

Case 154: CISG 1(1)(a); 7(1); 8(1); 25; 64(1); 73(2)

France: Court of Appeal of Grenoble (Commercial Division)

S.A.R.L. Bri Production “Bonaventure” v. Société Pan Africa

Export 22 February 1995

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A French seller, a jeans manufacturer, concluded a contract for the sale of a given quantity of goods with a buyer based in the United States of America. It was specified that the jeans purchased were to be sent to South America and Africa.

Both during the negotiations preceding the contract and during the follow-up to its performance, the seller had repeatedly and insistently demanded proof of the destination of the goods sold. It became apparent during a second delivery that they had been shipped to Spain.

The seller's refusal to maintain the trade relationship and to proceed with further deliveries triggered the proceedings.

The Court of Appeal invoked article 1(1)(a) CISG in order to determine the law applicable to the case, since the buyer and seller were nationals of two different States Parties to CISG.

The court then invoked article 8(1) CISG in order to conclude that the United States company had not respected the wish of the French company, namely to know the destination of the goods. That attitude constituted a fundamental breach of contract within the meaning of article 25 CISG.

Under article 64(1) the seller could declare the contract avoided. The Court of Appeal adopted this solution, invoking in addition article 73(2) with regard to the contracts for further deliveries.

Finally, it ordered the United States company to pay damages amounting to 10,000 French francs for abuse of process, finding that the conduct of the buyer, “contrary to the principle of good faith in international trade laid down in article 7 CISG, aggravated by the adoption of a judicial stand as plaintiff in the proceedings, constituted abuse of process”.