

Case 635: CISG 1 (1) (b); 29 (1); 57 (1) (a)

Germany: Oberlandesgericht Karlsruhe 7 U 40/02

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CISG-online.ch website <<http://www.cisg-online.ch/cisg/urteile/911.pdf>>

English translation available at: <<http://cisgw3.law.pace.edu/cases/031210g1.html>>

Abstract prepared by Ann-Catrin Theisen

The case examines the influence of an agreement regarding the terms of payment on the place of payment pursuant to article 57 (1) (a) CISG.

A German seller entered into a contract with a Brazilian buyer for deliveries of carpets. Since the buyer did not settle all payments for the deliveries, the parties concluded a so-called “New Agreement” on the balance, according to which the buyer acknowledged its payment obligation of the remaining receivables. This obligation was to be settled by cheque, with payments due on fixed dates each month. Furthermore, according to a “Record”, the parties entered into an agreement, which entitled the buyer to send back carpets up to a specified value. While some of the purchase price was settled by the buyer, there was still a remaining balance.

The seller brought suit at Karlsruhe Regional Court claiming the balance. The Regional Court held that the claim was inadmissible, since the seller had not substantiated if and to what extent the invoices submitted to the court had been discharged by the payment of the buyer. Moreover, the court denied its international jurisdiction with regard to the seller’s claims arising out of the “New Agreement” in connection with the “Record”.

On appeal, the Higher Regional Court of Karlsruhe held that, lacking any express choice of law by the parties and according to article (1) (1) (b) CISG, the applicable law was the CISG, since the rules of private international law pointed to the application of the law of Germany, a Contracting State of the Convention.

On the substance of the dispute, the court held that, pursuant to article 57 (1) (a) CISG, the place of payment was the seller’s place of the business in Germany.

The court considered the “New Agreement” as an agreement on the terms of payment: the court held that the parties were free to conclude such an agreement on the terms of payment in accordance with article 29 (1) CISG. The court further stated that the buyer’s obligation to pay the remaining purchase price derived from articles 53 and 54 CISG: this obligation included freight costs even if they were shown separately. The overall price was to be paid at the [seller]’s place of business (CISG article 57 (1) (a)).

As to the issue of limitation of actions, the court held that the limitation of a seller’s right to claim was neither governed by the CISG, nor by the UN Limitation Convention of 1974/1980, as Germany has not acceded to the latter Convention. As a result, German law was applicable to the question of prescription or limitation.