while the [Buyer] failed to appear despite having been duly summoned by this Court. 1.2

Seller's Arguments

1. [Seller's Claims]

[*] The translation should be verified by cross-checking against the original text. For purposes of this translation, Plaintiff of Guangdong Ecocampor Vehicle Co., Ltd is referred to as [Seller] and Defendant of 11319272 CANADA INC. is referred to as [Buyer]. Amounts in the currency of the United States (dollars) are indicated as [USD]. Amounts in the currency of the People's Republic of China (renminbi) are indicated as [RMB]. For reasons of clarity, headings in square brackets (formatted in bold) have been added; these are not included in the original text.

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a) To order the [Buyer] to pay the outstanding balance of [USD] 21,020.50 (calculated as [RMB] 151,124.78 based on the exchange rate at the time of filing) under sales contract EC201909. **2.1**

b) To order the [Buyer] to reimburse the [Seller] for legal fees of [RMB] 28,000 incurred while protecting its rights; and **2.2**

c) To order that all litigation costs of this case be borne by the [Buyer]. **2.3**

2. [Factual Grounds]

The [Seller] submits the following claims to this Court: **2.4**

The [Buyer] procured a batch of semitrailers from the [Seller]. Since September 2019, the parties had engaged in close communication regarding the contract terms. The transaction was finalized on 10 September 2019, when the [Buyer] issued Purchase Order No. EC201909 to the [Seller], stipulating the specific terms of the deal. Under this order, the [Buyer] purchased eight semitrailers at a unit price of [USD] 3,753.66, making the total price [USD] 30,029.28. The parties further agreed on a freight charge of [USD] 3,957.00, and that the goods would be shipped to Montreal under CFR (Cost and Freight) Incoterm. The agreement further stipulated that [Seller] would receive a 30% deposit of the total purchase price upon receipt of the order, and the remaining 70% was due for payment before 1 June 2020. **2.5**

On 13 December 2019, the [Buyer] remitted a payment totaling [USD] 12,965.78 (comprising [USD] 3,957 for freight plus [USD] 9,008.78, which equals the 30% deposit of the total purchase price) to the designated account provided by the [Seller] in the Purchase Order. The actual amount received by the [Seller] was [USD] 12,955.78, as the bank deducted [USD] 10 as a handling fee. In accordance with the agreement, the [Seller] arranged for shipment of the goods and completed customs declaration formalities, thereby duly performing its delivery obligations under the contract. The due date for the outstanding balance, 1 June 2020, has already passed. Despite repeated reminders, the [Buyer] has continually failed to tender payment. The [Seller]'s attorney sent a formal demand via email on 17 June 2021 to the email address used by the [Buyer] for all order-related communications. However, the [Buyer] disregarded this notice. **2.6**

WHEREFORE, based on the foregoing, the [Seller] brings this action to protect its lawful rights and interests, and requests the Court to render judgment as requested herein. **2.7**

3. [Evidence Submitted by the Seller]

During the proceedings, the [Seller] submitted the following evidence in support of its claims: **3**

1. **4**
Screenshots of email correspondence between the [Seller] and the [Buyer]. This evidence demonstrates that since September 2019, Ms. Caixia Luo, a sales representative of the [Seller], had communicated by email with Mr. Jonathan Di Donato, a member of the [Buyer]'s board

of directors, regarding the placement of the order in dispute. After the [Buyer]'s remittance on 13 December 2019, the [Seller]'s sales representative further communicated with the same contact person concerning the completion of the Bill of Lading (hereinafter, «B/L»).

2. 5
Invoice No. EC201909. This evidence shows that the [Buyer] placed an order with the [Seller] for eight semitrailers at a unit price of [USD] 3,753.66, amounting to a total contract price of [USD] 30,029.28, with additional freight charges of [USD] 3,957. The parties agreed under the CFR (Cost and Freight) Incoterm to ship the goods to Montreal. Upon placing the order, the [Buyer] was to pay 30% of the total price as a deposit, and the remaining 70% was to be paid by 1 June 2020.

3. 6
Bank transfer records. This evidence proves that the [Buyer], as agreed, remitted a payment of [USD] 12,965.78 to the [Seller]'s designated bank account on 13 December 2019, via the account of the paying company, 8378886 Canada Inc. (hereinafter, «8378886 Company»).

4. 7
Business registration documents of 8378886 Company and 11319272 Canada Inc. (the [Buyer]). These documents show that Ms. Shanshan He, the sole director of 8378886 Company, is also a board member of the [Buyer].

5. 8
Customs declaration forms, release notice, and B/L. These documents indicate that immediately upon receipt of the deposit and freight charges, the [Seller] proceeded with customs declaration. On 21 December 2019, the [Seller] completed the customs procedures and obtained the release notice. On 24 December 2019, the [Seller] successfully secured an On-Board B/L for the [Buyer]. The goods were loaded at Shenzhen on 24 December 2019, and the [Seller] thereby fulfilled its delivery obligations.

