

Case 309: CISG 1(1)(b); 11; 18(1); 57

Denmark : Østre Landsret

23 April 1998

Elinette Konfektion Trading ApS v. Elodie S.A.

Original in Danish

Published in Danish: [1998] ØLK Ugeskrift for Retsvæsen (UfR), 1092

Commented on in Danish by Hertz and Lookofsky in [1999] B Ugeskrift for Retsvæsen (UfR), 6;

Commented on in English by Lookofsky in [1999] 18 Journal of Law & Commerce, 289

Commented on in French by Midtgaard Fogt [1999] Recueil Dalloz No. 40, 360

A Danish seller, plaintiff, alleged that a French buyer, defendant, had ordered women's clothing from it. The seller sued the buyer for the outstanding purchase price. Denying the existence of an order or a contract with the seller, the buyer contested the jurisdiction of the court.

The first instance court dismissed the case for lack of jurisdiction, and the seller appealed.

Referring to article 57 CISG, the court of appeal noted that it would normally have jurisdiction according to article 5(1) of the European Communities Convention on Jurisdiction and Enforcement of Judgements in Civil and Commercial Matters, which provides that jurisdiction is dependant upon the place of performance of the obligation in question. However, referring to the European Court of Justice's decision in *Effer* (Case 31/18 4 March 1982) the court held that it would deal with the case only if there was evidence of the existence of the "constituent elements" of a contract - i.e an offer and an acceptance.

The court held Part II of the CISG to be applicable in accordance with article 1(1)(b) CISG. It held that although Denmark had made a reservation upon ratification, declaring that it would not be bound by Part II of the CISG, the conflict of laws rules expressed in article 3(2) of the 1955 Hague Convention on the Law Applicable to Contracts for the International Sale of Goods led to the application of French law, which after the ratification of the CISG, incorporated the provisions thereof in its entirety.

Referring to article 11 CISG and based on the second clause of article 18(1) CISG, which provides that "silence or inactivity does not in itself amount to acceptance", the court found that as the parties had no prior business dealings, the buyer's silence could not be interpreted as an implied acceptance of the offer allegedly made by the seller. Therefore, it determined that it had no jurisdiction to decide the case under the European Communities Convention on Jurisdiction and Enforcement of Judgements in Civil and Commercial Matters, since a key element of the contract (the acceptance) was thus missing.