

Case 1080: CISG 25; 35; 46 (2)

Poland: Supreme Court

V CSK 456/06

Spółdzielnia Pracy "A" v. GmbH & Co. KG

11 May 2007

Abstract prepared by Rohan Batra and Nimrat Kaur

A Polish seller and a German buyer entered into a contract for the sale of leather for the manufacturing of military shoes for the German Army. The leather was delivered directly to the third party manufacturer in Germany, but the German buyer did not inspect the goods after they were delivered to the manufacturer. Subsequently, the German Federal Bureau for Technical Defense and Supply found that the goods did not conform to the relevant specifications and the buyer notified the seller about the non-conformity. Meanwhile, the German Army returned all manufactured shoe pairs. An additional period of three days was given to deliver substitute goods but the seller refused. The buyer sent a declaration for the avoidance of the contract and the seller sued the buyer for the payment of the purchase price.

The Polish Supreme Court stated that there should not be any distinction between failure to perform and other breaches of the contract. Hence, delivery of non-conforming goods is a breach of contract as per Article 35 CISG. However, it was noted that this non-conformity does not permit a demand for delivery of substitute goods as per Article 46 (2) of the CISG unless there is a fundamental breach of contract under Article 25 CISG.

The Court held, referring to the principle of good faith, the CISG Advisory Council Opinion No. 5, and a ruling of the Austrian Supreme Court, that as a general rule a buyer may withhold payment as a result of non-conformity from Articles 71, 81 (2), 85 and 86 (2) CISG. Further referring to the good faith principle, the Court held that the buyer is not allowed to first request delivery and then purchase substitute good without avoiding the contract. Overall, the Court stated that the buyer, who demanded substitute delivery under Article 46, also had the right to withhold the payment of the price until such time as the seller performed its obligations in conformity with the contract.