

Case 998: CISG [6]; 9; 31(a)

Denmark: Højesteret (Supreme Court), No. 569/1997

15 February 2001

Damstahl A/S v. A.T.I. s.r.l.

Original in Danish

Published in Danish: Ugeskrift for Retsvæsen 2001, p. 1039 et seq.

www.cisg.dk/hd15022001danskversion.htm

Commentary in Danish: Lookofsky & Hertz, Ugeskrift for Retsvæsen 2001, p. 558 et seq.

English translation: www.cisg.dk/DANISH_SUPREME_COURT_15012001.HTM

Abstract prepared by Joseph Lookofsky, National Correspondent

In this case an Italian seller sold steel pipe to a Danish buyer. The goods, which were produced in Italy, were transported to Denmark, where they were resold and delivered to a buyer in Norway. Alleging that some of the pipes did not conform to the contract, the Danish buyer sued the Italian seller in a Danish court, claiming damages equivalent to a claim brought by the Norwegian buyer against the Danish buyer.

The seller challenged the juridical jurisdiction of the Danish court, raising a preliminary issue as to whether the parties in their sales contract had opted out [article 6 CISG] of the “place of delivery” rule in article 31(a) CISG. The buyer’s order provided for delivery “franko Skanderborg”, which according to Danish law means that the seller bears the freight costs and that place of delivery is at the destination, in this case Skanderborg, Denmark. In the seller’s order conformation, however, the delivery term was “F.CO DOMIC. NON SDOG” (franco domicile non sdogato) which, according to Italian law, does not indicate the place of delivery, but only that seller is to bear cost of freight.

Having decided that the parties had not agreed upon delivery in Skanderborg, the Supreme Court held that the default delivery rule in article 31(a) CISG applied, and that the goods were delivered in Italy. For this reason, the Danish courts did not have juridical jurisdiction under article 5(1) of the then-applicable EU Brussels Convention on Jurisdiction and Judgments, so the Danish courts were not competent to rule on the merits of the buyer’s nonconformity claim.