

Case 315: CISG 38;39

France: Court of Cassation

26 May 1999

Karl Schreiber GmbH v. Société Thermo Dynamique Service et al.

Original in French

Published in French: CISG-France <http://witz.jura.uni-sb.de/CISG/decisions/260599.htm>; [2000] Jurisclasseur périodique (JCP), 274, note Laurent Leveneur; [November 1999] Contrats-Concurrence-Consommation, 14, note Laurent Leveneur

The buyer, a French company, ordered 196 rolled metal sheets from a German company in August 1992. Delivery took place in several instalments between 28 October 1992 and 4 December 1992. On 1 December, the buyer cancelled the contract, principally on the ground that the products did not conform with the order as regards both quantity and quality. Fifteen days later, the buyer sued the seller with a view to having the sale declared void.

The appeal-court judges allowed the claim and dismissed the objection raised by the buyer on the basis of articles 38 and 39 CISG.

The seller referred the case to the Court of Cassation, pleading a breach of articles 38 and 39 CISG.

The Court of Cassation rejected the further appeal: “The Court of Appeal was solely exercising its sovereign discretion when, after considering the chronology of events, it concluded that the buyer had arranged for the goods to be inspected within what was a short and normal period, having regard to the heavy handling which the sheet metal required, and had given the seller notice of the lack of conformity within a reasonable time, within the meaning of article 39 (1) CISG”.

Corrigendum

Document A/CN.9/SER.C/ABSTRACTS/29 (Arabic, Chinese,
English, French, Russian, Spanish)

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The word “l’acheteur”, which appears in the second line of the second paragraph *should read* “le vendeur”.