

CISG-online 1611	
Jurisdiction	China
Tribunal	中华人民共和国最高人民法院 (Supreme Court of the People's Republic of China)
Date of the decision	21 September 2005
Case no./docket no.	(2004) Min Si Ti Zi Di No. 4
Case name	<i>Panda S.r.l. v. Shunde Westband Furniture Co., Ltd.</i>

Translation by Zheng Xie***

The [Buyer], Shunde Westband Furniture Co., Ltd., objected to the Higher People's Court of Guangdong Province's judgment (2002) Yue Gao Shen Jian Zai Zi Di No. 27 on the dispute with the [Seller], Panda S.r.l., over payment of the contract price and applied to the Supreme Court for retrial. After reviewing this case, the Supreme Court had handed down Civil Decision (2001) Min Si Jian Zi Di 64-1 remanding this case for retrial.

For this retrial, the Supreme Court formed the collegial bench including Chief Judge, Lu Xiaolong, Assistant Judge, Ren Xuefeng, and Assistant Judge, Gao Xiaoli. The collegial bench held a public court session to hear the case on 20 June 2005. The [Seller] authorized its attorney, Liu Wei, to participate in the litigation. The Court served the summons on the [Buyer] according to Item (1) of Article 247 of the Law of Civil Procedural of the People's Republic of China. The [Buyer] was not present in the court session without any justifiable reason. This case was closed. After hearing the case, the collegial bench confirmed the following facts:

[Facts of the case:]

On 5 December 1997, the [Seller] and the [Buyer] signed an Agreement stipulating:

(1)

The [Seller] should exclusively supply furniture made in Italy to the [Buyer] in the Chinese market;

(2)

The [Buyer] should purchase furniture made in Italy from the [Seller] and should not do business in furniture made in Italy with any other Italian company or other foreign companies;

* All translations should be verified by cross-checking against the original text. For purposes of this translation, Plaintiff of Italy is referred to as [Seller]; Defendant of the People's Republic of China is referred to as [Buyer]. Amounts in the currency of the United States (dollars) are indicated as [US \$]; amounts in the currency of the People's Republic of China (*renminbi*) are indicated as [RMB].

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(3)

The [Buyer] should guarantee to sell at least US \$100,000 furniture made in Italy;

(4)

The [Seller] should guarantee to load the containers of furniture on board and deliver the goods in term of CIF Hong Kong, and the [Buyer] should timely take the delivery at the destination port;

(5)

The [Seller] should supply the goods to the [Buyer] only in entire containers, and if part of the goods under one order exceeds the space of an entire container, this part shall be delivered with those under the next order;

(6)

The [Seller] reserves the right to appraise each of the [Buyer]'s orders, and each of the [Buyer]'s orders shall only take effect after the [Seller]'s written confirmation;

(7)

The parties would arrange exhibition and storage of some furniture, which in any event should exceed US \$100,000. Only when the Agreement is suspended due to any reason, would the [Buyer] make the payment at a reduced price by the parties' agreement; the furniture for exhibition and storage can only be adjusted by the parties' agreement;

(8)

The [Buyer] promises to make payment for each order by irrevocable Letters of Credit, and each payment shall be made unconditionally when the order is performed; the goods described in Item (7) are not included in this Item;

(9)

The valid period of the Agreement is three years from 1 January 1998, and can be renewed;

(10)

Neither party can unilaterally cancel this Agreement; only when the minimum sales volume described in Item (3) cannot be reached, can one party cancel the Agreement.

After signing this Agreement, the [Seller] delivered three instalments of furniture to Hong Kong on 18 January, 24 January, and 17 February 1998, respectively, and the [Buyer] took the deliveries in Hong Kong and transported the goods to Mainland China. As to these three instalments, the total price recorded in the invoices issued by the [Seller] and declared to customs was US \$105,326.

The Court also found that the [Seller] is a limited liability company established on 3 July 1997 with the approval of the local business, industry, manufacture and agriculture management bureau, and that its business scope is producing wood processing machines and technology, and instruction of installing the above machines and production line, etc. The [Buyer] is a Sino-foreign contractual limited liability company established on 28 September 1994 with the National Industry and Commercial Bureau. Its business scope is to manufacture and sell furniture.

