

Case 217: CISG 14 (1); 25; 49 (1) (a)

Switzerland: Handelsgericht des Kantons Aargau, OR.96.00013

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A German plaintiff (seller) had produced sets of cutlery ordered by a Swiss defendant (buyer). The buyer refused to accept the delivery and claimed that no contract had been validly concluded or that it was entitled to declare the contract avoided because of a violation of exclusive rights granted by the seller. The seller declared the contract avoided and sued the buyer for damages.

The court held that a contract had been validly concluded although not all relevant points had been addressed by the parties, such as the purchase price. The buyer had ordered specific sets of cutlery and had informed the seller about the time of delivery. This offer was sufficiently definite (article 14 (1) CISG). The court furthermore found that the buyer had no right to declare the contract avoided (article 49 (1) (a) CISG) even though the violation of an agreement granting exclusive rights might be a fundamental breach of contract. However, the buyer did not give sufficient proof under Swiss law that an agreement granting exclusive rights had been entered into. The court awarded a global amount of ten percent of the purchase price as damages, including the losses that occurred when the cutlery had to be resold. The court noted that every seller must expect expenses of that amount. However, a minority of the court found that there was no sufficient proof for these damages. The interest rate was determined based on the German law at the seller's place of business (§ 352 Handelsgesetzbuch), applicable pursuant to the forum's rules of private international law.