6. 9
Screenshot showing the USD-RMB exchange rate. This evidence reflects the applicable exchange rate between [USD] and [RMB] on the date of filing the claim.

7. 10
Screenshot of the demand letter sent by the [Seller]. This evidence proves that after delivery, the [Buyer] failed to make payment as agreed. Despite repeated reminders, the [Buyer] remained unresponsive. Consequently, the [Seller] engaged counsel to issue a formal demand letter, which was ignored by the [Buyer].

8. 11
Civil litigation representation agreement, payment voucher for attorneys' fees, and VAT Invoice. This evidence shows that on 6 January 2022, the [Seller] retained Guangdong Jinqiao

Baixin Law Firm to represent it in this case and incurred attorneys' fees in the amount of [RMB] 28,000.

9. 12
Manley group chat records. This evidence shows that during the performance of the subject project, the [Buyer] sought assistance with the management of its Facebook account. The parties discussed this matter, and following the [Seller]'s issuance of the demand letter, Ms. Shanshan He, a shareholder of the [Buyer], added the [Seller]'s representative on WeChat to seek a friendly negotiation.

10. 13
Chat records between the [Seller]'s company shareholder and the [Seller]'s employee. This evidence indicates that the parties discussed the project in dispute, but these discussions ultimately led to no further response.

The [Buyer] neither filed a defense nor submitted any evidence during the proceedings. 14

Upon review, this Court finds that the evidence submitted by the [Seller] is legally obtained, relevant, and authentic. As the [Buyer] failed to appear for cross-examination or raise any written objections, it is deemed to have waived its right to challenge the evidence and shall bear the corresponding legal consequences. Accordingly, the Court admits the above evidence into the record and considers it corroborated. 15

Findings of Fact

Based on the statements of the parties and the evidence examined and verified by the Court, the facts are ascertained as follows: 16

In September 2019, the [Seller] and the [Buyer] engaged in business negotiations through email correspondence. The parties agreed that the [Buyer] would purchase eight semitrailers from the [Seller]. They reached an agreement on the model, unit price, quantity, payment method, beneficiary information, and receiving bank. The [Seller] subsequently issued Purchase Order No. EC201909 to record these terms. According to the contents of the Purchase Order, the total price for the eight semitrailers was [USD] 30,029.28, with freight charges of [USD] 3,957. The goods were to be shipped to Montreal under CFR (Cost and Freight) Incoterm. The transaction was structured as a credit sale, requiring a first installment payment (30% deposit plus freight) of [USD] 12,965.78, with the outstanding balance of [USD] 21,020.50 to be paid in full before 1 June 2020. The Purchase Order also specified the [Seller]'s designated payee and receiving bank details at the bottom. 17

Subsequently, the [Seller] engaged Shenzhen Hongjing International Freight Forwarding Co., Ltd. to handle export customs declaration and related shipping procedures. The Export Customs Declaration of the People's Republic of China indicates that the B/L number was A1912212382; the domestic consignor was the [Seller]; the overseas consignee was the [Buyer]; the port of destination was in Canada; the mode of transport was by sea; the freight 18

charge was [USD] 3,957; the commodity code was 8716100000 semitrailers; and the quantity was eight vehicles, comprised of 12 packages. On 21 December 2019, the Dapeng Customs Document Review Centre issued an Electronic Notice of Customs Release for Export approving the release of the goods. According to the B/L, the shipment date was 24 December 2019, with a total of twelve packages. The consignor was the [Seller], and the consignee was the [Buyer]. The Notify Party field on the B/L indicates: *SAME AS CONSIGNEE; ALSO NOTIFY PARTY*.

On 13 December 2019, the [Seller] received a payment of [USD] 12,965.78 from a third party, 8378886 Company. The actual credited amount to the [Seller]'s account was [USD] 12,955.78, due to a [USD] 10 bank service fee deduction. **19**

According to the registration documents, 8378886 Company was incorporated in the Province of Quebec, Canada, with Ms Shanshan He as its sole director. **20**

11319272 Canada Inc. (the [Buyer]) was likewise registered in the Province of Quebec, Canada, with Mr Jonathan Di Donato and Ms Shanshan He as members of its board of directors. **21**

On 16 June 2021, as the [Buyer] failed to pay the outstanding balance by the due date, the [Seller] issued a formal demand letter to the [Buyer] seeking payment. **22**

On 6 January 2022, the [Seller] entered into a Civil Litigation Representation Agreement with Guangdong Jinqiao Baixin Law Firm, retaining lawyers, including Lu Lin, to act as its authorized litigation representatives in this case, incurring attorneys' fees of [RMB] 28,000. **23**

