Case 892: CISG [7(2); 25; 26]; 35; 38; 39; 46(3); 47(2); 49(1)(a); 49(2)(b)(ii); 74; 81; 84(1)

Switzerland: Kantonsgericht Schaffhausen (Cantonal Court of Schaffhausen); 11/1999/99

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http://www.globalsaleslaw.com/content/api/cisg/urteile/960.pdf

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The judgement in question contained a detailed preamble on the extent of the obligation to examine goods and give notice to the seller of any non-conformity, in accordance with articles 38 and 39 CISG. The case, which was brought before the competent court in conformity with article 17 of the Lugano Convention, concerned the sale, by the defendant domiciled in Germany, of scale model locomotives to a buyer whose place of business was in the canton of Schaffhausen. At the time of delivery of a sample model and, subsequently, of a prototype prior to mass production, the buyer had reported significant defects and, in the opinion of the court, was not only justified in undertaking an in-depth examination of the goods upon delivery but also had an obligation to do so (to report defects). Taking into account the considerable time necessary for such an examination (from 75 to 150 hours), the court considered that notification of the defects within three weeks of receipt of the goods had taken place in a timely manner.

The court held that the goods disputed by the plaintiff did not in fact conform with the contract, within the meaning of article 35 CISG. The defects were sufficiently significant to represent a fundamental breach of contract within the meaning of article 25 CISG. Under the terms of article 49 (1) (a) CISG the plaintiff was in principle permitted to declare the contract avoided. However, the plaintiff first had to await the expiration of the period of time fixed by it for the defects to be remedied (articles 49 (2) (b) (ii) and 47 (2) CISG). The conditions laid down in article 46 (3) CISG had been fulfilled in the present case.

The plaintiff had fixed several additional periods of time. The last communication had been accompanied by the threat of cancellation of the contract in the event of non-performance, which the court deemed admissible.

The defendant was ordered to reimburse the sale price against restitution of the delivered goods by the buyer. Pursuant to article 84 (1) CISG, the defendant also had to pay interest on arrears. The amount of interest was to be fixed in accordance with the applicable law as determined by Swiss private international law, in the present case German law.

In compensation for the loss sustained by the plaintiff by reason of the shipment and customs clearance of the goods, its advertising costs and certain expenses incurred by it even prior to conclusion of the contract, the court also granted the plaintiff damages pursuant to articles 81 and 74 CISG. In that respect, it explained that compensation could be requested for the entire loss sustained, hence for the loss arising from cancellation of the contract itself as well as for the loss resulting from subsequent re-performance. That also covered expenses needlessly incurred through cancellation of the contract.