

Case 1962: CISG 45(1)(b); 74

United States of America: U.S. [Federal] District Court for the Middle District of Pennsylvania

No. 1:20-cv-01764

Minh Dung Aluminum Co., Ltd. v. Aluminum Alloys Mfg. LLC

2 August 2021

Original in English

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Abstract prepared by Sam Walker

The case deals with the determination of damages under the CISG.

Minh Dung Aluminum Co., Ltd., a Vietnamese company (the buyer), entered into a contract with Aluminum Alloys Mfg. LLC, an American company (the seller), for the sale and delivery of aluminium ingots. The seller agreed to ship the aluminium ingots for \$118,978.20 and subsequently shipped four containers to the buyer in Viet Nam. Only two of the four containers arrived in Viet Nam and the rest were rerouted back to the United States of America. The two containers that arrived were filled with hazardous waste rather than ingots. The buyer informed the seller of the hazardous waste and the seller acknowledged that they shipped non-conforming goods and promised to issue a refund and arrange for the return of waste to the United States. The buyer brought proceedings for breach of contract in the federal district court of Pennsylvania to which the seller failed to respond, and the buyer resorted to default judgment in the amount of \$245,097.20.

The district court applied articles 45 and 74 CISG in determining whether the seller had breached the contract and, if so, how much the buyer was entitled to. The court stated that the elements of a breach under the CISG are generally recognized to be: (1) formation; (2) performance; (3) breach; and (4) damages.

The court found that the buyer's claim established that: (1) the buyer and the seller entered into a contract; (2) the buyer paid the seller \$118,978.20 for the ingots; (3) the seller failed to deliver those ingots; and (4) the buyer suffered loss due to the non-performance under the contract. Under article 45(1)(b) CISG, an aggrieved buyer is entitled to damages as provided in article 74 CISG.

The district court then looked at article 74 CISG for the appropriate damages. The buyer sought damages in the amount of \$245,097.20. This included the \$118,978.20 originally paid to the seller, \$58,394 for hazardous waste storage at the port, \$67,000 in lost profits, and \$725 in court costs and fees. The district court found that the original amount paid, the storage costs, and the lost profits were either direct or foreseeable losses stemming from the seller's breaches of the sale agreements and therefore recoverable under the CISG. The court costs and fees, however, were found not to be a direct or foreseeable loss stemming from the seller's breaches. As such, the court granted part of the buyer's claim regarding damages. Specifically, it found the recoverable damages to be \$244,372.20 (\$245,097.20 less the \$725 in costs and fees).