On 20 August 1998, with the approval of the National Industry and Commercial Bureau, the [Buyer] changed its name to Shunde Westband Furniture Co., Ltd. After the name was changed, the [Buyer] still used the seal with the former name for civil activities.

[Proceedings before the Court of First Instance, the Intermediate People's Court Foshan:]

On 18 May 2000, the [Seller] filed the lawsuit with the Intermediate People's Court Foshan, Guangdong Province, against the [Buyer] for non-payment of the contract price, requesting the Court to rule that the [Buyer] should pay the [Seller] the contract price of US \$105,326, and the penalty of renminbi [RMB] 265,534 for delayed payment, and should also compensate the [Seller] for the loss of RMB 1,500,000 and bear the litigation fee.

The [Buyer] filed a counterclaim alleging that:

- The parties signed an Agreement stipulating that the [Seller] should exclusively supply furniture made in Italy to the [Buyer] for sales in the Chinese market, but did not stipulate quantity, quality, price, delivery time, liability of breach, etc;
- The three instalments of goods delivered by the [Seller] were not those ordered by the [Buyer], but for exhibition; according to Article 7 of the Agreement;
- The ownership of the goods for exhibition was not transferred; and
- The [Buyer] was not obligated to pay the price of these three instalments; only when the Agreement was cancelled, could the goods be sold to the [Buyer] at a reduced price, which should be negotiated by the parties; otherwise, the [Seller] could take back the goods;
- The quality, model and price of these three instalments of goods did not fit the local market and consumers' demands, and the [Buyer] sent two faxes to the [Seller] asking for its proposal for these goods on 18 December 1999 and 18 April 2000, respectively; otherwise, the [Seller] should move out the exhibited goods. However, the [Seller] did not dispose the goods at all.

The [Buyer] requested the Court to rule that the [Seller] should either move out the exhibited goods or sell them to the [Buyer] at a reduced price, and should pay the [Buyer] for the exhibition fee and the storage charges, totalling RMB 100,000, and bear the counterclaim fee.

[Decision of the Intermediate People's Court Foshan:]

After hearing the case, the Court of First Instance, the Intermediate People's Court Foshan, held that the parties did not stipulate the applicable law, and according to the principle of most proximate connection, the laws of the People's Republic of China should apply to this case.

According to the relevant law of the PRC, the [Buyer] neither had foreign trade power nor obtained the approval of the relevant foreign trade authority, so the [Buyer] violated the relevant law and regulations of the PRC governing foreign trade, and the Agreement had no legal effect. As to the invalidity of the Agreement, both parties had fault, they should bear their

respective legal liability. The goods which the [Buyer] received according to the invalid Agreement were still in the warehouse, and should be returned to the [Seller]. However, the [Seller] did not make such request, so the Court did not rule on this.

The [Seller]'s claim that the [Buyer] should pay the contract price of US \$105,326 and delay penalty of RMB 265,534, and compensate for the loss of RMB 1,500,000, lacked legal and factual basis, so the Court dismissed this claim. The [Buyer] as the importer should have known that its activity was invalid, but it still directly imported furniture from the [Seller]; therefore, the [Buyer] also had fault to cause the activity to be invalid, so it should bear the charges for storing the above goods for the [Seller]. The [Buyer]'s counterclaim for storage charges of RMB 100,000 lacked legal basis, so the Court dismissed this counterclaim.

According to Articles 5 and 9 of the Law of the People's Republic of China on Contracts Involving Foreign Interest, and Articles 58 (1)[5] and Article 145 of the General Principles of Civil Law of the People's Republic of China, the Intermediate People's Court Foshan ruled that (1) the [Seller]'s claims were dismissed and (2) the [Buyer]'s counterclaims were dismissed. The litigation fee was RMB 17,709, which the [Seller] should bear; the counterclaim fee was RMB 3,510, which the [Buyer] should bear.

