# Higher Cantonal Court (*Tribunal cantonal*) Valais

## 28 January 2009 [C1 08 45]

*Translation*[*] *by Andrea Vincze*[**]

**PROCEDURE**

Through its request for appeal dated 28 April 2005, Plaintiff-Appellant [Seller] filed a lawsuit against Defendant-Appellee [Buyer]. [Seller] pleaded that:

***1.*** [Seller]'s request for appeal should be admitted.

***2.*** The [Buyer] should be ordered to pay:

- EUR 255.02 with 5% interest from 19 August 2001;
- EUR 535.00 with 5% interest from 19 August 2001;
- EUR 5,808.28 with 5% interest from 1 January 2002.

***3.*** The legal fees and the costs should be paid by [Buyer].

In its answer dated 5 December 2005, [Buyer] argued for the rejection of the [Seller]'s appeal, and that [Seller] should pay the legal fees and the costs.

[Seller] confirmed its arguments and pleas in its answer dated 7 April 2006.

During the preliminary hearing on 1 June 2006, the parties submitted their evidence. Beyond the examination of documentary evidence, the preliminary hearing consisted of the hearing of a witness by way of a letter rogatory and the testimony of the [Buyer].

After the preliminary hearing, the Monthey district judge transferred the documents on the merits to the higher Cantonal Court on 3 April 2008 for the purposes of rendering a judgment.

During the final hearing on 27 January 2009, the parties confirmed their respective pleas and arguments.

[*] All translations should be cross-checked against the original text. For purposes of this translation, amounts in European currency (*Euros*) are indicated as [*EUR*]; and amounts in Swiss currency (Swiss francs) are indicated as [*Sfr*].

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**DECISION OF THE COURT**

**I. Ruling on the facts**

**1. a)** [Seller] (formerly [...]), having its place of business in [K], Germany, is an active limited partnership business entity [Société en commandite], engaged, in particular, in the sale of composite material. [Buyer], having its place of business in [Z.], [Switzerland], is engaged in designing, manufacturing, sale and distribution of windsurfing boards and other sports articles.

**b)** On dates not specified in the files, [Buyer] placed several orders with [Seller].

***aa)*** Following the delivery of a fiberglass order, on 8 May 2001 [Seller] sent to [Buyer] invoice no. 911093 for the sum of EUR 1,408.53, with the following indication: „INCOTERMS: DDU Z." [Buyer] paid the requested amount. Moreover, [Buyer] paid the customs duties in the amount of Sfr 780.10.

***bb)*** Following further deliveries of the materials, on 20 June 2001 [Seller] sent to [Buyer] invoice no. 911435 for the sum of EUR 17,873.17 payable within the following 60 days, i.e., before 19 August 2001 (p. 11: „payable net to: 19.08.2001"), containing the following indication: „INCOTERMS: EXW K." On the same day, i.e., on 20 June 2001, [Seller] sent to [Buyer] invoice no. 911447, not submitted to the court, for the sum of EUR 342.00.

On 3 December 2001, [Buyer] paid to [Seller] the sum of Sfr 25,750.00. After being questioned the next day about the reasons why it paid less than the requested amount of money, [Buyer] indicated in a fax dated 10 December 2001 that it deducted the sum of EUR 535.00 from the total amount of EUR 18,215.17 (EUR 17,873.17 + EUR 342.00) to compensate for the customs duties relating to invoice no. 911093. In addition, [Buyer] explained that at the time of the order, [Seller] was out of stock, as a result of which [Buyer] had to order fiberglass from South Africa, incurring customs duties. Usually, the materials were shipped from Germany to Switzerland and were not subject to customs duties.

[Seller] argues that the late payment for invoices no. 911435 and no. 911447 led to a currency exchange loss of EUR 255.02.

