

Case 616: CISG 1 (1); 1 (2); 95; 100 (1)

United States: U.S. [Federal] District Court, Southern District of Florida; No. 01-7541-CIV-ZLOCH

Impuls I.D. Internacional, S.L. v. Psion-Teklogix Inc.

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Abstract prepared by P. Winship, National Correspondent

The issue before the federal court was whether it had jurisdiction.

The plaintiffs were three related corporations, which distributed computers. One, with its place of business in Spain, distributed computers in Europe and South America; a second, with its place of business in the United States, distributed them throughout South America; the third, with its place of business in Argentina, distributed them in Argentina. The first corporation negotiated an alleged oral contract with an English manufacturer of computers for distribution of these computers in South America by delivery to the second corporation. Deliveries were made pursuant to this contract for approximately six months.

During this period, however, the English manufacturer (who was not a party to this action) acquired a Canadian corporation, and the resultant corporation was the defendant in the action. After the acquisition, the defendant terminated the distribution contract upon 90 days notice, though offered an alternative arrangement to the corporations to act as retail distributors, which the latter declined. They then brought suit against the Canadian corporation for breach of the distribution contract and promissory estoppel.

The court noted that jurisdiction to resolve the case on the merits required both authority over the category of claim in suit (subject-matter jurisdiction) and authority over the parties (personal jurisdiction). The court found that it would have subject-matter jurisdiction if the Convention applied to the contract. Although the three plaintiffs each had its place of business in a Contracting State, the distribution contract had been concluded with a manufacturer with its place of business in England, a non-Contracting State, and under article 1 (1)(a), the Convention would therefore not apply. Further, although article 1 (1)(b) allows for the application of the Convention when a party is not from a Contracting State, the United States rejected being bound by that article when ratifying the Convention. Even though the defendant subsequently became a party to the distribution contract and was from a Contracting State, the court held that case law showed that it was the place of business of the original parties to the contract that governed whether or not the Convention would apply, and the fact that the defendant, became a party to the contract “[was] to be disregarded” because it was not known to the parties “at any time before or at the conclusion of the contract”. (Article 1 (2) CISG). The court therefore found that the Convention did not apply to the contract.

The court also found that it had no alternative subject-matter jurisdiction based on Article III of the United States Constitution, which extends the judicial power of the United States actions between United States entities and foreign entities, because both plaintiffs and defendant included foreign corporations.

Given the lack of subject-matter jurisdiction, the court found it should not proceed to address the other issues raised in the pleadings, and dismissed the action.