

Case 242: CISG 18; 19; 31

France: Court of Cassation (First Civil Division); J 96-11.984

16 July 1998

S.A. Les Verreries de Saint-Gobain v. Martinswerk GmbH Original in French

Published in French: [1999] Recueil Dalloz, 8ème Cahier, Jurisprudence, 117; CISG-France  
<http://www.jura.uni-sb.de/FB/LS/Witz/16071998.htm>

Commented on in French: Witz, [1999] Recueil Dalloz, 8ème Cahier, Jurisprudence, 117; Ancel et Muir  
Watt, [1999] Revue critique de droit international privé, 122.

The buyer, a French company, placed successive orders with the seller, a German company, for products to be used in glass manufacturing, which were to be transported from the seller's premises to the buyer's premises by tanker lorry chartered by the buyer. The latter claimed that the goods were defective and sued the seller before the Commercial Court of Orleans.

The Court of Appeal of Orleans held that the lower French court had no jurisdiction, basing its ruling on the provisions of the Brussels Convention of 27 September 1968 (articles 17 and 5 (1)) and on those of the CISG. The Court of Appeal considered that the jurisdiction clause appearing on the buyer's order forms in favour of the Commercial Court of Orleans should not apply since the order confirmations sent by the seller contained a jurisdiction clause in favour of the courts at that company's principal place of business.

The Court of Cassation did not make any reference to the Brussels Convention (article 17). It cited only articles 18 and 19 CISG and stated that a reply to an offer which purported to be an acceptance but which contained different terms that materially altered the terms of the offer, such as a different stipulation regarding the settlement of disputes, as provided for in article 19 (3), did not amount to acceptance. The jurisdiction clause invoked by the buyer was therefore inapplicable. The Court of Cassation also concurred with the Court of Appeal's ruling in regard to the application of article 5 (1) of the Brussels Convention, namely that the obligation to deliver the sold goods, as defined in article 31 CISG, had been performed by the handing over of the goods to the first carrier and that the obligation forming the basis of the claim had thus been performed in Germany.