

Case 196: CISG 3(2); 39; 49(1); 49(2)(b)(i); 74

Switzerland: Handelsgericht des Kantons Zürich; HG 920670

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The Swiss plaintiff sold a “floating centre”, a container filled with salt water for weightless floating, to the German defendant for an agreed upon price. The buyer alleged that the container leaked and as a result its house was damaged by water. Therefore, the buyer declared the contract avoided (article 49 (1)CISG) and refused to pay the outstanding balance. When the seller sued the buyer for the outstanding balance, the buyer filed a cross-claim seeking damages.

The court found that an agreement existed between the parties for a sale of goods with the attendant obligation to install the container. The court also found that the CISG was applicable since the services to be provided, i.e., the installation of the container, were not preponderant (article 3(2) CISG).

The court ruled in favour of the plaintiff. It was held that the buyer had lost its right to declare the contract avoided under article 49 CISG since the buyer had failed to notify the seller about the lack of conformity of the goods in a timely fashion (articles 39 and 49(2)(b)(i) CISG).

The court also mentioned that the seller’s failure to perform its obligation was probably not a fundamental breach as the damage concerned was easily repairable. However, since the buyer had lost its right under article 49(2)(b)(i) CISG, the court did not address this question fully.

As regards damages, the court found that the buyer had lost its rights for failure to claim damages for the leak within a reasonable time. Compensation for damages caused by the transport of the container was denied by the court because the buyer failed to prove them sufficiently (article 74 CISG).