***cc)*** On 2 November 2001, [Seller] sent to [Buyer] invoice no. 912648 for the sum of EUR 5,808.25, containing the following indication: „INCOTERMS: DDU Z r.." [Buyer] argues that it never received the materials mentioned in this invoice; therefore, it did not pay the requested sum. It appears on the invoice of 2 November 2001 that the shipping company (...) performed the shipping of the materials on an undisclosed date („dispatch: by forwarder"; „forwarder: H."). [Seller] submitted to the court the „delivery note" of shipping company H., at E. (exhibit no. 11). The title of this document – „*Ausfuhrbescheinigung fuer Umsatzsteuerzweck bei der Ausfuhr durch einen Spediteur oder Fachtfuehrer*" – and the provisions indicated on it seem to indicate that this is a document for tax purposes, i.e., to prove that the merchandise was shipped by a shipping company and that the merchandise is not subject to VAT in Germany. Regardless of the real purpose of this „delivery note", this document does not prove that the delivered merchandise is the same as the merchandise mentioned on the invoice dated 2 November 2001, since, on the one hand, the document is not signed by the receiver, and, on the other hand, the items mentioned on those two documents are not identical. Moreover, it is unlikely that [Seller] issued an invoice as much as four months after a delivery that took place in June 2001. In addition, the findings upon the letter rogatory

enforced in Germany did not contradict these observations. Therefore, the „delivery note“ does not prove the actual delivery of the merchandise.

**I. II. Legal considerations**

**2.** Considering the foreign element constituted by the fact that [Seller] has its place of business in Germany, the present dispute has an international character (RVJ 1994 p. 172, para. 1a; Knoepfler / Schweizer / Othenin-Girard, Droit international privé suisse, 3rd ed., 2005, no. 19). Therefore, it is necessary to examine the issue of conflicting jurisdictions and the applicable law.

**a)** Article 1(2) LDIP [„*Loi fédérale du 18 dcembre 1987 sur le droit international privé*“ - Swiss Federal Law on International Private Law of 18 December 1987] provides that international treaties govern international jurisdiction, specifically, the Lugano Convention of 16 September 1988, on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (hereinafter: Lugano Convention) that entered into force between Switzerland and Germany on 1 March 1995 (Art. 61(3) Lugano Convention). Since the [Seller]’s place of business is in [Germany], the Lugano Convention is applicable (Art. 54(1) Lugano Convention; ATF 119 II 391 para. 2; RVJ 1995 p. 164 para. 1a).

Pursuant to Art. 2(1) Lugano Convention, persons domiciled in a Contracting State shall, in lack of provisions to the contrary, whatever their nationality, be sued in the courts of that State. This is a provision establishing only the general jurisdiction, it does not specify which Swiss court has territorial jurisdiction; and that is governed by Art. 112 LDIP. This article provides in the first place that the court having jurisdiction is the Swiss court located at the domicile of the [Buyer] (Bucher / Bonomi, Droit international privé, 2nd ed., 2004, No. 897).

In the present case, [Buyer] has its place of business in Z. [Switzerland], therefore, the judicial authorities of Canton Valais have jurisdiction as a result of the location [of Z.].

**b)** As indicated in the arguments on appeal, the amount in dispute is EUR 6,598.30, i.e., Sfr 10,171.95 at the exchange rate on the day when the lawsuit was filed (exchange rate: 1.5416; ATF 63 II 64; Poudret, Commentaire de la loi federale d’organisation judiciaire, Vol. I, Art. 1-40, 1990, ch. 3.3 and 6 on Art. 36 aOJ). The amount in dispute confers jurisdiction on the Cantonal Court to decide on the present case on first and only cantonal instance (Art. 15(1) CPC and 23(1)(b) aCPC in relation to Art.VI(3) a *contrario* the Decree of 11 October 2006 modifying cantonal law regarding civil procedure in order to adapt it to the federal law on the Supreme Court). Moreover, under Art. 23(5)(b) CPC, a sole judge is authorized to render a judgment (Art. 23(5)(b) CPC in relation to Art. IX(7) of the law modifiying the Judicial Act of 9 November 2006).

