

**Case 482: CISG 6; 7; 38; 39**

France: Court of Appeal of Paris 2000/04607

Traction Levage SA v. Drako Drahtseilerei Gustav Kocks GmbH

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Original in French

<http://witz.jura.uni-sb.de/CISG/decisions/061101.htm> (French language text)

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On 5 December 1994 the buyer, a French company, ordered lift cables from the seller, a German company. The seller delivered the goods on 9 January 1995 on reels that did not conform with the order. After repackaging them on 17 January 1995, the buyer sent the cables to its client, a French company responsible for the maintenance of the lifts in the Eiffel Tower. While installing the cables at the site in March 1995, the client noticed that the goods were defective and informed its supplier, the buyer. The buyer submitted a claim to the seller, the German company, by fax on 16 March 1995. On 7 October 1996 the buyer brought an action against the seller.

The Commercial Court of Paris dismissed the warranty proceedings brought by the French buyer against the German manufacturer. The Court found that the action was not time-barred, but concluded that the warranty proceedings were inadmissible because of the delay in the provision of notice of non-conformity to the seller.

The Court of Appeal of Paris upheld the judgement, except as regards time-barring. The Court emphasized that CISG was automatically applied to contracts for the sale of goods between parties whose places of business were in different Contracting States. A contractual exclusion of the application of the Convention, pursuant to article 6, had to be proved by the party which invoked that rule. A unilateral note in the buyer's commercial documents stating that any dispute would be governed by French law was found not to constitute adequate proof. Such a note did not demonstrate that the two parties intended to exercise the option set out in article 6 of the Convention, which, the Court observed, constituted French law applicable to such sales. In the absence of proof of a common intention of the parties to exclude the application of CISG, the sales contract was governed by CISG.

The Court of Appeal of Paris ruled that the time-barring of the right to bring action was a matter governed by the Convention, but not settled in it. French private international law, applicable under article 7 CISG, referred for matters of time-barring to the law by which the contract was governed. Article 3 of the Convention on the Law Applicable to International Sales of Goods, done at the Hague on 15 June 1955, stated that the sales contract was governed by the domestic law of the country in which the seller had its habitual residence at the time when it received the order. The time-barring was therefore governed by German law. Article 3 of the German Introductory Act of 5 July 1989 and paragraph 477 of the German Civil Code (BGB) provided that the buyer could not bring an action for lack of conformity under CISG more than six months after giving notice. As the buyer had given notice of the lack of conformity of the cables on 16 March 1995, the court action brought by it on 7 October 1996 was found to be time-barred.

The Court of Appeal of Paris also ruled that the action would have been unfounded even if the time-barred period had been interrupted or suspended. Article 38 CISG obliged the buyer to check the goods after delivery. According to the Court, the buyer should have carried out this check at the latest when the cables were repackaged on 17 January 1995. As notice was not given to the seller until 16 March 1995, following the discovery of the defects by the client of the buyer, the buyer lost the right to rely on the lack of conformity of the goods under article 39 CISG.