

Case 1025: CISG 6

France: Court of Cassation, Commercial Division

3 November 2009

Appeal No. 08-12399

Société Anthon GmbH & Co v. Société Tonnellerie Ludonnaise

Original in French

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Abstract in English: Unilex database: www.unilex.info

English translation: <http://cisgw3.law.pace.edu/cases/091103fl.html> Commentaries: Claude Witz, *Recueil Dalloz*, 2010, panorama, p. 924; Jean-Michel Jacquet, *Journal du droit international*, 2010, p. 496 et seq.

Abstract prepared by Claude Witz, National Correspondent, and Erico d'Almeida

A French leasing company sued for termination of a leasing contract relating to a piece of equipment and for avoidance of a sale agreed between the French company and the German manufacturer.

With regard to the avoidance of sale, the Bordeaux Appeal Court applied French domestic law, and specifically the provisions of the Civil Code relating to the beneficiary of guarantees of hidden defects, rather than CISG, on the grounds that, although the seller company had “cited the provisions of the Vienna Convention”, with particular reference to article 82 relating to avoidance, “it had not requested the application of the Convention in the case before the court”. In adopting this approach, the Court applied the formula of a judgement by the Court of Cassation, First Civil Division, of 26 June 2001, which had since been abandoned (First Civil Division, 25 October 2005, CLOUT No. 837).

The Appeal Court inferred that “the parties to the dispute thus recognized that the applicable provisions are those of the French Civil Code”.

The judgement was rightly overturned by the Court of Cassation, Commercial Division, on the grounds that “the submissions had invoked provisions of both the Civil Code and CISG and the Appeal Court could not infer the wish of the parties to exclude the application of the Convention. Its ruling breached both provisions [Civil Code, art. 3, and CISG, art. 6]”.