

Case 155: CISG 19(2); 86(1)

France: Court of Cassation (1st Civil Division)

Decision dismissing the appeal on points of law brought against the decision of the Court of Appeal of Paris of 22 April 1992

4 January 1995

Société Fauba v. Société

Fujitsu Original in French

Published in French: Recueil Dalloz Sirey 1995, Jurisprudence, 289; [1996] UNILEX; Witz, Claude, Les premières applications jurisprudentielles du droit uniforme de la vente internationale - Convention des Nations Unies du 11 avril 1980, Librairie Générale de Droit et de Jurisprudence (L.G.D.J.), Collection Droit des Affaires, Paris (1995) 140

Commented on in French by Witz, see Recueil Dalloz Sirey 1995, Jurisprudence, 290; Witz, see L.G.D.J. above (1995) 61; 69

Reported on in English: [1996] UNILEX

The Court of Cassation dismissed the appeal on points of law brought by the French buyer against the decision of the Court of Appeal of Paris regarding the formation of the sales contract. The buyer asserted that the contract had not been formed and that, by deciding the contrary, the Court of Appeal had violated article 19 CISG. The Court of Appeal was also held by the buyer to have violated article 86 CISG by finding that the buyer should have immediately returned the surplus goods delivered.

The Court of Cassation agreed with the ruling of the trial and court on the question of the existence of an agreement between the parties regarding the object at issue and the price, including the part of the agreement relating to an adjustment of the initial price in accordance with the market and the alterations made in the content of the order. Having done so, the Court of Cassation made no reference to any provision of CISG.

Secondly, the Court of Cassation referred to article 86(1) CISG, under which the buyer who had received the goods and intended to reject them was entitled to retain them until it had been reimbursed by the seller its reasonable expenses for preserving them. In dismissing the appeal on this point, the Court of Cassation found that the buyer “had never claimed to have incurred such expenses for those goods which did not correspond to its orders”.