**3.** [Seller] based its arguments on the provisions on the international sale of goods.

**a)** Pursuant to Art. 1(1)(a) of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (hereinafter: CISG), the Convention applies to contracts of sale of goods between parties whose places of business are in different States, when the States are Contracting States. The CISG, which entered into force on 1 January 1991 in Germany and on 1 March of the same year in Switzerland, governs only the formation of the contract of sale and the rights and obligations of the seller and the buyer arising from such contract (Art. 4 first sentence CISG). On the other hand, in lack of express provisions to the contrary, the CISG it is not concerned with the validity of the contract or of any of its provisions

or of any usage (Art. 4(a) CISG). Issues not covered by the CISG are subject to the law applicable by virtue of the private international law provisions (Venturi, Commentaire romand, 2003, no. 10 on Arts. 184-215 CO; Werro, La responsabilit du vendeur dans le commerce international et dans le marché intérieur, in: SJ 2002 p. 291 et seq.)

Under the CISG, a sale of goods is a contract under which one party must deliver the goods, transfer the property in the goods, and, if necessary, hand over any documents relating to them, and the other party must pay the price and take delivery of the goods (RSDIE 2002 p. 148 s; Neumayer / Ming, Convention de Vienne sur les contrats de vente Internationale de marchandises: commentaire, 1993, no. 1 on Art. 1 CISG). Articles 14 to 24 CISG cover the formation of the sale of goods contract; if the offer is sufficiently definite, is accepted by the offeree and the declaration of acceptance is communicated to the offeror, the contract is deemed concluded.

**b)** In the present case, the parties did not submit the documents evidencing offer and acceptance. However, it is not contested that [Buyer] placed several orders for merchandise with [Seller]. Therefore, the parties, whose places of business are in Contracting States, concluded several contracts for the sale of goods subject to the CISG.

**4. a)** First, [Seller] is requesting a sum of EUR 535.00, „unduly recouped" by [Buyer] when it paid invoices No. 911447 and No. 911435 of 20 June 2001. [Buyer] argues that it was in compensation for customs duties it had wrongly paid (cf. regarding the possibility to compensate for debts incurred in connection with international sales contracts, unpublished judgment no. 4C.314/2006 of 20 December 2006 para. 2.2.1; RSDIE 2006 p. 202; RSDIE 2005 p. 119).

***aa)*** The obligations of the seller are set forth in Art. 30 CISG and the following articles. These articles are dispositive provisions, they apply only if the parties did not specify the details of the delivery, expressly or implicitly, in accordance with the practices which the parties have established between themselves (Art. 8 CISG), or with reference to commercial terms such as Incoterms (RVJ 2006 p. 191 para. 5a; Brunner, UN Kaufrecht - CISG, 2004, no. 2 on Art. 30 CISG; Venturi, op. cit., no. 59 on Art. 184 CO). Incoterms are official rules enacted by the International Chamber of Commerce (hereinafter: ICC) for the interpretation of the most common terms in international commerce. They cover four specific types of problems relating to the sale of goods: delivery of the goods, passing of risk, allocation of costs, and customs formalities (Neumayer / Ming, op. cit., no. 7 on Art. 9 CISG). A reference to these terms can be made by indicating the full name of the Incoterms clause chosen or by using the abbreviation of the chosen clause consisting of three letters. When the parties do not specify which edition of the Incoterms they are referring to, the latest version at the time of contract conclusion is considered applicable (Brunner, op. cit., no. 19 on Art. 30 CISG).

In principle, the Incoterms apply only in case of a definite and express agreement by the parties, unless there is a practice which the parties have established between themselves (cf. Art. 9(1) CISG; Erdem, La livraison des marchandises selon la Convention de Vienne, thesis, Fribourg 1990, no. 445). In lack of an express agreement between the parties, these rules may also be applicable under Art. 9(2) CISG, as their role as usages is widely recognized and regularly observed in international trade, provided, however, that the applicable Incoterm clause is relevant to the contract (Brunner, op. cit., no. 19 on Art. 8 and 11 on Art. 30 CISG and the references to judgments cited in the footnotes no page 683; Xueref, Les Incoterms 1990, in: Dessemontet [6d], Les contrats de vente Internationale de marchandises, 1991, p. 154 S.; contra Neumayer / Ming, op. cit, no. 7 on Art. 9 CISG, on when the Incoterms do not qualifiy as

usages). Finally, even when the Incoterms were not incorporated into the contract explicitly or implicitly, they are considered as rules of interpretation (Brunner, op. cit., no. 19 on Art. 8, no. 2 on Art. 9 and no. 11 on Art. 30 CISG).

