

**Case 882: CISG [7(2); 25]; 35; [45(1); 48(1)]; 49(1); [53]; 58; [74]; 78**

Switzerland: Handelsgericht des Kantons Aargau (Commercial Court of the Canton of Aargau),  
OR.2001.00029

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Abstract in German: Swiss Review of International and European Law (SRIEL), 1/2003, p. 103;

Internationales Handelsrecht (IHR), 4/2003, p. 160

<http://www.globalsaleslaw.com/content/api/cisg/urteile/715.htm>

Abstract prepared by Thomas M. Mayer

The defendant, an association incorporated in Germany, which held the marketing rights concerning a German motor racing event, ordered three inflatable triumphal arches bearing a specified advertising slogan from the plaintiff, a company having its headquarters in the canton of Aargau, Switzerland.

On the first day of the races one of the three arches collapsed. The race management thus insisted that all the arches be taken down. On the same day the defendant gave notice of the defects to the plaintiff, which responded two days later. Some two weeks later the defendant declared the contract avoided.

In the present case, the court before which the matter was brought was competent in accordance with the rules laid down in the Brussels-Lugano Convention. It awarded the plaintiff the full agreed sale price, together with interest on arrears as from the due date of payment. The defendant had correctly invoked lack of conformity within the meaning of article 35 CISG, since the arches did not meet the agreed purpose, namely their use as an advertising medium near to and above the motor racing tracks. However, the court concluded that the defendant was nevertheless not entitled to terminate the contract since, for that purpose, article 49(1) CISG required a fundamental breach of contract. No such fundamental breach was, however, established since it would have been possible to remedy the defect, which would have permitted the use of the arches at subsequent races.

Although the defendant had submitted set-off claims for damages, it had not detailed them and reserved the right to assert them in subsequent proceedings. In accordance with article 78 CISG, the sale price due yielded interest on arrears as from the date established on the basis of article 58 CISG. The rate of interest was to be determined in accordance with national law.