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Manufacturer's Corner: Manufacturer Gets Second Chance Following Unsuccessful Litigation With Supplier

JUNE 15, 2015| PUBLICATIONS

This is a story about a U.S. manufacturer who got into a dispute with its Chinese supplier. The story comes from a recent case in an Illinois federal court (handled by others, not by me or this firm).[1] Without getting too far into the details, the manufacturer decided the supplier was not holding up its end of the parties' contract, and also that the supplier was stealing trade secrets. Surely this is not the first time you have heard this story, but there are lessons to consider here, including that losing a lawsuit in China *may* not bar you from raising claims here that you could have raised in the Chinese action but did not.

The manufacturer sued the supplier for breach of contract in China. Two days later, it brought similar claims in Tennessee, and also alleged the supplier used the manufacturer's confidential information.[2]

The Chinese case resulted in a net judgment in favor of the supplier. The manufacturer appealed, and the Chinese appellate court affirmed "the majority" of the lower court's conclusions.

The supplier then counterclaimed in the U.S. action for recognition and enforcement of the Chinese judgment. The supplier also argued the manufacturer's claims in the U.S. action were barred by *res judicata* – that is, that the case already had been litigated and the parties were bound to the outcome of the Chinese action.

The manufacturer argued it was not treated fairly in the Chinese action, so the Chinese judgment should not be enforced. That argument went over about as well as you would expect, which is to say it was flatly rejected. That said, the manufacturer was not entirely off-base in its arguments: the U.S. court *could have* declined to enforce the judgment, it simply elected not to do so based on the facts presented (including that the manufacturer would have sought to enforce the Chinese judgment in the U.S. had it been more favorable). ***Lesson One***: don't sue in China unless you're prepared to accept the outcome here too. There may also be a Lesson One-(A) in there too about how U.S. companies are treated in Chinese courts, but I'll leave that issue to others.

Perhaps more significantly though, the manufacturer was a bit more successful in beating back the *res judicata* argument. The U.S. court held the CISG claims were over and done with because they were already litigated in China. But, the Court declined to find the trade secrets claim was barred. Specifically, the Court could not conclude based on the facts before it that *a Chinese court* would have found that claim barred merely because it could have been raised in the earlier Chinese action, but was not. ***Lesson Two***: if your China litigation goes sideways, don't assume you're boxed out from bringing other claims here. In the U.S., courts take a dim view of a plaintiff failing to bring all existing causes of action at once, but it is not clear (at least in the view of one U.S. court) that China does. Consequently, you may be able to get a second bite at the apple if you keep some claims in reserve. I can't say I would suggest it, but it offers some hope.

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[1] *Global Materials Technologies, Inc. v. Dazheng Metal Fibre Co. Ltd.*, 2015 WL 1977527 (N.D. Ill. May 1, 2015).

[2] I decline to speculate as to *why* the manufacturer brought two suits.

AUTHORS

- Ryan C. Hardy

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