According to the 2000 edition of Incoterms, the term „EXW" („ex works") imposes only a minimal obligation on the seller: it only has to make the merchandise available to the buyer at the agreed delivery location, usually its own place of business (Brunner, op. cit., p. 587 et seq.). As for the term „DDU" („delivered duty unpaid"), it means that the seller performs its delivery duty when it delivers the goods to the buyer, by any transportation vehicle to the place of destination, where the goods are not unloaded and not cleared for import (Brunner, op. cit., p. 673 et seq.). In the present case, the delivery took place after the transportation; therefore, the buyer is responsible for the costs and risks of obtaining any import authorization or any official authorization, and has to complete all the necessary forms for the importation purposes (Erdem, op. cit., Nos. 282 and 321).

It should be noted that a reference to commercial usages or commercial terms such as Incoterms does not exclude the CISG in its entirety but only the areas covered by the mentioned usages or terms (Neumayer / Ming, op. cit., no. 4 on Art. 6 CISG).

***bb)*** In the present case, [Buyer] does not contest the total sum of EUR 18,215.17 stated in invoices no. 911447 and no. 911435. However, [Buyer] argues that it was authorized to deduct EUR 535.00 as a compensation for the customs duties it had wrongly paid regarding a delivery of fiberglass.

The customs duties in dispute were paid during the delivery of the goods subject to invoice no. 911093 dated 8 May 2001 (exhibit no. 9). The parties did not submit the documents relating to the offer and acceptance of the order, neither did they submit general conditions applicable between them, even though several invoices refer to the general conditions of delivery and the payment on 12 June 1997. The parties did not evidence the contents of their agreement concerning the [customs] duties. In particular, [Buyer]'s allegations concerning previous deliveries are not supported by any indications or specific documents showing that it was the [Seller]'s obligation to pay these customs duties. However, the numerous invoices submitted show that using the official rules enacted by the ICC (Incoterms) is a practice which the parties have established between themselves. The invoice of 8 May 2001 is like that and it mentions one particular Incoterm clause, showing that the parties meant to specify the delivery details with reference to [Incoterms]. Moreover, the designation of a specific Incoterm clause and its role as a usage being widely recognized and regularly observed in international trade justify its application in the present case.

Therefore, the question regarding who should have paid the customs duties in dispute must, therefore, be resolved by taking into consideration the reference to „DDU Z.", as included in the invoice of 8 May 2001. Since there is no express indication, the 2000 edition of Incoterms must be applied. Consequently, the [Seller]'s obligation was to deliver the goods to [Buyer], not cleared of customs duties. Therefore, [Buyer] was not entitled to deduct the amount of EUR 535.00 from invoices no. 911447 and no. 911435, and consequently, [Buyer] is ordered to pay this amount to [Seller].

**b)** [Seller] argued that it had suffered a loss, due to a loss in the currency exchange rate, in the amount of EUR 255.02, as a result of [Buyer]'s delay in the paying for invoices no. 911447 and no. 911435 dated 20 June 2001. [Seller] argues that if the invoices had been paid in due time, it would have converted the received sum into Euros immediately upon

receipt. [Buyer] claims that [Seller] did not submit any evidence of the exchange rate, and that, therefore, this claim must be rejected.

***aa)*** Under Art. 53 CISG, the buyer has the obligation to pay the price, as required by the contract and the CISG, and take delivery of the goods (Art. 53 CISG). Under Art. 59 CISG, the buyer must pay the price on the date fixed by or determinable from the contract and the CISG without the need for any request or compliance with any formality on the part of the seller (Art. 59 CISG). This provision clearly specifies that the purchase price is due on the date agreed upon by the parties or on the date determined under Art. 58 CISG, without the need to call upon the buyer to pay or to grant an extension of the deadline (Brunner, op. cit., n. 1 and Art. 59 CISG; Neumayer / Ming, op. cit., no. 1 on Art. 59 CISG).