Reasoning of the Court

1. [Applicability of the CISG]

The Court holds that the [Seller] is a company registered in the People's Republic of China, and the [Buyer] is a company registered in Canada. This case concerns a dispute arising from an international commercial transaction. Accordingly, the procedural matters shall be governed by the special provisions on foreign-related civil procedure set out in Part IV of the Civil Procedure Law of the People's Republic of China. Given the [Seller]'s claims in this case, the cause of action is determined to be a dispute arising out of an international contract for the sale of goods. As both China and Canada are Contracting States to the United Nations Convention on Contracts for the International Sale of Goods (CISG), and the parties have not explicitly excluded the application of the Convention, the present case shall be adjudicated in accordance with the provisions of the CISG. **24**

2. [Validity of the Contract]

In the present case, the [Buyer] placed an order with the [Seller] for the subject goods. The correspondence between the parties demonstrates their communications by email regarding the consignee of the goods, the destination port, and the form of the B/L. The evidence submitted by the [Seller], including the customs declaration, the release notice, and the B/L, **25.1**

demonstrates that the [Seller] fulfilled its delivery obligation to the [Buyer] as agreed. The [Buyer] subsequently took delivery of the goods supplied by the [Seller]. Accordingly, a valid international contract for the sale of goods was concluded between the parties, which does not contravene any mandatory provisions of laws or administrative regulations and is therefore legally binding. Both parties are obliged to perform their respective obligations as stipulated.

3. [The Remaining Unpaid Purchase Price]

Pursuant to Art. 30 CISG, «The seller must deliver the goods, hand over any documents relating to them and transfer the property in the goods, as required by the contract and this Convention.» Art. 53 provides that «The buyer must pay the price for the goods and take delivery of them as required by the contract and this Convention.» The [Seller] has duly performed its obligation to deliver the goods. Therefore, upon taking delivery of the subject goods, the [Buyer] was obligated to pay the remaining purchase price. However, after paying the first instalment (comprising a 30% deposit and freight, totalling [USD] 12,965.78) through its associated 8378886 Company (whose shareholder is Ms. Shanshan He, also a board member of the [Buyer]), the [Buyer] failed to pay the outstanding balance of [USD] 21,020.50 by the agreed due date. Such conduct constitutes a fundamental breach of contract. **25.2**

Consequently, the [Seller]'s claim for payment of the remaining unpaid purchase price of [USD] 21,020.50 is hereby supported in law.

4. [Attorneys' Fees]

Art. 74 CISG provides that «Damages for breach of contract by one party consist of a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach. Such damages may not exceed the loss which the party in breach foresaw or ought to have foreseen at the time of the conclusion of the contract.» The text of Art. 74 does not explicitly stipulate whether such damages include litigation costs, such as attorneys' fees, incurred in pursuing remedies for the breach. According to CISG Advisory Council Opinion No. 6, Paragraph 5, «Under Article 74, the aggrieved party cannot recover expenses associated with litigation of the breach.» Furthermore, the parties did not reach any agreement regarding the reimbursement of attorneys' fees or similar expenses in the event of breach, neither during the performance of the contract nor the subsequent negotiations concerning the dispute. In view of these facts and in reference to the aforementioned opinion of the CISG Advisory Council, the Court finds that the [Seller]'s claim for attorneys' fees lacks both legal and factual basis and is therefore not supported. **26**

Judgment

The [Buyer] was duly summoned by this Court but failed to appear for the proceedings. The Court hereby renders a default judgment in accordance with the law. **27.1**

In accordance with the stipulation of Art. 30, 53 and 74 CISG, Articles 67 and 147 of the Civil Procedure Law of the People's Republic of China, it ordered as follows: **27.2**

1. The [Buyer], 11319272 Canada Inc., shall, within ten (10) days from the date on which this judgment becomes legally effective, pay to the [Seller], Guangdong Qituo Camping Vehicle Industry Co., Ltd., the outstanding purchase price of [USD] 21,020.50.
2. The other claims for relief sought by the [Seller] are hereby dismissed.

Should the obligation to pay a sum of money not be discharged within the period specified by this Judgment, the party obligated shall pay double the interest for the period of delayed performance, pursuant to the provisions of Article 260 of the Civil Procedure Law of the People's Republic of China. **27.3**

The case acceptance fee of [RMB] 3,883 (prepaid by the [Seller]) shall be borne by the [Buyer], 11319272 Canada Inc. **27.4**

Any party dissatisfied with this judgment may, within fifteen (15) days from the date of service (for the [Seller]) or within thirty (30) days from the date of service (for the [Buyer]), submit an appeal petition, together with the necessary copies for each opposing party, to this Court for transmission to the Foshan Intermediate People's Court of Guangdong Province, People's Republic of China. **27.5**