

**Case 578: CISG 8; 9; 25; 29; 38; 39; 64; 71-73**

United States: U.S. [Federal] District Court for the Western District of Michigan; No. 1:01-691  
Shuttle Packaging Systems, L.L.C. v. Tsonakis, Ina S.A. and Ina Plastics Corporation  
17 December 2001

Published in English: 2001 U.S. Dist. LEXIS 21630; 2001 WL 34046276

Abstract prepared by Peter Winship, CLOUT National Correspondent

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The issue before the court was whether it should issue a preliminary injunction forbidding the seller from making sales in breach of a non-competition agreement.

A company with its place of business in the United States concluded a contract with two companies, one of which had its place of business in Greece, for the purchase of equipment to be used to manufacture plastic gardening pots. The contract provided that the parties would conclude a non-competition agreement and they subsequently did so. The sellers delivered the equipment. The buyer later ceased to make the agreed progress payments, alleging that the equipment was nonconforming and that the sellers had breached the non-competition agreement. The buyer brought suit claiming breach of the non-competition agreement, breach of contract, and breach of warranty. It asked the court to issue a preliminary injunction with respect to the breach of the non-competition agreement.

The court declined to issue a preliminary injunction. It concluded, among other matters, that the buyer was unlikely to succeed at a trial on the merits.

In a preliminary assessment, the court found that the Convention was the governing law with respect to all issues other than the non-competition agreement. The court concluded that the buyer had committed a fundamental breach by failing to make agreed progress payments. On the basis of art. 25 CISG. This entitled the sellers to avoid the contract of sale and non-competition agreement or to suspend their obligations under these agreements pursuant to arts. 64, 71-73 CISG. The court also concluded that the alleged nonconformities in the equipment did not constitute a fundamental breach by the sellers.

The court applied the Convention when rejecting several arguments made by the sellers. In response to the defense that there was no consideration for the non-competition agreement, the court ruled that the agreement was supported by consideration for the contract of sale and that the Convention (art. 29 CISG) provided that contract modifications are enforceable without regard to consideration. In response to the argument that the territory covered by the non-competition agreement was not sufficiently defined, the court applied the Convention's rules on the meaning of the parties' statements (art. 8 CISG) and course of dealing (art. 9 CISG) to interpret the agreement as sufficiently definite. In response to the sellers' argument that they were not bound by the non-competition agreement because the buyer had breached the sales transaction first by failing to duly notify the sellers of the alleged nonconformities (arts. 38, 39 CISG), the court found that notice was timely because the equipment was unique, complicated, delivered in installments and subject to training and on-going repairs.