

Case 281: CISG 1(1); 1(1)(b); [4]; 35; 39; 57(1)(a)

Germany: Oberlandesgericht Koblenz; 2 U 1230/91

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Original in German

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Abstract in English: [1995] 15 Journal of Law and Commerce 234 Abstract in Italian: [1998] Diritto del Commercio Internazionale 451

Commented on in English: Cura, [1995] 15 Journal of Law and Commerce 183; Ferrari, [1995] 15 Journal of Law and Commerce 64 and 86; Karollus, [1995] Cornell Review of the CISG 56 and 73; Koneru, [1997] 6 Minnesota Journal of Global Trade 136

Commented on in French: Witz, [1995] Les premières applications jurisprudentielles du droit uniforme de la vente internationale 46

A French seller, plaintiff, and a German buyer, defendant, entered into a long-term contract which granted the buyer exclusive distribution rights in Germany for the seller's computer printers and computer chip. After the contractual relationship had been terminated, the seller sued for outstanding payments of invoices from 1988. The buyer disputed the applicability of the CISG and claimed a set-off. Alternatively, the buyer sought to pay damages in German currency.

The court held that the rules of private international law of Germany led to the application of French law. Since the CISG was in force in France 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)). The court held that the CISG applied to the sale of the computer chip, since, within the meaning of the Convention, "goods" includes all tangibles and intangibles that might be the subject of an international sales contract, which would include computer software (article 1(1) CISG).

The court allowed the seller's claim. It held that the buyer had not alleged any lack of conformity of the goods (article 35 CISG), notwithstanding that any such notice would not have been given to the seller in time (article 39). The claim was awarded in French Francs. Permission to make payment in German currency pursuant to the German Civil Code was not granted, as this was dependent upon the place of performance of the contract being in Germany. According to article 57(1)(a) of the CISG, the seller's place of business in France was the proper place of performance.

The court also awarded interest under article 74 of the CISG and stated that the rate of interest was to be determined by the law otherwise applicable, which in this case was French law. This damage award of interest was a legal consequence of the buyer's non-performance (article 61(1)(b) CISG).

As the Convention does not address the matter of set-off, the court applied French law under its rules of private international law and found that the set-off claim was inadmissible.