

Case 7: CISG 1(1)(b); 47; 49; 74; 78

Germany: Amtsgericht Oldenburg in Holstein; 5 C 73/89

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A German fashion retailer and an Italian clothing manufacturer concluded a contract for the sale of fashion goods, with the specification "autumn goods, to be delivered July, August, September + ". When a first delivery was attempted on 26 September, the buyer refused to accept the goods and returned the invoice on 2 October claiming expiry of the delivery period. The parties argued about the meaning of the above specification, relying on different additional factors allegedly known to both parties.

The court applied CISG as the law of the seller's country but took also into account German domestic law for filling gaps on questions of performance. The court awarded the seller the full sales price, including interest at the statutory rate in Italy plus additional interest as damages. The seller's claim was held to be justified since delivery was tendered during the agreed delivery period. Even if, as alleged by the buyer, during each of the three months one third of the goods had to be delivered, the buyer did not effectively avoid the contract by refusing acceptance of the goods without having fixed an additional period in the previous cases of non-delivery.