If the buyer did not pay the price when it was due, the seller may ask for damages under articles 74 to 77 CISG (Art. 61(1)(b) CISG; Brunner, op. cit., no. 3 on Art. 59 CISG; Neumayer / Ming, op, cit., no. 2 on Art. 59 CISG), as well as interest (Art. 78 CISG). In particular, when the debtor is late and pays in a currency different from the legal currency of the creditor's place of business, it is considered an additional damage due to the fact that the location of the buyer's place of business causes exchange rate loss. The creditor must submit evidence regarding the allegation that if the debtor had paid in time it would have immediately converted the sum of money into the legal currency at its domicile or place of business and, therefore, it could have avoided further devaluation of the currency used for the payment. Submitting this evidence is easy because if the creditor can show a loss due to the conversion into the legal currency at its domicile or place of business, the judge presumes this damage; and the debtor can still submit evidence to rebut this presumption of fact (ATF 123 111 241 para. 3a; 117 11 256 para. 2b; 109 11 436 para. 2; Brunner, op. cit., no. 45 on Art. 74 CISG; Weber, Vertragsverletzungsfolgen: Schadenersatz, Ruckabwicklung, vertragliche Gestattungsmoglichkeiten, in: Bucher [ed.], Wiener Kaufrecht, 1991, p. 201; cf. e.g., Thevenoz, Commentaire romand, 2003, no. 9 on Art. 106 CO; Schranker, Commentaire zurichois, 2000, No. 9 203 et seq. on Art. 84 CO).

Nowadays, the conversion rate of currencies is a commonly known fact, which does not need to be submitted or evidenced. It can be checked on the Internet, in official publications and in the written press; thus, it is accessible to everybody (judgment no. 5A_559/2008 of 21 November 2008 para. 4.1; cf. judgment no. 5P.236/1988 of 8 November 1988 para. 1, in: SJ 1989 p. 205; judgment no. 4P.277/1998 of 22 February 1999, para. 3d, in: RSDIE 2000 p. 575). In addition, the Internet allows fast access to the applicable exchange rates on a specific date; therefore, it is not necessary to obtain a bank statement or a copy of the written press on the specific date (judgment no. 5A_559/2008 of 21 November 2008 para. 4.1).

***bb)*** The CISG does not contain any provisions regarding the currency and the legal payment methods. In lack of contractual provisions on the currency of payment, the domestic law designated by the conflict of laws provisions governs this issue (RVJ 2006 p. 188 para. 6a; 1999 p. 227 para. 3c; Neumayer / Ming, op. cit., no. 4 on Art. 54 CISG). Therefore, Article 118 LDIP is applicable (RSDIE 2005 p. 118 et seq.; 2004 p. 106; RVJ 2006 p. 188 para. 6a; 1999 p. 227 para. 3c). Pursuant to this Article, the sale of moveable goods is governed by the Hague Convention on the Law Applicable to International Sale of Goods, concluded in The Hague on 15 June 1955. Under Art. 3(1) of this Convention, a sale shall be governed by the domestic law of the country in which the vendor has his habitual residence at the time when he receives the order, except in the case of certain circumstances not applicable to the present case.

***cc)*** In the present case, all the invoices submitted contain amounts in EUR. In lack of any claims to the contrary by the parties, it is presumed that they agreed on this currency for

the payment. In any event, the application of the provisions mentioned earlier leads to the same conclusion because the orders, with a probability bordering on certainty, were received at the [Seller]'s place of business in K. [Germany] Therefore, German law applies, and the Euro was the chosen currency.

