

Case 822: CISG 41; 43; 44

Germany: Bundesgerichtshof

VIII ZR 268/04

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[2006] Juristenzeitung (JZ) 977; [2006] Neue Juristische Wochenschrift (NJW) 1343;

[2006] Recht der internationalen Wirtschaft (RIW) 462;

[2006] Zeitschrift für Rechtsvergleichung (ZfRV) 154

<http://www.cisg-online.ch/cisg/urteile/1200.htm> (original)

<http://cisgw3.law.pace.edu/cases/060111g1.html> (English translation)

Abstract prepared by Prof. Ulrich Magnus, National Correspondent, and Jan Lüsing

The claimant, a car dealer based in the Netherlands, bought a used car from the defendant, a German car dealer in April 1999. In August 1999, the police seized the car from the claimant on the suspicion that the car had been stolen prior to the contract of sale. The insurance company of the original owner demanded the turnover of the car from the claimant in a letter dated May 2000.

Meanwhile, in October 1999, the claimant requested refund of the purchase price from the defendant stating that the contract was invalid because the car had been stolen. After the seller rejected the request, the buyer filed an action for refund of the purchase price and for damages relating to expenses allegedly incurred in connection with the pick-up of the car from the seller.

Although the claimant was successful in the first instance, on appeal its claims were dismissed. The Federal Court of Justice upheld the appeal decision. It held that the buyer had no right to remedies under article 45 CISG if it had lost its right to rely on article 41 CISG by failing to give notice of legal defects within a reasonable time according to article 43 (1) CISG. The court pointed out that the length of the “reasonable time” under article 43 (1) CISG was to be determined by the circumstances of each individual case. Therefore, a rigid interpretation of the concept was to be excluded. However, the buyer had to be granted a certain period of time within which it could get an approximate picture of the legal situation, also depending on the type of legal defect. On the basis of those standards, the court confirmed the view of the court of appeals that the notification to the seller in the letter of October 1999, more than two months after the seizure of the car, was beyond the reasonable time as intended in article 43 (1) CISG.

Furthermore, the Federal Court of Justice held that the buyer could not derive any rights from the insurance company’s demand for handover of the car, because it had failed to notify the claim to the seller within a reasonable time after receiving that letter. The court noted that the notification of the claim of a third party had to contain the relevant information on the claiming person and the steps taken by it, as the notification was supposed to allow the seller to contact the third party and to reject the claim against the buyer. The claimant had sent the seller a letter after the seizure of the car by the police in October 1999, but only to inform the seller of the seizure based on the police suspicion of a stolen car. It seemed that no other letter had been sent to the seller after the buyer had received the letter of the insurance company in May 2000.

Finally, the Federal Court stated that the requirements of the exception to article 43 CISG contained in article 44 CISG were not fulfilled, as the buyer lacked a reasonable excuse for its failure to give the required notice within a “reasonable time”.