

Case 5: CISG 1(1)(b); 8; 23; 29; 53; 58; 78

Germany: Landgericht Hamburg; 5 O 543/88

26 September 1990

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An Italian clothing manufacturer demanded payment of the purchase price plus interest from a German who, according to his account, had intended to order the textiles on behalf of a company X with limited liability but, according to the seller, had acted under a trade name referring to a non-existent company Y. After delivery of the goods, the German had given the seller a bill of exchange drawn on and accepted by company Y.

The court, following German international private law, applied CISG as the relevant Italian law for the formation of the contract and for the rights and obligations of the parties to the sales contract. It determined according to article 8 that the seller could not know that the German intended to bind company Y. Since, according to German law as the law applicable to the formation of a company in Germany, company X had not been validly established as a legal person, the German himself was the buyer. While, under Italian law, the giving of the bill of exchange did not free him from the payment obligation, it constituted a modification of the contract according to article 29(1) CISG to the effect that the due date for paying the purchase price was postponed until the maturity date of the bill of exchange. From that date on, interest was awarded under article 78 CISG at the statutory Italian rate plus additional interest as damages under article 74 CISG assessed on the basis of the Italian discount rate.