Case 152: CISG 1(1) (b); 49; 78

France: Court of Appeal of Grenoble (Commercial Division)

26 April 1995

Marques Roque, Joaquim v. S.A.R.L. Holding Manin

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A company with its place of business in France sold to an individual resident in Portugal a used warehouse for the price of 500,000 French francs, including the cost of dismantling and delivery, the price of the warehouse being 381,200 francs and the dismantling and delivery costs amounting to 118,800 francs. Following the buyer's refusal to pay the last part of the price on the grounds that the dismantled metal elements were defective, the Court of Appeal of Grenoble found that the disputed contract covered the sale of a used warehouse together with its dismantling and that it was apparent from the invoices submitted that the supply of services did not constitute the preponderant part [of the contractual obligations]. The court concluded that the contract therefore fell within the scope of application of CISG (art. 3(2)).

The Court of Appeal further stressed that the contract had been concluded between a seller with its place of business in France and a buyer resident in Portugal, that France was a State Party to CISG whereas Portugal had neither signed nor ratified it, and that it was therefore necessary to ascertain whether CISG was applicable through the provisions of private international law (art. 1(1)(b)).

Having invoked the Hague Convention of 15 June 1955 on the Law applicable to International Sales of Goods, the court arrived at French law, this being the law of the country where the seller had its habitual residence at the time when it received the order (art. 3, first paragraph, Hague Convention). The court accordingly applied CISG because “since 1 January 1988, the French domestic law applicable to international sales was the Vienna Convention of 11 April 1980”. The court found, in the light of article 35 CISG, that a certain quantity of the goods were not fit for the particular purpose of reassembly in the identical form expressly made known to the seller. Since that defect related to only part of the warehouse and concerned metal elements which could be repaired, it did not constitute a fundamental breach such as to deprive the buyer of what he was entitled to expect under the contract. The court therefore found that this breach did not justify avoidance of the contract pursuant to article 49.

The Court of Appeal further noted that, in the event, such avoidance had not taken place, since the parties had determined that the seller would repair the damaged metal elements. In response to the buyer's objection that the [seller's] obligation was to restore the warehouse to a new state, the court found that it was not established that the seller had accepted such a task which would have served to multiply the value of some of the elements sold by a factor of 40. Having furnished the buyer with replacement elements which were only very slightly bent out of shape, the seller had, in conformity with article 46(3) CISG, repaired the defect in conformity with the goods sold.

The court awarded damages to the buyer after noting that the latter retained the right to claim damage s notwithstanding the repair carried out at its own expense by the seller (art. 48(1)).

Finally, regarding interest on arrears and the capitalization of interest claimed by the seller, the Court of Appeal noted that article 78 CISG stated that any delay in payment gave rise to entitlement to interest on the arrears without notice being served and that such interest should start to accrue on the date on which the replacement goods were handed over to the buyer. The court decided that the interest would be capitalized at the end of one complete year to be counted from the date of submission of grounds of appeal in which the seller first made the request for interest.