

**Case 883: CISG 33(c); 47(1); 49(1)(b); 71(1); [74]**

Switzerland: Kantonsgericht von Appenzell Ausserrhoden (Cantonal Court of Appenzell Ausserrhoden), 433/02

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Abstract in German: Internationales Handelsrecht (IHR), 6/2004, pp. 254 ff.

<http://www.globalsaleslaw.com/content/api/cisg/urteile/852.pdf>

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In January 2002, the German plaintiff and the defendant, based in Switzerland, concluded a contract of sale concerning a machine being used by a third company until the beginning of March 2002. The agreed sale price was 15,000 euros, payable 14 days before the delivery of the machine. The precise date for taking possession of the machine was to be communicated to the buyer in the course of the following days. Notwithstanding several requests from the plaintiff, the defendant never communicated a date for taking possession. Following the expiry of a final additional period of time fixed by it, the plaintiff brought an action for damages before the competent court, claiming the payment of approximately 7,000 euros as compensation for the loss that it had suffered by reason of the resale of the machine to a Turkish customer.

The court held that, in accordance with article 71(1) CISG, the plaintiff was entitled to suspend the performance of its obligation to pay the sale price. Citing article 33(c) CISG, it further held that the defendant should have fixed a date for delivery of the machine no later than the beginning of April 2002. In accordance with article 49(1)(b) CISG, the plaintiff, having unsuccessfully fixed an additional period of time for performance within the meaning of article 47(1) CISG, was thus entitled to terminate the contract on 29 April and could claim compensation for its loss. However, the court considered that the loss asserted had not been sufficiently demonstrated. For that reason it finally rejected the claim.