

Case 2114: CISG 1; 6; 25; 26; 38; 39; 45; 49; 86; 86(1); 86(2); Limitation Convention 8

Slovenia: Višje sodišče v Ljubljani (High Court of Ljubljana)

VSL sklep I Cpg 1502/2015

28 April 2016; and

VSL Sodba I Cpg 322/2017 (High Court of Ljubljana)

10 May 2017

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A dispute arose between a seller with place of business in Macedonia (plaintiff) and a buyer with place of business in Slovenia (defendant) over two consignments of onions. The seller filed a claim for the payment of the two consignments and the buyer filed a counterclaim based on the lack of conformity of the onions and demanded compensation of damages. The buyer claimed that the delivered onions were wet and rotten, and that it had notified the lack of conformity to the seller. It added that the seller had asked the buyer to dry the onions, but that the drying was ineffective and the onions had to be discarded. However, the court of first instance found in favour of the seller. The buyer filed an appeal with the Ljubljana High Court.

In its order (VSL sklep I Cpg 1502/2015), the High Court indicated that the CISG applied to the matter as both parties have their place of business in CISG contracting States and had not opted out according to article 6 of the CISG. In the case at hand, the seller and the buyer entered into a contract for the sale of onions which had been delivered to the buyer. The buyer refused to accept the delivery of the onions, stating that they were non-conforming with the terms agreed in the contract. Pursuant to the seller's request, the buyer took possession of the goods on behalf of the seller and took steps that were reasonable in the circumstances to preserve the onions (article 86 of the CISG). The buyer explained that it did not sign the consignment note evidencing receipt of the goods because it only took possession of the onions, but did not take them over. Moreover, the buyer reiterated that it notified the seller of the non-conforming quality of the onions immediately by the telephone and within a reasonable period by email.

The High Court recalled that, in accordance with article 53 of the CISG, the buyer is obliged to pay the price for the goods and take delivery of them, and explained that the buyer cannot refuse to take the delivery of goods if these are not in conformity, except in case of fundamental breach and if the seller has been notified within a reasonable period. In that regard, the High Court stated that the notice of termination did not need to be explicit, but the will of the buyer to terminate the contract should be evident.

The High Court noted that under article 27 of the CISG, a delay or error in the transmission of the communication or its failure to arrive did not deprive that party of the right to rely on the communication, including when email is used. However, in confirming that the notification of non-conformity of the goods may be oral, the High Court added that the burden of proving the content of the oral communication and the fact that the addressee had accepted and understood it lied with the party who alleged it and chose the method of communication, i.e., the caller in case of telephone communication.

In light of the above, the High Court of Ljubljana referred the case back to the court of first instance. The court of first instance denied the claim in its entirety while partially awarding the damages requested by the buyer. The seller filed again an appeal.

In its second judgement (VSL Sodba I Cpg 322/2017), the High Court of Ljubljana confirmed that the CISG was the law applicable to the contract and that the notification of the lack of conformity was timely. It also indicated that the buyer declared the contract avoided by declining to take the onions when they were delivered and that it tried to dry them only because the seller requested it in accordance with article 86, paragraph 2 of the CISG. Moreover, in reply to the argument of the seller that the counterclaim for compensation of damages was time-barred under article 480 of the Slovenian Code of Obligations, the High Court confirmed the conclusion of the court of first instance that the Convention on the Limitation Period in the International Sale of Goods was applicable, and that, given the limitation period of four years (article 8 of the Limitations Convention), the counterclaim was not time-barred.