[Proceedings before the Court of Second Instance, the Higher People's Court of Guangdong Province:]

The [Seller] objected to the above judgment and appealed to the Higher People's Court of Guangdong Province alleging that the parties did not need to stipulate the applicable law in the Agreement or after the dispute arose because China and Italy are Contracting States of the United Nations Convention on Contracts for International Sales of Goods (CISG), so CISG should apply to the Agreement signed by the parties of these two countries. According to the CISG, the Agreement signed by the parties was legally established. The [Seller] had performed its duties in accordance with the Agreement; the [Buyer] refused to make payment, which constituted a fundamental breach, so it should be liable for the breach. However, the Court of First Instance did not consider the nature of the dispute, and the parties' dispute was still in the same status as before the litigation, which was inconsistent with the principle and purpose of the litigation. Therefore, the [Seller] asked the Court of Second Instance to rule that the [Buyer] should pay the contract price and the delay penalty.

In its defense, the [Buyer] alleged that according to the principle of most proximate connection, the laws of the People's Republic of China should apply to this case; that the parties Agreement was only an intent to contract, and that the goods delivered by the [Seller] were for exhibition and different from those under the Agreement, so the [Buyer] was not obligated to make the payment.

[Decision of the Higher People's Court of Guangdong Province:]

After hearing this case, the Higher People's Court of Guangdong Province held that the dispute in this case arose due to the [Buyer]'s non-payment to the [Seller]. The [Seller]'s place of business was in Italy, and the [Buyer]'s place of business was in China. On 5 December 1997, the parties signed an Agreement for the sale of furniture made in Italy. The Agreement was signed

by parties of different countries. Because the parties did not stipulate the applicable law in the Agreement, and these two countries are Contracting States of the CISG, according to the principle that international conventions preempt domestic laws, the CISG should preempt and apply to this case.

Although the [Buyer] did not have foreign trade power, and the Agreement between the [Buyer] and the [Seller] was invalid according to the relevant foreign trade law of the People's Republic of China; however, according to Article 4(a) of the CISG:

«This Convention governs only the formation of the contract of sale and the rights and obligations of the seller and the buyer arising from such a contract. In particular, except as otherwise expressly provided in this Convention, it is not concerned with:

(a) the validity of the contract or of any of its provisions or of any usage ...»

the validity of the Agreement did not affect the rights and obligations of the parties in international sales of goods.

The [Seller] shipped the three instalments of furniture from Italy to Hong Kong, and delivered the goods to the [Buyer]; the [Buyer] transported the goods from Hong Kong to mainland China, and confirmed receipt of these three instalments of furniture and three invoices issued by the [Seller]. The [Seller] alleged that this shows that the [Seller] completed its obligations to deliver the goods to the [Buyer]; although the parties did not stipulate the price of the goods, the [Buyer] kept silent on the price of these three instalments of furniture after receiving the three invoices with the total value of US \$105,326 issued by the [Seller].

Article 55 of the CISG stipulates:

«Where a contract has been validly concluded but does not expressly or implicitly fix or make provision for determining the price, the parties are considered, in the absence of any indication to the contrary, to have impliedly made reference to the price generally charged at the time of the conclusion of the contract for such goods sold under comparable circumstances in the trade concerned.»

In addition, when doing the customs declaration, the [Buyer] declared the price recorded in these three invoices. Therefore, the [Buyer] admitted the price recorded in the invoices by the implied expression. According to Articles 53 and 78 of CISG, the [Buyer] was obligated to pay the contract price plus interest. In both the first and second instances, the [Seller] expressed that it would sell the goods to the [Buyer] at 80% of the price recorded in the invoices; this is the party's substantive right, and the Court approved. Accordingly, the [Buyer] should pay the [Seller] 80% of the total contract price of US \$105,326 (i.e., US \$84,260.8) plus interest (calculated at the loan interest rate of Bank of China at the same time from 18 February 1998 to the day when the payment is actually made) within 10 days from the day when this judgment takes effect.

The [Buyer] alleged that these three instalments of goods were for exhibition, so it should not make the payment. The Court of First Instance held that although the Agreement signed by

the parties on 5 December 1997 stipulated that some goods would be arranged for exhibition and storage, this stipulation was a special provision regarding the exhibition and storage, and the parties did not specify the quantity of the goods for exhibition; therefore, it should be read as the parties would make other stipulation with respect to the exhibition and storage. Because the parties did not reach any agreement regarding the exhibition and storage during the performance of the Agreement, the [Buyer]'s allegation that these three instalments of furniture were for exhibition was not established, and the Court of First Instance did not sustain this allegation.