On 3 December 2001, the exchange rate for 1 Swiss franc was EUR 0.678794 (cf. fxtop.com referring to the official rate of the European Central Bank). According to this exchange rate, the amount paid by [Buyer], i.e., Sfr 25,750.00, corresponding to EUR 17,478.96. The amount due was EUR 17,680.17 [at the due date]; consequently, the damages incurred between the due date and the actual payment is EUR 201.21, and [Buyer] is ordered to pay the latter sum to [Seller].

**c)** [Seller] is also requesting the payment of its invoice no. 912648 dated 2 November 2001 for EUR 5,808.28. [Buyer] claims it had never received those goods.

***aa)*** The provisions concerning the seller's obligation to deliver and the derogations the parties may make were discussed in paragraph 4(a)(aa), see that paragraph for reference.

***bb)*** There is no direct provision in the CISG concerning the burden of proof. Yet, the judge must not refer to domestic law because the CISG indirectly provides for the allocation of the burden of proof, by way of the effect of its terms or by establishing a relationship between a rule and its exception. Generally, any party asserting a right has the burden to prove that the conditions for this right are fulfilled; conversely, the other party must prove the facts excluding the claimed right or opposing it (unpublished judgment no. 4C.144/2004 of 7 July 2004 para. 3.3; ATF 130 111 258 para. 5.3; RVJ 2006 p. 188 para. 5b; Brunner, op. cit., no. 56 et seq. on Art. 4 CISG; Neumayer / Ming, op. cit., no. 13 on Art. 4 CISG). The party claiming payment for the goods sold must prove that the goods were delivered in conformity with the contract (ATF 130 III 258 para. 5, 3; RVJ 2006 p. 188 para. 5b).

***cc)*** In the present case, the parties did not invoke or a fortiori establish the contents of their agreement concerning the disputed delivery. They did not submit the contractual documents relating to this delivery. The allegedly delivered goods were subject to invoice no. 912648 of 2 November 2001, which invoice might contain details regarding the respective obligations of the parties. It follows from the indication „Incoterms: DDU Z." on this invoice that [Seller] was supposed to deliver the ordered goods to Z. [Switzerland], i.e., [Buyer]'s place of business. As shown above, the „delivery note" does not constitute proof of delivery. The rogatory hearing of the manager of the shipping company, that took place in Germany, did not show either that [Seller] had performed its obligation. Having failed to prove delivery of the goods invoiced on 2 November 2001, [Seller] is not entitled to claim the payment of EUR 5,808.28.

Application of the CISG to the present case would have led to the same result since [Seller] did not establish the delivery of the goods, by showing that they were handed over either to the first carrier or to the buyer (cf. Erdem, op. cit., no. 335).

**5. a)** The buyer still owes moratory interest from the due date of the purchase price, without request by the seller (Arts. 59 and 78 CISG; RSDIE 2004 p. 107 and the references cited; 2003 p. 103; Brunner op. cit., no. 4 on Art. 78 CISG). Damages due under Art. 74 CISG, including those relating to the loss due to the currency exchange rate, are due from the occurrence of the damage and the interest starts to run the same time, in accordance with Art. 78 CISG (Brunner, op. cit., n. 48 ad Art. 74 CISG).

Article 78 CISG provides for default interest, without specifying the interest rate (RVJ 2006 p. 188 para. 6c, 1998 p. 140 para. 5b; 1995 p. 164 para. 2c; Brunner, op. cit., no. 7 on Art. 78 CISG). The rate must be determined under the law applicable by virtue of the conflict of law rules of the forum (Art. 7(2) CISG; judgment no. 4C.179/1998 of 28 October 1998, in: RSDIE 1999 p. 181; RSDIE 2006 p. 202; 2005 p. 120; 2004 p. 108; RVJ 2006 p. 188 para. 6c). According to Art. 118 LDIP and article 3(1) of the Hague Convention of 1955 on the Law Applicable to International Sales of Goods (on the application of these dispositions, cf. RSDIE 2005 p. 120; 2004 p. 108; RVJ 1998 p. 140 para. 5b; 1995 p. 164 para. 2c). The applicable law is the domestic law of the country where the seller is domiciled at the time of receiving the respective order.

