

Case 429: CISG 6; 8; 14; 18

Germany: Oberlandesgericht Frankfurt a. M.; 9 U 13/00

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<http://www.cisg.law.pace.edu/cisg/text/000830g1german.html> (German language text)

<http://cisgw3.law.pace.edu/cases/000830g1.html> (English translation)

Abstract prepared by Rudolf Hennecke

The decision deals with the prerequisites of contract formation as well as the exclusion of CISG by means of a choice-of-law clause.

The defendant, a German textile wholesaler, ordered five containers of textile yarn from an Indian manufacturer. The Indian manufacturer asked its Swiss subsidiary, the plaintiff in these proceedings, to issue an invoice for the goods. The plaintiff sent the invoice to the defendant, pointing out that it had been requested to do so by its Indian parent company, and demanded that a promissory note be issued by the defendant to secure payment of the contract price. The defendant issued a promissory note in favour of the Indian parent company. The plaintiff requested the issuing of a new, extended promissory note, which should, inter alia, be made out in its, plaintiff's, favour. Even though the defendant failed to comply, the goods were delivered. The plaintiff subsequently claimed the contract price for the goods from the defendant.

The Court first ruled that the applicability of CISG had not been excluded by a choice-of-law clause in the plaintiff's invoice, which stipulated that all transactions were "subject to Swiss law". Since the CISG was part of Swiss law, such a clause could not lead to its exclusion. In order to exclude the application of CISG, a more specific reference to the domestic Swiss code would have been necessary.

The Court then dismissed the claim on the ground that the plaintiff lacked a right of action, since there was no contract between the plaintiff and the defendant. First, the invoice sent by the plaintiff could not be construed as an offer under article 14 CISG, even though it had been intended as such by the plaintiff. According to article 8 CISG, a statement by a party is not to be construed according to the party's subjective intent. Rather, it is to be construed according to its objective meaning, i.e. the understanding of a reasonable receiver. Since the plaintiff had pointed out to the defendant that the invoice had been issued on request by its Indian parent company, the defendant was rightfully under the impression that the Indian parent company, and not the plaintiff, was its contractual partner.

Even if one was to construe the invoice by the plaintiff as an offer, there was still no acceptance by the defendant. Applying the objective standard of article 8 CISG, the issuing of the promissory note could not be understood by the plaintiff as an acceptance, since the note was made out in favour of the Indian company, and did not reveal any intent on the defendant's part to contract with the plaintiff.