

Case 417: CISG 8, 14(1), 19, 25, 28, 46, 72

United States: U.S. [Federal] District Court for the Northern District of Illinois; No. 99 C 5153

7 December 1999

Magellan International Corp. v. Salzitter Handel GmbH

Published in English: 76 Federal Supplement, 2d series 919; 1999 U.S. Dist. LEXIS 18855; 40 UCC Reporting Service (Callaghan), 2d series 321; <http://cisgw3.law.pace.edu/cases/991207u1.html>

An Illinois distributor of steel products, plaintiff, negotiated with a steel trader with headquarters in Germany and a sales office in Illinois, defendant, to purchase steel to be manufactured in the Ukraine to the plaintiff's specifications. When purportedly accepting plaintiff's offer, the defendant appended general conditions to its order confirmations that differed from plaintiff's conditions with respect to vessel loading conditions, dispute resolution and choice of law. The parties continued to negotiate until plaintiff, under pressure from the defendant, agreed to the contract and arranged to have a letter of credit issued naming the defendant as beneficiary. Each party subsequently sought amendments but they were unable to agree on any change. Defendant therefore stated that unless the letter of credit was amended it would "no longer feel obligated" to perform and would "sell the material elsewhere." Plaintiff thereupon canceled the letter of credit and defendant sought to sell the steel to other buyers.

The plaintiff brought this legal action (1) to recover damages for the defendant's alleged anticipatory repudiation of the contract, and (2) to obtain a court order directing the defendant to deliver the steel to the plaintiff. The defendant moved to dismiss the complaint for failure to state legally sufficient claims.

The issue before the Court was whether the buyer's pleadings stated legally sufficient claims so that the case should proceed to trial.

The Court found that the complaint sufficiently stated facts from which it could be found at trial that there was a contract, that plaintiff was prepared to perform, that there had been anticipatory repudiation by the defendant, and that the plaintiff had been damaged by the repudiation. The Court also found that the complaint stated sufficient facts to justify an order of specific performance under article 46(1) CISG and domestic law, which the Court found to be relevant by virtue of article 28 CISG. The Court therefore refused to dismiss the action but it noted that plaintiff would still have to prove the facts at trial.