

## CISG-online 74

Jurisdiction	Germany
Tribunal	Oberlandesgericht Düsseldorf (Court of Appeal Düsseldorf)
Date of the decision	2 July 1993
Case no./docket no.	17 U 73/93
Case name	<i>Veneer cutting machine case</i>

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### Facts of the case:

Claimant [buyer] had its place of business in Krefeld, Germany. [Buyer] purchased a veneer cutting machine from the Respondent [seller], whose place of business was located in Indiana, U.S.A. The veneer cutting machine was to be installed in the veneer processing unit of a Russian furniture combine. After the machine had been put into operation, an accident occurred which led to the death of a worker and caused injuries to another. Subsequently the Russian sub-purchaser demanded repair of the defective machine from [buyer].

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With its claim, [buyer] seeks to recover the costs of repair in the alleged amount of 273,207.80 DM (*Deutsche Mark*) from [seller]. [Buyer] furthermore moves for a declaratory judgment from the court establishing that [seller] was required to indemnify [buyer] against all damage claims raised by the Russian sub-purchaser and furniture combine with respect to the accident in dispute.

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[Seller] argues that [buyer]'s demands are unjustified. [...]

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[Seller] contested the local jurisdiction of the Krefeld District Court which, in an interlocutory decision, held that it had local and international jurisdiction over the matter. The court based its findings on § 23 Code of Civil Procedure (ZPO), stating that [seller] had assets in the local forum.

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In its appeal from the interlocutory judgement, [seller] claims that § 23 ZPO is not applicable to the jurisdictional issue.

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[...]

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\* For the purposes of the present translation, Claimant of Germany is referred to as [buyer], and Respondent of the U.S. is referred to as [seller].

**Reasoning:**

The appeal is not meritorious. The District Court was correct in asserting international jurisdiction over the issue in dispute. 8

In general, a German court can assert international jurisdiction over a matter whenever the court, according to German Procedure Law, also has local jurisdiction over the matter in dispute (Bundesgerichtshof, *NJW-RR* (1991), 423, 424; Bundesgerichtshof, *NJW* 1991, 3092, 3093). Therefore, before the issue of international jurisdiction can be resolved, the local jurisdiction of the court of first instance has to be established. This does not come into conflict with § 512(a) ZPO pursuant to which appeals related to pecuniary issues of law may not be based on contested local jurisdiction (OLG Saarbrücken, *NJW* 1992, 987). 9

The District Court Krefeld has local jurisdiction. 10

I.  
[...] 11–12

II.  
Pursuant to § 29(1) ZPO, jurisdiction over contractual disputes shall be in the forum where the performance at issue is to be tendered. In this case, the forum is in Krefeld. 13

1.  
Indiana law determines the place of performance for the claims raised in the complaint. This follows from Art. 28 EGBGB (Conflict of Law provision in the Introductory Law of the German Civil Code). This provision provides that the law of the place where the contractor's headquarters is located shall be applied to contracts for work and materials (Palandt/Heldrich, *BGB*, 52nd ed. (1993), Art. 28 EGBGB n. 14). The contracting parties entered into a contract for work and materials with respect to the cutting machine. The [seller] contractor maintains its business headquarters in Indiana. Therefore, the laws of this state are applicable. 14

The UN Convention on the International Sale of Goods from April 11, 1980 („the CISG“) has been in force in Indiana since January 1, 1988 – hence, effective at the time the contract was concluded by the parties in dispute. Consequently, the provisions of the CISG govern the contract between the parties pursuant to Art. 1(1)(b) and Art. 3(1) of the CISG. 15

By contrast, German law would apply, had the parties agreed to its applicability in accordance with Art. 6 of the CISG, Art. 27 EGBGB. In this event, the CISG would not have been relevant because in Germany it entered into force on January 1, 1991 which was after the formation of the contract (BGBl. II, 1477). Nonetheless, the parties never agreed to the applicability of German law [...]. 16

[...] 17–19

2.  
Based on the provisions of the CISG, the complaint asserts claims for indemnification pursuant 20

to Art. 45, 74 of the CISG. Indemnification is to be rendered at the place where the [buyer] has its principle place of business which is Krefeld.

The place of performance for the indemnification claim pursuant to Arts. 45, 74 of the CISG, however, is not set forth by the CISG. It is determined from the Convention's general principles which are derived from Art. 7(2) of the CISG.

Art. 57(1)(a) of the CISG provides – in contrast to the German law on sales – that the duty to tender payment of the purchase is an obligation to be performed at the seller's place of business. Accordingly, the place of performance is where the seller maintains its principle place of business (Hager, in: Schlechtriem (ed.), *Kommentar zum Einheitlichen UN-Kaufrecht*, 1990, Art. 57 n. 10).

Therefore, if the place where payment is to be tendered – at the same time determinative of the jurisdictional forum – is the seller's place of business, it then seems to be appropriate to recognize this as a general rule governing the place of performance for all claims for payment under the CISG. The reasoning behind a rule governing the place of performance for claims for the purchase price are just as applicable to other claims for payment. The claim that [seller] should be required to take over [buyer]'s liability to [buyer]'s sub-purchaser pursuant to Arts. 45, 74 is keyed to payment of money (Stoll, in: Schlechtriem, *ibid.*, Art. 74 n. 19). Consequently, performance is to be tendered at the seller's principal place of business.

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III.

[...]

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