



Missouri Court of Appeals
Southern District

Division Two

CHINA WORLDBEST GROUP CO., LTD.,)
)
Plaintiff-Appellant/Respondent,)
)
v.)
)
EMPIRE BANK,)
)
Defendant-Respondent/Cross-Appellant.)

Nos. SD30453 & SD30487
Filed: 6-12-12

APPEAL FROM THE CIRCUIT COURT OF GREENE COUNTY

Honorable J. Dan Conklin, Circuit Judge

OPINION ON MOTION FOR REHEARING OR TRANSFER

PER CURIAM.

After the issuance of this Court's opinion, Worldbest filed a timely Motion for Rehearing and an alternative Application for Transfer. *See* Rule 84.17; Rule 83.02. In the Motion for Rehearing, Worldbest contends, *inter alia*, that this Court overlooked or misinterpreted Missouri law regarding the proper measure of damages pursuant to § 400.4-103(e). According to Worldbest, this statute does not allow a bank to reduce its liability by presenting evidence regarding the quality of the goods involved in the underlying transaction. On the facts presented, we do not agree.

Derges wanted to cancel the contract. If she had, all parties could have exercised their respective UCC remedies. *See* § 400.2-106(4); § 400.2-711. Instead, almost certainly out of self-interest, Worldbest’s agent Chao convinced Derges to keep accepting shipments. Chao did so by telling Derges *not to pay on delivery*, but only after she repaired (and presumably sold) the goods. Chao also agreed to take full responsibility. One cannot fault Worldbest (through its agent, Chao) for trying to make the best of a bad situation. That’s business. But if Worldbest’s agent initiated a course of dealing inconsistent with Worldbest’s Article 4 rights, by agreeing to take full responsibility and hoping for the best, Worldbest cannot fall back on Article 4 to hang the loss on Empire after things fall apart.

The additional arguments made in Worldbest’s motion for rehearing were considered and disposed of in our original opinion. Worldbest’s Motion for Rehearing is denied.

In the alternative, Worldbest asks that we transfer this case to the Supreme Court of Missouri because the issues are of general interest and importance. We decline that invitation. Our Supreme Court always carefully considers a Rule 83.04 application and will order transfer if it sees fit. *See Tucker v. Missouri Highways and Transp. Comm’n*, 250 S.W.3d 373, 375 (Mo. App. 2008). Worldbest’s Rule 83.02 Application for Transfer is denied.

JEFFREY W. BATES, J. – OPINION AUTHOR

DANIEL E. SCOTT, J. – CONCUR

WILLIAM W. FRANCIS, P.J. – CONCUR