

Case 205: CISG 1(1)(b); 57(1)

France: Court of Appeal of Grenoble (Commercial Division)

23 October 1996

SCEA des Beauches v. Société Teso Ten Elsen GmbH & CoKG

Original in French

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In May 1990, a French company ordered equipment and plant from a German company. The latter confirmed the order on the basis of its general terms indicated on the reverse side of the order form. After delivery and payment of the price, the French company demanded restitution of part of the price paid, because it considered that the amounts paid exceed the invoiced amount.

Its demand for reimbursement having been refused, the French company brought an action against its seller before Valence Commercial Court. Following dismissal of the action, it lodged an appeal before the Court of Appeal of Grenoble.

The Court of Appeal dismissed the jurisdiction clause on the ground that it had not been drawn up within the meaning of Article 17 of the Brussels Convention. The Court of Appeal ruled on the question of applicable law and sought to ascertain whether the French court could be deemed competent under article 5(1) of the Brussels Convention, which provided for special jurisdiction in contractual matters in favour of the court of the place where the obligation giving rise to the action had been or was to be performed. In order to determine this place, the Court of Appeal of Grenoble stated that jurisdictional competence must be assessed in the light of the provisions of the Vienna Convention, applicable in the case in point by virtue of Article 1(1)(b) CISG, French law being indicated by the provisions of private international law (Hague Convention of 15 June 1955 on the Law applicable to International Sales of Goods, art. 3(2)).

The Court of Appeal stated that the Vienna Convention established the place of payment of the price as the seller's place of business (art. 57(1)); and that the usual interpretation of this provision was that it expressed the general principle that payment should be made at the place of domicile of the creditor. The Court therefore concluded that the Valence Court was competent by combined application of CISG and article 5(1) of the Brussels Convention.