

Case 576: CISG 1 (1) (a); 8 (3); 11; 14; 18; 19 (3); 23; 29

United States: U.S. [Federal] Court of Appeals, Ninth Circuit; No. 02 15727

5 May 2003

Chateau des Charmes Wines Ltd. v. Sabaté USA Inc.

Published in English: Federal Reporter (Third Series) 328, 528;

<http://www.ca9.uscourts.gov/ca9/newopinions.nsf/1A2AF3B55A2B5FC988256>

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Abstract prepared by Peter Winship, National Correspondent

The issue before the court was whether it should dismiss the suit because the parties had agreed to an exclusive forum selection clause designating a foreign court.

The buyer, a company in Ontario, Canada, concluded several contracts with a corporation, with its place of business in the United States, to purchase specialty wine corks manufactured by that corporation's parent company in France. The parent company supplied the corks but the buyer alleged that contrary to the seller's representations the corks did not prevent "cork taint," a distasteful flavour left by some corks. The buyer brought suit for breach of contract against both the parent and subsidiary companies. The sellers moved to dismiss the suit on the ground that the buyer was bound by a forum selection clause printed in the sellers' invoices paid by the buyer. The district court dismissed the suit and the buyer appealed.

The appellate court stated that the Convention governed whether the parties had agreed to a choice of forum clause because the parties had their places of business in different Contracting States pursuant to art. 1(1)(a) CISG.

The court found that the forum selection clause on the invoices was not binding because the clause materially altered the offer as per art. 19(3) CISG. The court also found no evidence that the buyer had affirmatively agreed to the clause under art. 8(3) CISG. The appellate court therefore reversed the district court's dismissal of the case.