

Case 652: CISG: 3 (2); 7; 30; 31; 53

Italy, Tribunale Padova

Pessa Studio vs. W.H.S. Saddlers International

10 January 2006

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<http://www.cisg.law.pace.edu/cisg/wais/db/cases2/060110i3.html#cd>

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The dispute arose out of a sale contract on approval of two merry-go-rounds manufactured and to be installed by an Italian manufacturer in the United Kingdom. As neither the price was paid nor the goods returned to the seller within the time fixed in the contract, the seller brought an action against the buyer before an Italian Court of First Instance. This latter declared not to have any jurisdiction according to art. 5.1 (b) of EC Council Regulation No. 44/2001 on jurisdiction and recognition and the enforcement of judgments in civil and commercial matters [Regulation 44/2001 applies to actions, concerning "civil or commercial matter", brought after 1 March 2002].

According to the said art. 5 (1), the place of performance of sales contracts is the place "where the goods were delivered or should have been delivered under the contract", providing this is in a Member State. However, since the Regulation does not provide a definition of "sales contract", the Court resorted to an autonomous definition and the Court made reference to the CISG, since the Convention defines the substantial meaning of "contract of sale". The Court considered the recourse to the Convention justified also in light of the international consensus on the CISG and of its particular character. As a matter of fact, the CISG, though a stand-alone instrument, is also a model for other legal texts (e.g. European Union Directive n. 99/44 on the sale and consumer goods and associated guarantees).

According to art. 3, 30 and 53 CISG, a sale contract is a contract whereby the seller is obliged to deliver the goods, transfer the property in the goods and possibly deliver the documents relating to the goods while the buyer is obliged to pay the price and to take delivery of the goods. Contracts where part of the obligations of the party who supplies the goods consists in the supply of labour or other services are also considered sales contracts unless the supply of labour or other services represent a preponderant part of the obligations (art. 3 (2)CISG).

In the present case, the seller was also obliged to install the merry-go-rounds in the United Kingdom. However, the Court did not consider the obligation to supply labour preponderant over the obligation to manufacture/deliver the goods. In particular, the value of the merry-go-rounds was superior to the labour supply and in the agreement the installation was not described as an essential condition of the delivery.

Finally, with regard to the issue of jurisdiction, the Court referred to art. 31 CISG. However, the judges noted that, since the seller was bound to install the merry-go-round in the United Kingdom, none of the options set forth in the said art. 31 could apply. With reference to art. 5 Regulation 44/2001, the Court thus concluded that the United Kingdom was the place of performance of the obligation and declared the jurisdiction of the English courts.