

Mind your signature on legal documents and avoid being strapped in China

Description

Just recently a poor guy from Europe called me for advice and help regarding his being stopped from leaving China.

The client is a director of a European company that is engaged in trading business with sellers in Shanghai. He came to Shanghai as a representative of its company in dealing with their business. The plaintiff is a Shanghai local company that purchases goods as per orders issued by this client on behalf of his company. Then the goods will be sent to another company that has the license to do exporting and the latter will export the goods to the said European company. The European company will pay money to the exporting company first and then the exporting company will transfer the money to the purchasing company. Once, in order to substantiate and calculate payment in arrears, they did an account checking and in the end, it was confirmed that there was an outstanding bill to be paid by the European company. Statement of the outstanding bill is made in writing signed by three parties to the deal. In this statement, an amount of RMB 500,000 was confirmed to be paid and the client signed on the statement without indicating that he would be liable for paying the debts personally. Later the plaintiff, the purchasing company sued the client asking the client to personally assume the debt.

The facts are clear. The purchasing company knowing that it is difficult to pursue the real debtor, the European company, tried to interpret the client's signature as the client's personal undertaking to pay the money while it did know that the client is just a representative of the European buyer. The client was aware that the purchasing company was being unreasonable to make the claim and believed that such claims would for sure be dismissed by court. The client managed to get the European buyer to issue a statement to court clarifying that the client is acting on behalf of it. He did not even bother to hire a lawyer to represent him in the court proceeding. Fortunately enough, the district court in Shanghai did dismiss the claim on the ground that the client is not personally liable to the debts. Then the plaintiff appealed the district court ruling to Shanghai First Intermediary Court. Shockingly, the appellate court overturned the first-trial ruling and ordered the client to pay the money as the court found that the client made inconsistent statements about his representative status (the client claimed himself as a representative of the European company at the first instance court, but later said the money in dispute was in part owed by another two companies which had nothing to do with him) which led the court to think the client was lying to the court.

What happened then was too much for the client. The plaintiff then immediately applied to enforce the effective judgment made by the appellate court and asked the court to issue an order barring the client from leaving China. Woops....

The client now approached me for help. Sorry, there is not much I can do to lift the ban unless we further ask a higher court to review and overturn the appellate ruling which may be a lengthy process ahead.

Though there is a big question mark to the appellate court judgment in terms of its correctness and justice, this is not the point this post wants to make. I write this post to get foreigners or expats in China

to learn lessons from the unfortunate event.

The first lesson is about affixing your signatures onto legal binding documents in China. Unlike Chinese companies, most western companies don't have an official binding corporate chop or seal which can be used to sign contracts. Instead, western companies employ director's signatures to bind themselves. Due to this difference, foreigners working in China tend to cling to their home practice and are less wary or vigilant about the pitfalls of using their personal signature for corporate matters. This case well illustrates this risk to those unminded people.

The second lesson is about venturing to take the risks in Chinese legal proceedings by working on their own. There are many factors such as bias and incompetence, that may inappropriately affect the judgments or results in Chinese court proceedings. Foreigners companies or individuals shall take vigilance when confronted in Chinese lawsuit and shall admit that that is an area you should not tread on your own. Otherwise, you will end up trapped here in China, esp individuals. I am sure the client must regret not using a Chinese lawyer in the case.

Date Created

May 25, 2013

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