Want to sue a Chinese company? But which court? Jurisdiction Issue

Description

I have been receiving email inquiries from abroad asking for help to sue a Chinese company that failed to deliver goods in compliance with contract terms. Very often, the foreign buyers find that the goods do not comply with quality standards and sometimes, the goods are stone, sands or useless powders. Fraud is pervasive and rampant in international trade with China.

Once the foreign buyer is scammed, they will of course think of trying to sue the Chinese supplier in order to get back their money and further to get some compensation for their losses. Very often, there are factors that often make it inappropriate for us, lawyers based in Shanghai, to represent such clients in litigating against the Chinese companies suppliers.

(1) the amount in dispute is relatively small, from a few thousands USD to tens of thousand USD;

(2) the Chinese suppliers are often located outside of Shanghai, for instance, in Shangdong, Shijiazhuang and Taiyuan. There is no jurisdiction clause in the contract providing for Shanghai court jurisdiction.

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In such a case, it may seem not worthy of hiring a Shanghai lawyer to sue the perpetrators as the legal fee coupled with travel cost will dwarf the efforts by the clients to seek justice with a Chinese court. The reason is related to jurisdiction issue under Chinese laws.

What China Civil Procedures Law say about jurisdiction?

When a Chinese court takes a litigation case, the judge will of course apply China Civil Procedures Law and related interpretations issued by China Supreme Court in deciding whether the court in question has jurisdiction over the case.

Article 23 of China Civil Procedures Law provides that (in the absence of an agreement on jurisdiction) a dispute arising out of a contract shall be adjudicated by the court in the domicile place of the defendant or in the place of performance of the contract. Accordingly, when a foreign buyer wants to sue a Chinese company, basically, he can only have two options: go to the place where the Chinese supplier is located or incorporated, or go to the place of performance of contract.

It is easy to decide on the domicile place of the defendant Chinese company. But due to drawbacks of Chinese judicial systems, it is wise for any plaintiff to be wary of suing a Chinese company in the place where the company is incorporated because local court may be too ready to be biased against foreign party, or too easy to be inappropriately influenced by the defendant through “connections”. We call this phenomena “local protectionism”. Even in a domestic dispute, the Chinese plaintiff will try to avoid suing the defendant in his or its domicile place.

So you may think of going to the place of performance of contract. But wait a minute. What is the place of performance of contract? Unlike in other countries, contract dispute jurisdiction is determined to be

in the place of the contractual obligation that is in dispute. Place of performance of contract can and ought to refer to the place of any obligations under a contract. Very often, there are multiple obligations under any given contract. It has been so elusive a concept that China judiciary has not made it clear at all, volatile to different interpretation. In practice, due to this confusion and ambiguity, it has bred most jurisdiction challenges in civil proceedings. So the foreign buyer may go to the port for litigation where the goods are delivered over rail of the buyer's ship based on the FOB term. But "FOB Shanghai" is not a ready ground for establish jurisdiction in a Shanghai court, as Shanghai has quite a few courts. So it is not a safe bet to rely on this concept of "place of performance of contract".

What is the best option now?

The best practice is always to think in advance and agree on the choice of court in the contract.

China Civil Procedures Law allows the parties to a contract to stipulate on the court to which their disputes shall be submitted for resolution. Article 34 of this Law provides that the parties to a contract may agree in writing on the forum court in the following places: domicile of defendant, place of performance of contract, place of execution of the contract, domicile of plaintiff, place where the subject matter is located and other places that have actual connection with the dispute in question.

With this rule in mind, the parties may agree on the court of jurisdiction in the relevant contract they sign, and the court should be the one outside of the domicile places of both parties, which is easy to accept by the parties.

In practice, by taking advantage of this Article 34 in regard of place of execution of contract, foreign buyers may choose a district court in Shanghai to be the forum court simply by stating in the contract that the contract has been executed in Pudong New Area (other districts such as Huangpu, Changning, Jing'an etc.) in Shanghai despite the fact that the contract is not executed or signed in Shanghai at all and the suppliers are not located in Shanghai. This is possible because China Supreme Court has made it clear in one of its interpretation concerning the determination of place of execution of contract.

Of course, to choose a Shanghai court is based on the general belief in China that Shanghai as an international metropolis city has a better legal environment than the rest of China. My personal experience has warranted that belief.

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By the way, this article does not discuss arbitration which is very much used as an alternative way of dispute resolution to court litigation.

Date Created
October 2013
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