

Case 236: CISG 1(1)(b); 4(2)(a); 45(1)(b); 53; 54

Germany: Bundesgerichtshof; VIII ZR 134/96

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An Italian seller, plaintiff, claimed payment for clothes delivered to a German buyer, defendant, under a supply contract.

The buyer refused payment of the purchase price for the goods, alleging that the parties had a void franchise agreement since it violated European and German antitrust laws. The buyer also adduced that the nullity of the franchise agreement affected the validity of their supply contract.

The court held that the CISG was applicable under its article 1(1)(b) since the parties had agreed to the application of German law. The seller's claim was justified under articles 53 and 54 CISG. It was insignificant whether the franchise agreement violated German or European antitrust laws inasmuch as the nullity of the franchise agreement did not affect the validity of the supply contract. However, each supply contract had to be examined separately and the validity of the supply contract was not governed by the CISG in keeping with its article 4(2)(a). The court also held that the buyer was obliged to pay the seller the purchase price and that the buyer was not entitled to claim damages under article 45(1)(b) CISG.

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*Corrigendum (ENGLISH TEXT ONLY)*

Case 236

Caption and third paragraph: the reference to CISG article "4(2)(a)" *should read* "4(a)".