Based on the above, the [Seller]'s appeal is justifiable, and the Court of Second Instance sustained it. The Court of First Instance correctly identified the facts, but it inappropriately applied the law and decided the substantive issues; therefore, the Court of Second Instance revised the judgment of the first instance according to the relevant law. Because the [Buyer] did not appeal the judgment of the first instance to dismiss its claims, it is deemed that the [Buyer] agreed on the judgment; thus, this judgment was sustained.

According to Article 153(1) [2] and [3] of the Law of Civil Procedure of the People's Republic of China, the Court of Second Instance ruled that:

(1)

Item I of the civil judgment Fo Zhong Fa Jing Zi Di No. 281 handed down by Foshan Intermediate People's Court was revoked;

(2)

The [Buyer] should pay the [Seller] the contract price of US \$84,260.8 plus interest (calculated at the loan interest rate of Bank of China at the same time from 18 February 1998 to the day when the payment is actually made);

(3)

Item II of the judgment of the first instance was sustained. The litigation fees for the first and second instances are RMB 17,709 each, totalling RMB 35,418, which the [Buyer] should bear.

[Buyer's Appeal to the Supreme Court for Retrial:]

The [Buyer] objected to the above judgment and applied to the Supreme Court for retrial. After hearing this case, the Supreme Court held that it lacked factual and legal basis for the Court of First Instance to identify the fact that the goods delivered by the [Seller] were those purchased by the [Buyer]. On 16 December 2003, the Supreme Court issued Civil Order (2001) Min Si Jian Zi Di No. 64 directing the Higher People's Court of Guangdong Province to retry this case.

[Retrial before the Higher People's Court of Guangdong Province:]

After retrying the case, the Higher People's Court of Guangdong Province held that the content of the Agreement showed that the parties did not stipulate the quality, specification, model, quality, etc, and that the Agreement did not have the character of a contract for the sale of goods; in addition, the parties stipulated in the Agreement that the [Buyer]'s order

took effect only after it was confirmed by the [Seller] in writing; therefore, the Agreement was not a contract for the sale of goods. This was a framework agreement in which, in principle, the parties agreed to have the [Buyer] exclusively sell the furniture made in Italy. The Agreement was reached by the parties voluntarily, and was an intent regarding the [Buyer]'s exclusive sale of furniture made in Italy in the Chinese market. The Agreement did not violate any prohibiting regulations of the PRC and did not stipulate that the [Buyer] should be responsible to import the goods; therefore, the Agreement was valid.

The [Seller]'s place of business place is in Italy, the [Buyer]'s place of business is in Shunde, Guangdong Province, China, and the performance place stipulated in the Agreement is in Hong Kong. The parties did not stipulate the applicable law in the Agreement or after the dispute arose. According to the principle of most proximate connection, the laws of the PRC should apply to this case. The Court of First Instance held that the Agreement was a contract for the sale of goods. This was inconsistent with the facts; it was inappropriate for the Court of First Instance to apply the CISG to this case. Because in the Agreement, the parties did not specify that the three instalments of furniture were goods for the [Buyer] or for exhibition, it lacks basis for the [Buyer] to allege that the three instalments were for exhibition, or for the Court of First Instance to hold that the three instalments were goods purchased by the [Buyer]. Both the [Seller]'s claim that the [Buyer] should pay the contract price and the [Buyer]'s claim that the [Seller] should pay the storage charges lack basis, so these claims were dismissed. Both parties were at fault regarding to the indefinite stipulation in the Agreement. Considering the fact that the three instalments of furniture had already been shipped to China, the Court of First Instance ruled that these three instalments should be sold by auction, and the price received from the auction should be paid to the [Seller]; and that each party should bear 50% of the loss after the auction.

