UNITED NATIONS

A

General Assembly

GENERAL
Distr.
A/CN.9/SER.C/ABSTRACTS/29

10 April 2000
ENGLISH

ORIGINAL: FRENCH

UNITED NATIONS COMMISSION
ON INTERNATIONAL TRADE LAW

CASE LAW ON UNCITRAL TEXTS
(CLOUT)

Contents

INTRODUCTION

This compilation of abstracts forms part of the system for collecting and disseminating information on court decisions and arbitral awards relating to Conventions and Model Laws that emanate from the work of the United Nations Commission on International Trade Law (UNCITRAL). Information about the features of that system and about its use is provided in the User Guide (A/CN.9/SER.C/GUIDE/1/Rev.1). CLOUT documents are available on the website of the UNCITRAL Secretariat on the Internet (http://www.uncitral.org).

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V.00-53081 (E)

I. CASES RELATING TO THE UNITED NATIONS SALES CONVENTION (CISG)

Case 312: CISG 1 (1) (a); 7; 57 (1)

France: Court of Appeal of Paris

14 January 1998

Société Productions S.C.A.P. v Roberto Faggioni

Original in French

Published in French: D. [1998], obs. Bernard Audit, somm., 288; CISG-France http://witz.jura.uni-sb.de/CISG/decisions/140198.htm

A French company purchased two circus elephants from a Spanish trader. The agreed price was paid by transfer to the seller's bank account in Perpignan. The buyer, maintaining that the veterinary services had not authorized the animals' importation, "cancelled" the purchase. The seller, noting that the cancellation had taken place 70 days after the invoice date and for reasons not connected with the animals, refunded only part of the price paid. The buyer had a preventive attachment order served to freeze the seller's account and sued the seller before the Commercial Court of Paris with a view to having the contract declared avoided, the balance of the price paid refunded, damages awarded and the attachment order validated.

Invoking the Brussels Convention of 27 September 1968 on Jurisdiction and the Enforcement of Civil and Commercial Judgements, the Commercial Court declined jurisdiction in favour of the Spanish courts.

The Court of Appeal upheld the decision and applied article 5 (1) of the Brussels Convention of 27 September 1968 on Jurisdiction and the Enforcement of Civil and Commercial Judgements, according to which a defendant may be sued, in contractual matters, in the courts of the place at which the obligation forming the basis of the claim has been performed or is to be performed. In order to determine the place of performance of the obligation to refund the sales price, the Court first referred to the CISG, which is applicable by virtue of article 1 (1) (a) CISG. In the absence of any specific provisions, the Court considered, pursuant to article 7 CISG, whether the question of the place of restitution of the price by the seller following cancellation of the sale could be settled in accordance with the general principles on which the CISG is based. The Court held that the provisions of article 57 (1) CISG could not be construed as a general principle regarding the place of payment, since one party had both the capacity of seller and the capacity of creditor, with the result that the obligation to pay, in the absence of any particular stipulations, at that party's place of business could correspond to the principle of payment at the seller's domicile as well as to that of payment at the creditor's domicile. The Court therefore referred to the law applicable by virtue of the rules of private international law and consequently applied article 3 of the Hague Convention of June 1955 on the Law Applicable to International Sales of Goods. The Court thus arrived at the law of the seller and applied article 1171 of the Spanish Civil Code, which provides that payment is in principle to be made at the debtor's domicile. That place is, in the present case, the domicile of the Spanish seller. The lower-court judges had thus rightly declined to exercise jurisdiction.

Case 313: CISG 1 (1) (a); 18 (1); 25; 74

France: Court of Appeal of Grenoble

21 October 1999

Société Calzados Magnanni v. SARL Shoes General International (SGI)

Original in French

Published in French: CISG-France, http://jura.uni-sb.de/CISG/decisions/211099.htm

The buyer, a French company, placed an order with the seller, a Spanish company, for 8,651 pairs of shoes to be marketed under the "Pierre Cardin" trade name. The seller denied having received any orders and refused to deliver. The buyer resorted to substitute manufacturers. The buyer was late in supplying its retailers and 2,125 unsold pairs were returned to the buyer. The buyer then filed a claim amounting to F 712,879 for the 2,125 unsold pairs and for loss of the company's brand image. In addition, the buyer accused the Spanish company of acts of unfair competition.

The Commercial Court of Vienne, France, awarded damages to the buyer for contractual breach by the seller and for loss of its brand image. The seller lodged an appeal.

