

Case 574: CISG 1 (1) (a); 6; 7 (2); 30; 35; 74

United States: U.S. [Federal] District Court for the Northern District of Illinois; No. 01 CV 5938
29 January 2003

Ajax Tool Works, Inc. v. Can Eng Manufacturing Ltd.

Published in English: 2003 U.S. Dist. LEXIS 1306; 2003 Westlaw 223187;

<http://cisgw3.law.pace.edu/cases/030129u1.html>

Abstract prepared by Peter Winship, National Correspondent

The issue before the court was whether the claims of the buyer should be dismissed before trial on the ground that there was no genuine issue as to material fact and the seller was entitled to judgment as a matter of law.

The seller, a company with its place of business in Ontario, Canada, agreed to sell a fluidized bed furnace to the buyer, an Illinois corporation with its place of business in the United States. The parties' contract provided that the seller would repair or replace, at its option, any defects in workmanship or material which might develop under normal use during a period of 90 days after the date of shipment. The contract also provided that repair or replacement under this provision constituted the seller's full liability with respect to the furnace and that the seller was not liable for consequential damages. The contract was to be governed by the laws of the Province of Ontario.

During the four years following shipment, the buyer encountered numerous difficulties with the furnace. The buyer notified the seller of the difficulties and the seller attempted many repairs without charge to the buyer. All the buyer's notices were given after 90 days from shipment. The buyer sued the seller for breach of contract and warranties. The buyer moved to dismiss the suit before trial. As to most claims, the court declined to grant summary judgment.

The court found that the parties' contract was governed by the Convention because the parties had their places of business in two different Contracting States pursuant to art. 1(1)(a) CISG. The court also found that the parties had not agreed to exclude application of the Convention according to art. 6 CISG. The contract term making the laws of Ontario govern was read to be a reference to the Convention as the relevant law applicable in Ontario. Although the buyer's pleadings made claims under the domestic sales law of Ontario rather than the Convention, the court concluded that the pleadings gave legally sufficient notice of claims under the Convention.

As for the buyer's claim that the seller had breached express terms with respect to the quality of the furnace (art. 35(1) CISG), the court declined to grant summary judgment because there remained an issue of material fact as to whether the seller had waived the 90-day contract clause or was stopped from enforcing that clause. The court stated that the Convention did not address the issue of waiver and it applied the laws of Ontario to fill the perceived gap. On the basis of art. 7(2) CISG.

On the same ground, the court declined to grant summary judgment with respect to the buyer's claim that the seller had breached its obligations to deliver a furnace fit for its ordinary use and fit for the buyer's particular use (art. 35(2)(a), (2)(b) CISG)

The court further found that the parties had not agreed to exclude these obligations as per art. 6 CISG.

The court did, however, grant summary judgment with respect to the buyer's claims for damages for consequential losses. The court stated that the contract term excluding such damages was enforceable according to art. 6 CISG. It also stated that the buyer had failed to produce evidence that the losses were foreseeable by the seller (art. 74 CISG).