

Case 395: CISG 19, 74, 75, 77

Spain: Tribunal Supremo, First Division, No. 31/200

28 January 2000

Internationale Jute Maatschappij BV v. Marin Palomares SL

Original in Spanish

Published in Spanish: [2000] Aranzadi Repertorio de Jurisprudencia, 454

Commented on in Spanish: Blazquez, [2000] *Revista de Derecho Patrimonial* 203.

The matters at issue in this case are diverse and on all of them the ruling of the Supreme Court establishes case law.

In the first place, the ruling states that the contract of sale was completed by the exchange of faxes in early 1993 between the parties with regard to the subject matter of the contract—800,000 sacks of jute and the price payable for each of them (US\$ 55.90 per 100 bags)—and to the conformity of the goods with the subject matter: “the literal terms of the faxes unequivocally indicate the acceptance of the offer by the buyer, defendant, thus given rise to a contractual agreement binding on the parties”.

Moreover, any subsequent proposal made by the buyer to the seller to renegotiate the contract terms at which the agreement had been made—in the present case, the price—cannot be regarded as altering the conclusion of the contract, which had already occurred. It is precisely because it was subsequent to the unconditional acceptance of the offer—and to the delivery of a first consignment of the purchased sacks—that the proposal has to be regarded as a proposal of novation amending the contract with regard to the price. That proposal was not accepted by the seller and the buyer refused to pay.

In such circumstances, the seller arranged a substitute sale of the sacks to a third party at terms far lower than those agreed with the Spanish buyer, namely US\$ 0.30 per sack, pursuant to article 75 of the Convention. Furthermore, the amount of the substitute sale was far below the renegotiation price offered by that original buyer. Thereupon, the seller claimed from the Spanish buyer the difference between the original price agreed and the price of the substitute sale, in accordance with articles 74 and 75.

The Court held that the buyer was in breach of its obligation to mitigate the loss, as stipulated in article 77 of the Convention, and consequently made an appropriate reduction in the amount of damages claimed.

The decision of the Supreme Court is also based on the buyer’s requirement that payment be arranged through “a letter of credit from a Dutch bank of recognized standing covering the purchase price offered”. That requirement was shown to be contrary to the practice established by the parties since 1988, whereby payment for previous purchases had been effected “after receipt of the invoice”.