

Case 649: CISG 57 (1)(a)

Italy, Corte Suprema di Cassazione, Sezioni Unite, No. 7503/04

Tekna S.r.l. vs. Eberhardt Freres S.

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An Italian seller (plaintiff) concluded a contract with a French buyer (defendant), for the sale of goods (refrigerators' components) manufactured by the seller. When the plaintiff brought action before an Italian court asking for payment of the price for the delivered goods, the defendant alleged lack of jurisdiction and argued that the contract included a forum selection clause leading to the jurisdiction of a French court. After the lower court had upheld the defendant's claims, the plaintiff asked the Italian Supreme Court to state the Italian jurisdiction on the case. The Supreme Court rejected the defendant's claims and held that the Italian court had jurisdiction.

In assessing the question of jurisdiction, the court evaluated the applicability of the forum selection clause embodied in the contract. Italian Law provides that in case of commercial and civil disputes the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Law applies. Article 17 (1) of such Convention establishes that a forum selection clause must be in written form *ad probationem*. Since the contract where the clause was embodied was neither signed by the plaintiff nor implicitly agreed upon by it (at least as far as this particular clause was concerned), the court held that the contract was not binding upon the parties.

The court then referred to art. 5 (1) of the Brussels Convention, which sets forth the jurisdiction of the country where the obligation must be performed. In order to assess the place of performance of the obligation (i.e. the place of payment), the court held that the CISG was applicable, thus superseding both domestic law and the 1980 Rome Convention on the Law Applicable to the Contractual Obligation (ratified by Italy). Pursuant to art. 57 (1)(a) CISG, and lacking any agreement to the contrary, the buyer shall pay the price at the seller's place of business: since this was in Italy, according to the above mentioned art. 5 (1) of the Brussels Convention, the Supreme Court established that the Italian court had jurisdiction.