The Court of Appeal noted that both parties "accept that the Vienna Convention of 11 April 1980 on Contracts for the International Sale of Goods governs their contract since the contract was concluded between a seller and a buyer whose places of business are in different States parties to the Convention (1 (1) (a) CISG) and the subject of the contract was the sale of goods to be manufactured whose substantial materials—other than the soles and metallic decoration characteristic of the "Pierre Cardin" brand—which are necessary for such manufacture were supplied by the seller" (3 (1) CISG). Although the seller denied the very existence of a contract of sale and relied on article 18 (1) CISG, according to which silence or inactivity does not in itself amount to acceptance, the Court held that the contract had indeed been concluded, even in the absence of any express acceptance on the part of the seller. The Court referred to the practice of previous years, the seller having always fulfilled the French company's orders without expressing its acceptance. Moreover, the seller did not produce, in reply to the many letters of claim from the buyer, any document stating that it had not received any order. In addition, the seller was aware of the buyer's intention to penetrate the footwear market by the summer of 1995 and, even if it had not received any order, it should, after manufacturing samples and being left with the original material in its possession, have questioned the buyer as to how the absence of an order should be interpreted.

The Court held that "refusal, without any legitimate reason, to fulfil an order received by falsely maintaining that the order had not been placed constitutes a fundamental breach by the seller within the meaning of article 25 of the Vienna Convention".

The Court of Appeal upheld the ruling to the extent that it granted compensation for the loss suffered as a result of the refusal to deliver, referring, in that regard, to article 74 CISG. The Court noted that compensation for impairment of the trading image was not in itself recoverable under the CISG and overturned the ruling with regard to the award of damages in that respect.

The Court granted damages to the buyer in respect of its claim of unfair competition, on the basis of French domestic law, which was applicable in accordance with the rule designating the law of the place of the offence, since the Spanish company had marketed, to its own advantage, footwear liable to cause confusion with footwear which the buyer had commissioned it to manufacture and thus likely to win over the latter's clientele.

Case 314: CISG

France: Court of Appeal of Paris

21 May 1999

S.A. JCP Industrie v. ARIS Antrieb und Steuerungen GmbH

Original in French

Published In French: CISG-France, http://jura.uni-sb.de/CISG/decisions/210599.htm

The seller, a German company, delivered electronic parts called "servomotors" to the buyer, a French company, with which it maintained a commercial relationship based on a contract entered into on 30 May 1989. Claiming that the seller was in breach of its contractual obligations, the buyer terminated the contract on 24 May 1995. However, the buyer subsequently requested delivery of goods, for which the seller drew several invoices. The buyer refused to settle the invoices, alleging defects in the goods. The Commercial Court of Paris ruled that the CISG was applicable to the dispute, ordered the buyer to pay the sum, plus interest at the statutory rate as from the date of the formal demand, and dismissed the buyer's counterclaims, which had been based on the defective nature of the goods and the termination of the contractual relationship.

The Court of Appeal upheld the lower-court ruling, stating that "the court has, in this case, rightly applied the provisions of the Vienna Convention of 11 April 1980 on Contracts for the International Sale of Goods, which entered into force on 1 January 1988 and which, for States, such as France and Germany, that had ratified that Convention, serves in place of the Hague Convention of 16 June 1955". According to the French national correspondent, "this reasoning is acceptable subject to the tendentious statement that the CISG serves in place of the Hague Convention on the Law Applicable to International Sales of Goods".

The Court pointed out that "assuming to be correct the fact that the parties had agreed to make their legal relationship subject to German law under the contract entered into by them on 29 May 1989, it has to be concluded that, since the disputed invoices were issued after 20 May 1995, i.e. the date of termination of the contract, whose stipulations could no longer be implemented, the argument put forward by the seller to support the allegation that the buyer's claims are inadmissible since they were time-barred by virtue of the German Civil Code is irrelevant". The Court considered that the buyer had not furnished proof that the measures which the buyer claimed it had had to take at its customers' premises arose from defects in the equipment supplied by the seller, and accordingly dismissed the counterclaim for damages.

Case 315: CISG 38;39

France: Court of Cassation

26 May 1999

Karl Schreiber GmbH v. Société Thermo Dynamique Service et al.

Original in French

Published in French: CISG-France http://witz.jura.uni-sb.de/CISG/decisions/260599.htm; [2000] Jurisclasseur périodique (JCP), 274, note Laurent Leveneur; [November 1999] Contrats-Concurrence-Consommation, 14, note Laurent Leveneur

The buyer, a French company, ordered 196 rolled metal sheets from a German company in August 1992. Delivery took place in several instalments between 28 October 1992 and 4 December 1992. On 1 December, the buyer cancelled the contract, principally on the ground that the products did not conform with the order as regards both quantity and quality. Fifteen days later, the buyer sued the seller with a view to having the sale declared void.

The appeal-court judges allowed the claim and dismissed the objection raised by the buyer on the basis of articles 38 and 39 CISG.

The seller referred the case to the Court of Cassation, pleading a breach of articles 38 and 39 CISG.

The Court of Cassation rejected the further appeal: “The Court of Appeal was solely exercising its sovereign discretion when, after considering the chronology of events, it concluded that the buyer had arranged for the goods to be inspected within what was a short and normal period, having regard to the heavy handling which the sheet metal required, and had given the seller notice of the lack of conformity within a reasonable time, within the meaning of article 39 (1) CISG”.

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