

**Case 2112: CISG 1; 4; 6; 7; 92**

Sweden: Högsta domstolens Stockholm (Swedish Supreme Court)

Case no. T-6032-16

*CeDe Group AB v. KAN Sp. z o.o.*

29 May 2020

Original in Swedish

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Available at:

[https://cisg-online.org/files/cases/13414/translationFile/5500\\_93804867.pdf](https://cisg-online.org/files/cases/13414/translationFile/5500_93804867.pdf)

CeDe, a company with place of business in Sweden, entered into a supply agreement on 9 June 2010 with PPUB Janson Sp J. (PPUB), a company with place of business in Poland. The contract included a choice of law provision designating Swedish law as applicable to the contract. Before July 2011 PPUB declared bankruptcy, and the PPUB bankruptcy estate claimed from CeDe SEK 1.5 million as payment for delivered goods. CeDe responded with a SEK 3.9 million counterclaim for damages due to non-delivery of certain goods and defects in other goods and arising from pre-bankruptcy dealings. Eventually, the PPUB bankruptcy estate assigned the claim to the company KAN.

A preliminary decision excluded the applicability of the rules on private international law of the European Insolvency Regulation<sup>5</sup> to determine the law of the right of set-off.

The Swedish Supreme Court noted that since the parties had their places of business in two different CISG Contracting States, the CISG applied to the contract. However, it also noted that article 4 of the CISG defined the scope of application of the CISG, which did not include the relationship between the assignee and the obligor.

Noting under the Rome I Regulation<sup>6</sup> the law applicable to an assigned claim was the same as the law applicable to the original claim, the court considered whether the CISG applied to the right of set-off. Mindful of the different views on this point, and of the fact that the choice of law of the original parties to the supply agreement did not regard the right of set-off, the court declared that Swedish law applied to the right of set-off.

In a separate opinion, it was noted that the supply agreement was a framework agreement and, as such, the CISG did not apply to it, but it could apply to the individual sale contracts concluded under that framework agreement. It was also noted that at the time of the conclusion of the contract Part II of the CISG was not in force in Sweden, and that this might affect the ability to deduct general principles from the CISG relevant for determining its application to the right of set-off.