

Case 802: CISG 35, 36, 38, 39

Spain: Tribunal Supremo (sección 1a)

Reporting Judge: Don Ignacio Sierra Gil de la Cuesta

17 January 2008

Antecedents: Juzgado de Primera Instancia, no. 1 de Arrecife, 31 May 1999;

judgement of AP Las Palmas, 24 October 2000

Published in Spanish: <http://www.uc3m.es/cisg/sespan67.htm> and

Aranzadi/Westlaw (RA 2008/38038)

Abstract prepared by María del Pilar Perales Viscasillas, National Correspondent

The German buyer submitted an application for judicial review by the Supreme Court of the judgement of the Provincial High Court. The Supreme Court rejected the application.

The German buyer claimed that CISG articles 35, 36, 38 and 39 had been violated. The Supreme Court reviewed the most important provisions of the Convention to be found in parts I and III thereof, and dwelt especially on article 25, recognizing that that article implied a system of contractual liability based on a criterion of objective imputation, attenuated, however, by exceptions – corresponding to the hypotheses of fortuitous events and force majeure under domestic law – and by a parameter of reasonableness. The Supreme Court then focused on the German party's arguments based on a lack of conformity of the vehicles, which exhibited a certain amount of damage in the form of scratches, chafes and the deterioration of various components. The Supreme Court concentrated its analysis on determining the object of the sales contract in the light of its clauses. It was indicated in the contract that the vehicles had previously been hired out, hence the stipulated price, and that the seller undertook to ship the vehicles in good condition taking into account normal use and free of accidents. The Supreme Court, evaluating the evidence considered by the Provincial High Court, agreed with its conclusion that the defects detected in the vehicles resulted from normal wear in view of the use to which they had been put earlier, which had been known to the buyer and had been taken into account by the contracting parties, and that the imperfections of the vehicles resulting from their earlier use had been expected, whereas no signs of accidents had been detected. The Supreme Court therefore concluded that there had been no lack of conformity with the contract provisions or violation of CISG article 35 and no breach of contract by the two Spanish seller companies. In addition, the Supreme Court found that the German buyer had not complained of the defects in time as required by CISG article 39 (1).