In sum, the Court of First Instance had correctly identified the facts, but mistakenly identified the nature of the Agreement and the substantive issues. After the judicial committee discussed this case, the Court of Second Instance, according to Article 153 (1)[2] of the Law of Civil Procedure of the PRC, ruled that:

(1)

Items 1 and 3 of the civil judgment (2000) Yue Gao Fa Jing Er Zhong Zi Di No. 591 were sustained;

(2)

Item 3 of the civil judgment (2000) Yue Gao Fa Jing Er Zhong Zi Di No. 591 was revoked;

(3)

The three instalments of goods disputed in this case should be disposed by auction when this judgment took effect, and the price received from the auction should be paid to the [Seller]; the original contract price of the above three instalments was US \$105,326; the difference between this price and the amount received from the auction was the loss, which the [Seller] and the [Buyer] should bear 50% respectively. The [Buyer] should pay the [Seller] 50% of the loss within 10 days after the auction price was decided. The litigation fees for the first and

second instances were RMB 17,709 each, which the [Seller] and the [Buyer] should bear 50% each, respectively.

[Proceedings before the Supreme Court:]

When the above retrial judgment was handed down, the [Buyer] objected to it, and applied to the Supreme Court for retrial by alleging:

1.

The retrial judgment of the Higher People's Court of Guangdong Province did not correct the mistake of identification of facts and application of laws in the second instance judgment.

Because the Court ruled that the Agreement signed by the parties was valid, the facts should be identified according to the Agreement. The parties did not reach a written agreement on the order. Under this circumstance, the three instalments of goods delivered by the [Seller] could only be deemed as some quantity of goods for exhibition and storage stipulated in the Agreement, and the ownership of the furniture still belonged to the [Seller]. However, the Court in the retrial judgment decided that the three instalments of furniture were neither those for sales between the parties nor those for exhibition or storage. Obviously, the Court in the retrial judgment did not identify the ownership of the three instalments of furniture, which caused the retrial judgment to be unfair.

2.

Because the ownership of the three instalments of furniture was not identified, the retrial judgment was unjustifiable. The Court in the retrial judgment decided that the Agreement between the parties did not have the legal character of a sales contract; this showed that the purpose of the [Seller]'s shipping of the furniture was not for supplying the goods, and the [Buyer]'s taking delivery was not acceptance of the goods. Therefore, the ownership of these three instalments of furniture should belong to the [Seller]. When the ownership of the goods was not transferred, the goods were stored in the [Buyer]'s warehouse; this showed that the relevant storage charges had already been incurred, so it was not inappropriate for the [Buyer] to claim storage charges from the [Seller]; however, the Court in the retrial judgment ruled that each party should bear 50% of the loss after the furniture was sold by auction, and this was unjustifiable.

The [Buyer] has requested the Supreme Court to revoke Item 1 and Item 3 of civil judgment (2002) Yue Gao Fa Jian Min Zai Zi Di No. 27, and to rule that:

- The [Seller] should move the goods from the [Buyer]'s warehouse within a stipulated time at its own expense;
- The [Seller] should pay the [Buyer] storage charges according to the domestic market price, and other economic loss of RMB 100,000; and
- The [Seller] should bear the litigation fees for the first and second instances.

[Decision of the Supreme Court:]

After hearing this case, the Supreme Court held that:

(1) Nature of the dispute and application of the law

The [Seller] is a limited liability company established in Italy and the [Buyer] is a limited liability company established in China, so the disputes on performance of the Agreement between the parties were commercial disputes involving foreign interest.

Because the parties neither stipulated the applicable law in the Agreement nor reached any supplementary agreement after the disputes arose, according to Article 145 (2) of the Law of Civil Procedure of the People's Republic of China, the laws of the country with the most proximate connection should apply. The [Buyer] is a Chinese legal person, the Agreement was signed in China, the purpose of the Agreement was to sell furniture made in Italy in the Chinese market, the essential performance places including destination, exhibition and storage place, were in China, the language in the Agreement was Chinese, and Italy was only the [Seller]'s business place and shipping place; therefore, regarding the conclusion and performance of the Agreement, compared with Italy, China had more proximate connections in terms of quantity and quality of connection, and the laws of the PRC should apply to this case. China and Italy are Contracting States of the CISG, and the CISG applies to the disputes between the parties in China and Italy, respectively.

