

Case 220: CISG 6; 39 (1)

Switzerland: Kantonsgericht Nidwalden, 15/96 Z

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An Italian plaintiff delivered furniture to a Swiss defendant, who resold the goods in East Asia. The buyer refused to pay the purchase price, alleging non conformity of the goods. The court granted the plaintiff's claim for payment of the purchase price.

The court first had to determine the applicable law because both parties had argued before the court based on Swiss law although the seller's general contract terms included a provision with a choice of Italian law. The court found that the parties had implicitly chosen Swiss law without excluding the application of the CISG (article 6 CISG). The court furthermore held that the buyer had lost its right to rely on the lack of conformity because, by using expressions like "wrong parts" or "full of breakages" the buyer did not specify the nature of the lack of conformity (article 39 (1) CISG).

The interest rate was determined on the basis of Italian law. The court also determined the period for which the buyer had to pay interest based on Swiss law, which provides that a debt only becomes due and interest starts to accrue after a reminder by the seller (article 102 (1) Swiss Code of Obligation).