**b)** In the present case, the application of these conflict-of-law rules points to German law. According to German law, the rate of the moratory interest is the base rate plus 5% (Art. 288(1) BGB; cf. e.g., Art. 352(1) HGB). In case of a legal relationship where no consumers are participating, the rate is the base rate plus 8% (Art. 288(2) BGB). The base rate is 3.62%. However, it is modified on 1 January and on 1 June every year; and Deutsche Bank is in charge of publishing the modified base rate (Art. 247 BGB).

[Seller] granted [Buyer] 60 days to pay the invoices of 20 June 2001; the due date was 19 August 2001. The interest on the sum of EUR 535 started to run on the following day, i.e., 20 August 2001. It appears nowhere on the file that the parties agreed upon a particular interest rate. In lack of contrary legal provisions, the judge is bound by the pleas of the parties. The judge can decrease them but may not increase them, may not grant something that is not requested, and may not grant less than what was stated (Art. 66(5) CPC; RVJ 1991 p. 323 para. 3d; Hohl, Procedure civile, Vol. II, 2002, Nos. 3013 et seq.). The judge may not go beyond the pleas; therefore, the interest on the sum of EUR 535.00 is 5% and it starts to run on 20 August 2001. As for the sum of EUR 201.21, relating to the loss due to the currency exchange rate, the interest is 5% and it starts to run on 4 December 2001, the day after the occurrence of the damage.

**6.** [Seller] claimed a sum of EUR 6,598.00. [Buyer] is ordered to pay to [Seller] EUR 736.21 (EUR 535 + EUR 201.21). Under these circumstances, the legal fees are split and 1/8 must be paid by [Buyer] and 7/8 must be paid by [Seller] (Art. 252(1)1 CPC).

**a)** Determined in accordance with the amount in dispute, the legal fees vary between Sfr 1,000.00 and Sfr 3,000.00 (Art. 14(1) LTar). The difficulty of this case was average. Therefore, considering the expenses and the services (Art. 11(2) LTar), the legal fees are evaluated at Sfr 1,600.00, including Sfr 1,550.00 for the court fees and Sfr 50.00 for the clerk fees. Considering the sums already paid (Sfr 980.00 by each party), [Seller] must pay to [Buyer] Sfr 420.00 ((7/8 of Sfr 1600.00) – Sfr 980.00) as reimbursement for the advances paid. The Court Clerk will disburse to [Buyer] Sfr 360.00 ((Sfr 980.00 x 2) – Sfr 1,600.00).

**b)** The attorneys' fees vary between Sfr 2,100.00 and Sfr 3,000.00 for the entire proceeding (Art. 32(1) LTar). Activities of the counsel for [Seller] consisted, mostly, of writing two documents, participating in three court hearings, including the final hearing, and preparing for that. The counsel for [Buyer] wrote only one document, and for the rest he did the same thing as his colleague. Also considering the average difficulty of this case, the costs are evaluated at Sfr 2,480.00 for [Seller] and Sfr 2,280.00 for [Buyer]. [Seller] must pay to [Buyer] a sum of Sfr 1,995.00 (7/8 of Sfr 2,280.00) for the costs. [Buyer] must pay to [Seller] Sfr 310.00 (1/8 of Sfr 2,480) for the same reason.

**JUDGMENT**

For the above mentioned reasons, the court rendered the following judgment:

***1.*** [Buyer] shall pay to [Seller] the sum of EUR 736.21, with 5% interest on the sum of EUR 535 from 20 August 2001 and on the sum of EUR 201.21 from 4 December 2001.

***2.*** The legal fees: Sfr 1,600.00, must be paid by [Buyer] regarding 1/8 of the total legal fees (Sfr 200.00) and by [Seller] regarding 7/8 of the total legal fees (Sfr 1,400.00).

***3.*** [Seller] shall pay to [Buyer] the sum of Sfr 420.00 as reimbursement for the advance payment and Sfr 1,995.00 for the costs. [Buyer] shall pay to [Seller] Sfr 310.00 for the costs.

Sion, 28 January 2009