However, the legal relationship stipulated in the Agreement between the parties included more than sales of goods. The parties in the Agreement stipulated exhibition and sales. The stipulation on exhibition and storage was the step before the sale of furniture. Only disputes arising during the placing of orders or thereafter pertain to the sales relationship. Because the parties disputed as to whether the three instalments of furniture were for exhibition or for sales, the Court should not apply CISG only; it should apply the relevant laws of the PRC to decide whether the parties established the legal relation of sales.

(2) Nature and validity of the Agreement

The nature of the Agreement should be decided based on the content of the Agreement. The Agreement in this case included two essential parts: one was that the [Seller] should provide some quantity of furniture made in Italy as samples for exhibition in China in order to attract Chinese consumers; the other was that the [Buyer] should place orders with the [Seller] according to the orders of its domestic customers. The Agreement did not stipulate the name, specification, quantity, delivery time, delivery term, unit price and total price of the goods, so it did not have the basic character of a sales contract.

According to Article 6 of the Agreement, the establishment of the parties' sales relationship should go by the process of the [Buyer] placing orders and the [Seller]'s appraisal and written confirmation; each order would take effect only after the [Seller] confirmed in writing. Therefore, the Agreement was only an intent or principle for the parties to arrange the exclusive sales of furniture made in Italy, it was a pre-arrangement before the parties established a sales relationship, and was not a sales contract between the parties. The Agreement reached by the

parties did not violate any mandatory regulations of the PRC, so it was valid. The Court of Second Instance, the Higher People's Court of Guangdong Province, held that the Agreement was not a sales contract, but a basic framework agreement setting forth the principles for the exclusive sales of furniture made in Italy, which was correct and consistent with the parties' true intent.

(3) Nature of the three instalments of furniture

According to the identified facts, after signing the Agreement, the [Seller] shipped three instalments of furniture to the [Buyer]. It is pivotal in this case to decide whether these three instalments were for exhibition and storage or for sales to the [Buyer]; as to this, the parties had different opinions.

The nature of these three instalments should be decided according to the comprehensive facts of establishment and performance of the Agreement. The content of the Agreement showed that Article 6 and Article 7 stipulated the process of the [Buyer]'s placing orders, the conditions of the orders taking effect, quantity, total price, adjustment and disposal of the goods for exhibition and storage. According to the facts identified in the first and second instances, retrial and the Supreme Court's review, these three instalments of furniture were neither ordered by the [Buyer], nor appraised or confirmed by the [Seller] in writing; in addition, no evidence proved that during the performance of the Agreement, the parties modified or adjusted the above Article 6 and Article 7. The [Seller] did not provide any evidence to prove that the [Buyer] had promised to purchase these three instalments of furniture. According to the identified facts, after the [Seller] shipped the goods to Hong Kong, the [Buyer] took the delivery and completed the customs declaration when importing the goods, and did not raise any objection to the price provided by the [Seller]. However, it could not be concluded that the [Buyer] purchased the three instalments of furniture by its taking delivery and completing the customs declaration, because the [Buyer] also needed to take delivery and complete customs declaration to perform Article 7 of the Agreement for the exhibition and storage of the goods. The [Buyer] did not raise any objection to the price provided by the [Seller]. However, this could not be deemed as the [Buyer]'s implied agreement on the price of these three instalments of furniture, because the price of the goods for exhibition and storage had nothing to do with the [Buyer], and it was impossible for the [Buyer] to raise any objection to the price of the goods for exhibition and storage. When the Agreement did not stipulate the price, if the three instalments of furniture were purchased by the [Buyer], it did not prove possible for the parties to reach an agreement by negotiation or discussion; otherwise, the [Seller] could not deliver the goods, and the [Buyer] could not take the delivery. However, the fact in this case was that when the Agreement did not stipulate the price, and no evidence proved that the parties negotiated the price before these three instalments were shipped, the [Seller] shipped the goods, and the [Buyer] took the delivery.

The only reasonable explanation to this should be that the goods were for exhibition and storage, which was definitely stipulated in the Agreement. Therefore, the [Buyer]'s taking the delivery, completing the customs declaration, and raising no objection to the price should not be deemed that it purchased the three instalments of furniture at the [Seller]'s unilaterally quoted price. Considering the fact that the parties stipulated the goods for exhibition and

storage in the Agreement, the [Seller] did not submit any evidence to prove that the parties had cancelled the arrangement for exhibition and storage. The [Buyer], as a Sino-foreign contractual enterprise, manufactured and sold furniture itself and did not need the Italian furniture, and the purpose of the Agreement for the [Buyer] was to purchase furniture from the [Seller] based on its domestic customers' orders and to earn the price difference.

