

Case 2081: CISG 1(1)(a); 39(2)

France: Court of Cassation, Commercial Division

Judgment No. 620 F-D; joint appeals U 20-16.174 and X 20-16.798

Boissec v. Eco Tendance

26 October 2022

Original in French

Available from Légifrance, www.legifrance.gouv.fr, and from the CISG France database, www.cisg-france.org, Decision No. 343 (no abstract available)

Abstract prepared by Paul Klötgen, National Correspondent

In 2010 and 2011, Boissec, a limited liability company incorporated under Swiss law and trading in timber products, purchased 23,740 linear metres of composite wood slats from Eco Tendance, a company incorporated in France and specialized in the trade in materials. The slats were resold by Boissec to various customers for use in the construction of outdoor terraces. Over the course of 2012 and 2013, Boissec received a number of complaints regarding defects that had been identified in the wood slats (including cracks, premature ageing and mould), and requested the seller to honour the guarantee provided. The seller agreed to replace the slats with wood slats of a different composition. However, a stock of 2,923 linear metres, worth 23,751 euros, remained unsold. Fearing that the limitation period for legal action would expire, on 23 June 2013 Boissec obtained from Eco Tendance the signature of an agreement to suspend the limitation period for a period of one year.

After having the decking slats analysed by a laboratory, the seller's insurer rejected the insurance claim and suggested that the buyer bring proceedings against the manufacturer of the slats, André Bondet, a company incorporated under French law, and the supplier of the raw material, Beologic, a company incorporated under Belgian law. In June 2014, however, Boissec brought an action against Eco Tendance and its insurer before the Montauban Commercial Court, seeking compensation for the damage caused by the defective material. On 31 July 2014, the insurer of Eco Tendance applied for a court order to the effect that the supplier, André Bondet, and its insurer would indemnify Eco Tendance and its insurer in the event of any successful claim against them. Through a petition of 12 August 2014, André Bondet's insurer in turn brought an action for indemnity against Beologic and its insurers.

The court of first instance, the Montauban Commercial Court (judgment of 31 May 2017, No. 2014/237), found that the guarantee provided by Eco Tendance to its buyer was enforceable in application of article 1641 of the Civil Code on guarantees for latent defects, while ruling out the application of the Vienna Convention (CISG). The Toulouse Court of Appeal (judgment No. 17/03443 of 12 February 2020) overturned that decision, ruling that "in relations between seller and buyer, given the international nature of the dispute, the Vienna Convention of 11 April 1980 on the international sale of goods must be applied, as it constitutes French substantive law among professional sellers and is binding on the judge, unless the parties have excluded its application or have agreed to derogate from it by express agreement." The Court went on to order Eco Tendance, on the basis of articles 35 and 36 of the CISG, to indemnify Boissec and compensate for the damage caused by the non-conformities.

In so doing, the Court of Appeal rejected the argument that the buyer's action had been time-barred under the CISG (article 39(2)) on the grounds that the claim had arisen more than two years after delivery. In that regard, the appeal court referred specifically to articles 38 and 39 of the Convention. It concluded that "Given that the seller was immediately informed of the first complaints as soon as they were received, and that the parties concluded an agreement to suspend the statute of limitations period in June 2013, the [seller's] claim of non-admissibility must be rejected."

The Court of Cassation did not disallow that argument of the Court of Appeal, which was premised on the idea that the question of limitation was not addressed in the Convention. The Court of Appeal was then required to rule on the nature of the recourse actions of the sub-buyer, Boisseac, against the manufacturer and the supplier of the raw material, the companies André Bondet and Beologic, and the recourse actions of those two companies against each other. The Court of Appeal pointed out that the sub-buyer's direct action against the manufacturer could not be brought on the basis of the CISG, which applied only to relations between the seller and the buyer. It explained that, in a chain of contracts, recourse against successive sellers or against the original seller is governed by the law applicable under the rules of private international law. However, the claim of André Bondet against its raw materials supplier incorporated under Belgian law, Beologic, could be brought under the CISG. For each of those actions, it was necessary to determine the limitation period.

With regard to the action brought on the basis of the CISG (*André Bondet v. Beologic*), the Court of Appeal ruled that the statute of limitations argument should be rejected because, in essence, the initial seller had been informed in good time – very quickly, in fact – of the existence of the non-conformities.

On this last point, the Court of Cassation overturned the appeal court's judgment on a point of law. It stated, with reference to article 7(2) of the CISG (on questions not settled in the instrument), that in ruling that the recourse action based on the Convention was admissible, the Court of Appeal had referred solely to the provisions of the Convention, whereas the CISG, although it does impose a time limit on the buyer for giving notice of a lack of conformity, does not establish any limitation rule.