

Case 206: CISG 6; 35(2)(a)

France: Court of Cassation (Commercial Division)

17 December 1996

Société Céramique culinaire de France v. Société Musgrave Ltd.

Original in French: Recueil Dalloz [1997] 337; Revue critique de droit international privé [1997] 72; CISG-France <http://www.jura.uni-sb.de/FB/LS/Witz/171296.htm>

Commented on in French: Witz, Recueil Dalloz [1997] 337; and Rémy, Revue critique de droit international privé [1997] 72

The seller, a company with its place of business in France, concluded in 1991 a contract with an Irish buyer for the sale of ceramic ovenware. The contract contained an applicable-law clause in favour of French law. Several months after the delivery, the Irish company informed the seller that the ovenware was insufficiently ovenproof. After unsuccessfully seeking an amicable agreement, the Irish buyer brought an action against the French company to avoid the sales contract for breach of the obligation to deliver goods in conformity with the contract, and claimed damages.

Following dismissal of its action by the Court of First Instance of Strasbourg, the seller lodged an appeal invoking CISG. The Court of Appeal of Colmar, however, rejected the applicability of CISG on the ground that, while the sales contract was indeed international in character, it must nonetheless be subject to French law, which had been expressly chosen by the parties for settling any dispute concerning them, and not to the Vienna Convention, as invoked by the Irish company. The Court noted that, as far as applicable law was concerned, the said Convention was waivable at the will of the parties, as expressly indicated in its article 6. Situating itself, in its reasons, in the context of the guarantee provided by French domestic law against hidden defects, and, in its operative words, in that of breach of the obligation to deliver, the Court of Appeal ordered the sale to be avoided.

When an appeal was brought against this judgement by the seller, the Court of Cassation quashed the decision delivered by the Colmar court on the sole ground that it lacked a sufficient legal basis in the light of French national law, there having been no criticism by the appellant of the non-application of CISG by the Court of Appeal. The Court of Cassation nevertheless expressed reservations regarding the dismissal of CISG by the lower court.

Moreover, referring to article 35(2)(a) CISG, the Court of Cassation considered that, while the unfitness of the sold article for its intended use represented a lack of conformity to the contract within the general meaning given to those terms by the provisions of the Vienna Convention, it now constituted, following the rejection of that convention's applicability, the hidden defect referred to in article 1641 of the Civil Code and was distinct from the failure on the part of the seller to comply with its obligation to deliver goods in conformity with those agreed.