

Case 346: CISG 1(1)(a); 3(2); 45; 46(2); 46(3)

Germany: Landgericht Mainz; 12 HK.O 70/97

26 November 1998

Original in German

Unpublished

A Swedish seller, the defendant, delivered to a German buyer, the plaintiff, a cylinder for the production of tissue-paper. The parties agreed that the purchase price were to include loading, transport, unloading, installation, insurance until the end of installation and extra work. Soon thereafter, delivery problems occurred followed by negotiations between the parties. The buyer gave notice about defects in a detailed list.

More than two years later the buyer sued the seller for damages.

The Court applied the CISG by virtue of Art. 1(1)(a). The application was not excluded by Art. 3(2) CISG. The court found that in order to decide whether the preponderant part of the obligations of the seller consisted in the supply of labour or other services a comparison of the value of each performance in question was not admitted. The court considered the purpose of the contract and the circumstances of its formation and concluded that, under the agreement, the delivery of the cylinder was essential. Additional tasks involved, which amounted to services, such as the design of the machine, were to be regarded as part of the obligation to deliver the final product. Finally, the remaining aspects of performance, namely installation, attendance, transport and other services due under the agreement were of subordinate importance.

As to limitation of action the court held German law to be applicable. The limitation period commenced, when the buyer gave notice about the lack of conformity in the detailed list of damages (article 39 CISG). Since, according to German law, the limitation period was six months the claim was time-barred. This rule applied to all remedies open to the buyer under article 45 CISG including the claims for damages, subsequent delivery (article 46(2) CISG) or repair (article 46(3) CISG).