

**Case 613: CISG 1 (1)(a), 4 (b)**

United States: U.S. [Federal] District Court, Northern District of Illinois; No. 02 C 0540

Usinor Industeel v. Leeco Steel Products, Inc.

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Abstract prepared by Peter Winship, National Correspondent

The issues before the court were (1) whether the seller was entitled to recover possession from the buyer of steel sold to the buyer but for which the buyer had not paid, and, if not, (2) whether the seller could avoid the contract under the Convention.

The seller, a French company with its place of business in France, sold steel plate to the buyer, an Illinois corporation with places of business in the United States. The parties' contract provided that the seller retained title to the steel until the buyer paid the purchase price. The buyer took delivery of the steel but did not make full payment. The seller sued the buyer to recover possession of the steel that had not been sold by the buyer. The legal proceedings revealed that the buyer had granted a security interest in the steel to a bank that took due steps to publicize its interest.

The court found that the Convention governed the rights and obligations of the seller and buyer according to CISG article 1 (1)(a). However, the court stated that the rights of third parties in the goods, whether arising before or after the sale, are excluded from the coverage of the Convention (CISG article 4 (b)). Given the third party bank's rights in the steel, the court concluded that the seller was not entitled to recover possession of the steel or to avoid the contract. (The court also applied domestic United States law to determine the legal effect of the retention of title clause and the relative priority of the interests of the seller and the bank.)