

CASE TRANSLATION: CHINA

PARTIES:

Yang Chunning v Han Ying

CASE CITATION:

(2005) hai min chu zi NO.4670

NAME AND LEVEL OF COURT:

Beijing Hai Dian District People's Court

DATE OF JUDGMENT:

14 July 2005

MEMBERS OF THE COURT:

Zhang Yonghua, Wang Shi and Li Chunrong

Plaintiff's Claims

The plaintiff claimed that the defendant was one of his friends. On 27 August 2004, he lent RMB 5,000 to the defendant through a remittance. On 7 September 2004, he lent a further RMB 6,000 to the defendant through a remittance. On 14 September 2004, he refused the defendant's third request to borrow money from him, and he asked the defendant to repay the money she borrowed from him on 27 August 2004 and 7 September 2004. Although the defendant agreed she would repay the aforementioned money to the plaintiff as soon as possible, the money had not been repaid. Therefore, the plaintiff initiated legal action against the defendant for the repayment of the money, and asks for his costs against the defendant.

Defendant's Defence

The defendant claimed that the plaintiff's claim is not true. At the beginning of 2004, the plaintiff borrowed RMB 11,000 from him, and then the plaintiff repaid the money to him. There is no other credit relation between them, and the plaintiff's claims are rejected.

Facts and Evidence

Through a public trial, Beijing Hai Dian District People's Court found that the plaintiff remitted RMB 5,000 and RMB 6,000 to the defendant on 29 August 2004 and 8 September 2004 respectively. The defendant claimed that the money (in the sum of RMB 11,000) was a repayment to her from the plaintiff. To prove that the money was borrowed by the defendant, the plaintiff submitted his own Philips mobile telephone with telephone number 139 xxx 2199 to the court during the process of the hearing. The plaintiff stored some of the messages in this mobile telephone, as follows:

- 15:05 PM on 27 August 2004: Please lend me some money to help me.
- 15:08 PM on 27 August 2004: Do you really agree to lend money to me? Are you afraid to be cheated?
- 15:13 PM on 27 August 2004: You are so kind! I need RMB 5,000. I have undergone an eye operation in Beijing recently, I couldn't go out of the door. Please remit the money to my card.
- 16:43 PM on 27 August 2004: Thank you for your trust.
- 19:24 PM on 29 August 2004: Hi, have you remitted the money to me?
- 14:01 PM on 7 September 2004: I need another RMB 6,000. I will return you the surplus (if any).
- 16:48 PM on 7 September 2004: I only want to ask if you could lend me some money. I saw a foreign tour advertisement yesterday, and I wish my mother could have the opportunity to travel abroad. The total expense is a bit more than RMB 10,000. However, to get rid of my mother's hesitation, I told her that the total expense is RMB 6,000. I will pay some of the expenses.
- 16:51 PM on 7 September 2004: I told my mother that the expense would be assumed by me. I only have RMB 5,000 savings, can you make an advancement for me if you have money? I will repay you after accomplishing my project.
- 10:05 AM on 8 September 2004: Are you busy? I want to ask when you can remit the money to me.
- 13:59 PM on 14 September 2004: Please transact a laundry card of Quan Jin Cheng for me. Quan Jin Cheng is near to my house, a 20% discount can be gained if transacting the card within these days.
- 11:01 AM on 15 September 2004: I have seen your message just now. Please do not misunderstand what I said, I will return the money to you as soon as possible.
- 15:30 PM on 15 September 2004: I will repay you the money one day, but not now. Please understand me. I would have not borrowed from you if I am rich.
- 10:59 AM on 16 September 2004: I promise that I will repay you if I have money.
- 11:02 AM on 16 September 2004: I know in my heart that you are very kind to me. You helped me when I was in difficulties. I felt sad the day before

yesterday when you requested me to repay you the money. I hope that you will not threaten me by referring to the money when I stay with you together. After the festival.

