

CISG-online 4430	
Jurisdiction	Egypt
Tribunal	Egyptian Cassation Court
Date of the decision	11 April 2006
Case no./docket no.	CCRC, JY 73, no. 979
Case name	<i>Italian marble case</i>

*Translation by Abdelrahman Sami**

A.

Respondent-Appellant [Buyer] – Golden Marble for Marble and Granite, legally represented by Mr. Samir Aziz Abdelgawad and Ms. Sanya Sayed Aboelseuod, located at 38,40 St Elhamzya, seket housh El Sharkawy, Eldarb Elahmar, Cairo Governorate, and Mr. Saleh Elderbash attended the session.

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Claimant-Appellee [Seller] – Mondeal Granite Company located at Gramikiley katiana, Italy, represented by Mr. Karim Ali Assem Law office, 4 st Abdelmegeed El Ramaly, Bab Elouk, Cairo Governorate, and no one attended the session.

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Facts:

On 21 October 2003, the Cairo Court of Appeal ruling of 24 August 2003, issued in Appeal No. 371 for the year 120 JY, was challenged before the Cassation Court by a deposited memorandum by the buyer requesting accepting the formal conditions of the cassation and in merits to revoke the appealed judgment, on the same day the Buyer has deposited a clarifying memorandum for the cassation.

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On 30 October 2003, the Seller was notified by the cassation notice.

And on a session of 8 February 2005, the Court ordered a temporary stay of execution of the ruling appealed,

The Public Prosecution deposited its memorandum in which it requested that the appeal be accepted in form and in merits to revoke the appealed judgment.

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On 28 May 2005, the appeal was examined by the Court in an advisory room which, it was considered, eligible for a hearing and heard the appeal as indicated in the record.

The Public Prosecution decided on what was stated in its memorandum, and the court postponed issuing the judgment to today's session.

Pursuant to the perusal of the documents, and the reading of the summary report that was read by Mr. Council/ Refaat Mohammed Abdelmegeed Vice president of the court, hearings and after deliberation.

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Whereas the cassation has fulfilled all formal conditions, and

Whereas, in the facts - as apparent in the contested judgment and the documents, After the Rejection of the rendered writ of Execution, the seller filed the lawsuit no. 13160, year 2002, at the court of first instance South Cairo:

Demanding [Buyer], to pay 17.336.500 Italian Lira or the equivalent in Egyptian Pound which is 36.000 Egyptian Pound.

Stating that, the Buyer has purchased a quantity of marble proven by two issued invoices.

Additionally, the [Buyer] has paid part of the price and then abstained from paying the rest, which was amounted to the requested sum.

Consequently, the [Seller] filed an action to grant the requested sum, on 24 of December 2002, the court responded to the claim raised by the [Seller].

Furthermore, the [Buyer] appealed this ruling with appeal no. 371 for 120 JY. Cairo. On 24 August 2003, the court corroborated the first ruling which was in favor of the [Seller].

Therefore, the [Buyer] challenged the issued ruling before the cassation court, and the prosecution office has deposited a memorandum endorsing the opinion of challenging the contested judgment, once the challenge has been shown up to the court in the deliberation room, a session has been scheduled for the examination of the challenge, and the prosecution office stuck by its opinion.

B. The reasoning

Whereas, the cassation is based on two grounds: The [Buyer] claims that the contested judgment violated the law and substantially insufficient thereof. The judgment relied on the documents and bills submitted by the [Seller] to find that the [Buyer] is liable for the claimed amount. The [Buyer]'s defense does not contest the validity of these documents that prove the liability of [Buyer], as these bills are signed and issued by the buyer. Yet, these documents and bills do not prove the receipt of the goods sold. The Buyer claimed, therefore, that these

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documents and bills are no legitimate reason for the judicial claim. The judgment has, hence, erred and its cassation is necessary.

Whereas this objection is valid, since – as per the rulings of this court – the court itself had to examine the applicable law to the relationship between both parties, then apply it on the facts additionally, provide the correct legal reasoning and the judge has to do it on his own even if the parties do not request it.

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This was mentioned in Article 88 of Trade Law No 67 for 1999 which states that " ... 2) International contracts for sale of goods are subject to the valid rules of international treaties regarding this kind on contracts in Egypt". Further, in Article 1 of United Nation Convention on Contracts for the International Sale of Goods, signed in Vienna, along with the Presidential decree no 471/1982 announced in the official gazette In 30 of January 1997 stipulates" the aforementioned treaty is applicable on contracts on sale of goods concluded between different domicile parties: (A) when these states are contracting states or (B) ... ". Article 4 of the same convention reads "[t]his Convention governs only the formation of the contract of sale and the rights and obligations of the seller and the buyer arising from such a contract".

Article 7 of the mentioned treaty states "In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade".

Article 8 of the mentioned treaty states "(1) For the purposes of this Convention statements made by and other conduct of a party are to be interpreted according to his intent where the other party knew or could not have been unaware what that intent was".

Article 11 of the mentioned treaty states "A contract of sale need not be concluded in or evidenced by writing and is not subject to any other requirement as to form. It may be proved by any means, including witnesses".

Article 13 of the mentioned treaty states "For the purposes of this Convention "writing" includes telegram and telex".

In this context, when a contract of sale is signed between a buyer from one of the signatory state of the treaty and a seller from another signatory state, the rules of the treaty shall be applicable on the formation of the sale contract, rights and obligations that arises thereof – without taking into consideration the conflict of law rules of the state of the judge – in compliance with good faith rules and what is meant by both parties to the contract whether had known or could not be unaware which may be proved by any means, including witnesses also messages – including telegram and telex – that does not carry a signature or otherwise deviates from the form requirements that could be imposed by one of the parties national law.

In this regard, in case one of the parties to an international sale of goods contract has submitted such proof of these aforementioned proofs, the burden is shifted to the other party to prove the opposite.

The buyer generally owes the price of the goods that were sold and the burden of proof of the fulfillment of obligation shall be shifted to the buyer to prove the opposite.

Whereas, according to the facts, the challenged judgment and all the documents that the [Seller] located at Italy – one of the signatories states of the CISG – has sold the marble to the [Buyer] located in Egypt – one of the signatory states of the CISG – the seller has supported its demands by the amounts of money by providing the originally sent copy of the Fax for the speedy paying of the money and also two original invoices clarifying the quantities, prices and the rest of it.

The challenged judgment – which was rendered by the Court of Appeal – does not clarify or state the applicable law after providing the correct legal reasoning. According to what has been previously explained or presented regarding the applicable evidentiary rules, which must be applied to the case at hand, and the extent of the impact of this on shifting the burden of proof, the judgment is defective and it is, thus, necessary to revoke it.

THEREFORE

The cassation of the challenged judgment was granted and the [Seller] has to pay all the expenses and 200 Egyptian pounds for the advocacy fees, and the case is referred to Court of Appeal Cairo.

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