

Case 210: CISG 33(c); 39(1); 74

Spain: Audiencia Provincial, Barcelona

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Original in Spanish

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The dispute concerns a possible lack of conformity of textile dyes supplied late by the foreign seller to the Spanish buyer. The buyer's judicial claim for damages was not admitted by the Court.

Three main points of the judgment are of interpretative interest.

In the first place, the Court held that the seller had fulfilled its delivery obligation within a reasonable time after the conclusion of the contract (article 33(c) CISG), since the buyer had accepted the goods without protest at the time of their delivery and no specific delivery date had been expressly agreed in the contract. The Court did not accept that the reasonableness implied in accepting delivery without protest could be affected by the seasonal nature of the goods, whose commercial use was to some extent connected with the Christmas period.

Secondly, the Court expressed its opinion regarding the reasonable time within which the buyer must give notice to the seller of non-conformity of the goods following their receipt and after having discovered such non-conformity, in accordance with article 39(1) CISG. It maintained that it was unreasonable for the buyer to receive protests and complaints regarding defective quality from third parties to whom the buyer had resold the goods in a transformed condition and yet to say nothing at all to the supplier of those defective resold goods. It is unacceptable to refrain from giving notice of non-conformity until payment is sought by the seller from the buyer, but it is reasonable for the buyer to give such notice to the seller as soon as the buyer becomes aware of the non-conformity from the protests by third parties.

The Court also expressly indicated in this matter that, within the scope of the CISG, no provisions specifically regulate hidden defects but, in their place, there are provisions governing non-conformity of goods forming the subject of the contract.

Finally, the Court laid down a set of appropriate criteria for fixing damages, as provided for in article 74 CISG.

Addendum

Document A/CN.9/SER.C/ABSTRACTS/17 (Arabic, Chinese,
English, French, Russian, Spanish)

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Commented on in French: Rosch, [1999] Recueil Dalloz, No. 40, 361