15. 11:17 AM on 5 January 2005: I feel that you are compelling me. I only have RMB 5,000 now.
16. 09:07 AM on 20 January 2005: Don't push me too far! Even a hare will bite when it is cornered. All problems will be settled through negotiation.
17. 10:42 AM on 26 January 2005: I will repay RMB 10,000 to you tomorrow, OK? I have collected the money just now, you should write a receipt then. I will give you the money after you have withdrawn.
18. 10:52 AM on 26 January 2005: Please prepare the receipt, I will give you tomorrow. I hope you can withdraw in advance.

The contents of the messages noted above were sent from a mobile telephone with the following number: '139 xxxx 7365'. Through verification by the court during the first hearing, the defendant acknowledged that telephone number 139 xxxx 7365 was used by her from July or August 2004 to the date of the hearing. However, during the second hearing, the defendant denied that she had used telephone number 139 xxxx 7365. Without providing any evidence, the defendant claimed that the money was repaid to her by the plaintiff.

The above facts can be proved by following evidence:

Both parties' representations; personal business vouchers of the Industrial & Commercial Bank of China; message records stored in a Philips mobile telephone.

Judgment Reasons

According to above facts and evidence, Beijing Hai Dian District People's Court considered that: in accordance with the provisions of the Electronic Signature Law of the People's Republic of China, which was implemented from 1 April 2004,¹ an electronic signature means the data in electronic form contained in and attached to a data message to be used for identifying the identity of the signatory and for showing that the signatory recognizes what is in the message, and the data message means the information generated, dispatched received or stored by electronic, optical, magnetic or similar means. The messages stored in the mobile telephone conform to the form of the electronic signature and the data message. At the same time, messages stored in a mobile telephone can give effective expression to the contents carried, and can

readily be referred to; the addressees and recipients of the messages in a mobile telephone and the time of their dispatch and receipt can be identified. By examining the reliability of generating, storing and transmitting the data messages, the reliability of the methods used to maintain the completeness of the contents and the reliability of the methods for distinguishing the addressees of the messages of the messages in the Philips mobile telephone provided by Yang Chunning, the court concluded that the contents of the messages were true as evidence.

During the first hearing, the defendant expressly acknowledged that mobile telephone number 139 xxxx 7365 was used by her, however, she withdraw her acknowledgement during the second hearing. Considering that the alteration of the expression of the intention has not been agreed by Yang Chunning, and there is no evidence to show that the acknowledgement was made under oppression or gross misunderstanding by the defendant, the court believes that the telephone number was used by Han Ying.

The contents of the messages sent from Han Ying to Yang Chunning and submitted by Yang Chunning into evidence, conformed to the amount and time recorded in personal business vouchers of the Industrial & Commercial Bank of China from Yang Chunning to Han Ying, and the contents of the messages in the mobile telephone also illustrated Han Ying's intention to pay the load back, so the fact that Han Ying has borrowed money from Yan Chunning can be confirmed.

Conclusion

In accordance with article 206 of Contract Law of the People's Republic of China, Beijing Hai Dian District People's Court judged that: the defendant should repay RMB 11,000 to the plaintiff within seven days after the judgment has taken into effect. The acceptance fee of the case, which amounts to RMB 450, is to be paid by the defendant.

Commentary

This is the first case which was judged by Chinese judges based on the Electronic Signature Law of the People's Republic of China. The Electronic Signature Law has given corresponding legal status for data message and electronic signatures. In accordance with the provisions of article 8 of the Electronic Signature Law, the following factors shall be taken into consideration when the authenticity of data messages to be used as

¹ For an unofficial translation of the law, see Minyan Wang and Minju Wang, 'Translation and Introduction to the Electronic Signatures Law of

China', *Digital Evidence and Electronic Signature Law Review*, 2 (2005) 79–85.

evidence is examined: the reliability of the methods used for generating storing or transmitting the data messages, the reliability of the methods used for keeping the completeness of the contents and the reliability of the methods for distinguishing the addressers. In this case, the judges examined the truthfulness of the main evidences (namely messages) based on article 8 of Electronic Signature Law. Under the condition that the reliability of sources of the messages, the time for sending the messages and the transfer system can be confirmed, and there is no other adverse evidence which can deny the probative force of the messages, the evidence probative force of the messages can be confirmed.

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With thanks to Chen Jihong, partner of Zhong Lun Law Firm

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