The Court decided that the three instalments of furniture were for exhibition and storage, but not for sales to the [Buyer]. In the retrial judgment, the Higher People's Court of Guangdong Province decided that the three instalments of furniture were neither for exhibition or storage, nor for sales. This was neither consistent with common knowledge nor consistent with the parties' stipulation in the Agreement; the identification of facts was indefinite. In the first and second instances, the retrial and the Supreme Court's review, the [Buyer] insisted that the three instalments of goods should be for exhibition and storage; that is consistent with the stipulation in the Agreement and the facts of performance, so the Supreme Court sustains this allegation. The [Seller] alleged that the three instalments of furniture were purchased by the [Buyer], and that the [Buyer] should pay the contract price; this claim lacked factual and legal basis, and is dismissed.

(4) Arrangement of the goods for exhibition and storage

In Article 7 of the Agreement, the parties stipulated that the goods for exhibition and storage would be purchased by the [Buyer] at a reduced price agreed by the parties, when the Agreement was cancelled due to any reason. The price for the goods for exhibition and storage could only be adjusted when the parties so agreed. Therefore, the goods for exhibition and storage should be handled according to the Agreement. However, in the first and second instances, the [Seller] agreed to sell the goods to the [Buyer] at 80% of the invoice price, but the [Buyer] wanted to reduce the price to 40% of the invoice price. The parties did not reach an agreement on how to dispose of the goods. When the Supreme Court reviewed the case, although the summons was legally served, the [Seller] was not present at the court session; therefore, it was impossible for the parties to reach an agreement to reduce the price of the three instalments. Because the ownership of the three instalments was not transferred to the [Buyer], the [Seller] should dispose these three instalments of furniture at its own cost, and should bear the loss. In the retrial judgment, the Higher People's Court of Guangdong Province decided that the [Seller] should bear 50% of the loss, which was unfair and lacked legal basis, so the Supreme Court should revise this.

(5) Storage charges

The parties did not stipulate the storage charges for the goods for exhibition and storage. According to the principle of fairness, the storage charges, which had been paid by the [Buyer], should be shared by the [Buyer] and the [Seller]. When the Supreme Court reviewed the case, the [Buyer] requested the [Seller] to pay the storage charges of RMB 100,000, which should be deemed that the [Buyer] gave up the right to claim an amount in excess of RMB 100,000. Therefore, the [Seller] should only pay the [Buyer] RMB 100,000 of the storage charges for the three instalments of furniture.

In sum, in the retrial judgment, Guanggong Higher People's Court made some mistakes when identifying the facts and applying the laws, so the Supreme Court should revise that judgment.

According to Articles 84, 85, 106(1) of the General Principles of Civil Law of the People's Republic of China, Article 177 (2) of the Law of Civil Procedure of the People's Republic of China, and Article 201 of Supreme Court's Opinions on Application of the Law of Civil Procedure of the People's Republic of China, the Supreme Court rules that

1. The retrial civil judgment (2002) Yue Gao Fa Jian Min Zi Di No. 27 of Guangdong Higher People's Court, the Civil Judgment (2000) Yue Fa Gao Jing Er Zhong Zi Di No. 591, and the civil judgment (2000) Fo Zhong Fa Jing Chu Zi Di No. 281 issued by Fo Shan Intermediate People's Court are revoked.
2. The [Seller]'s claims are dismissed.
3. The [Seller] should dispose of the furniture disputed in this case within 30 days after this judgment takes effect.
4. The [Seller] should pay the [Buyer] the storage charges of RMB 100,000 within 30 days after this judgment was served.

The litigation fee for the first instance was RMB 17,709, the fee for the counterclaim was RMB 3,510, and the litigation fee for the second instance was RMB 17,709. The total of these fees is RMB 38,928, which the [Seller] should bear.

This is the final judgment.