

Case 316: CISG 1(1)(b); 38, 39, 49; 82(1); 82(2)

Germany: Oberlandesgericht Koblenz; 2 U 1899/89

27 September 1991

Original in German

Published in German: <http://www.jura.uni-freiburg.de/ipr1/cisg/urteile/text/30.htm>

Abstract published in Italian: [1996] Diritto del Commercio Internazionale No. 90, 621

An Italian seller, plaintiff, delivered marble slabs to a German buyer, defendant. The buyer informed the seller that the slabs were broken and had been stuck together. Thereafter, the buyer cut off the slabs and processed them. As the buyer refused to pay, the seller claimed payment of the purchase price.

The appellate court upheld the decision of the first instance court, which had admitted the seller's claim.

The court held that the rules of private international law of Germany led to the application of Italian law. Since the CISG was in force in Italy as of 1 January 1988, even though Germany was not a Contracting State at that time, the CISG was held to be applicable (article 1(1)(b) CISG).

The court found that it was not necessary to decide whether the marble slabs were broken and had been stuck together before delivery took place, whether the goods had been examined by the buyer in a short period of time (article 38 CISG), whether the buyer had given notice within a reasonable time after it had discovered the lack of conformity (article 39 CISG) or whether the seller had deceived the buyer with regard to the quality of the goods.

The court held that due to the processing of the marble slabs, it was impossible for the buyer to arrange for restitution of the marble slabs in the same condition in which it had received them. Therefore, the buyer had lost its right to declare the contract avoided (article 49 CISG) pursuant to article 82(1) CISG. Furthermore, the buyer had not met the requirements of article 82(2) CISG in order to exclude the application of article 82(1). The change in the slabs' condition had been caused by the buyer's own act and had not been the result of the examination of the goods under article 38 CISG.