

### **Case 1150: CISG 75**

Slovenia: Višje sodišče v Mariboru (Maribor High Court)

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In 1995, a seller from Austria sold printing machines to a buyer in Slovenia under multiple contracts of sale. The buyer paid only a part of the purchase price and, after they were delivered, started using the machines.

Because of the buyer's failure to pay the complete purchase price, the seller declared the contract avoided and, on 2 February 1998, claimed restitution of the machines in a different case before the court of the first instance. Thereupon, the buyer filed a counter-claim for restitution of the already paid part of the purchase price to which the seller lodged an objection stating that the amount of the already paid purchase price was at least as high as the damages it had suffered from value diminution of the machines resulting from the buyer's usage.

The court decided on the case in 2000 and confirmed the existence of all three claims and offset the buyer's claim for restitution of the already paid part of the purchase price with the seller's claim for damages resulting from value diminution.

In 2001, after having regained the machines, which were still located at the buyer's premises, the seller sold them to another Slovenian buyer for the price of 180,000.00 Deutsche Marks. Subsequently, it brought another action against the initial buyer claiming payment of the rest of the damages resulting from value diminution due to the buyer's use of the machines in the amount of 125,977.21 EUR. This was the difference in euros between the contractually agreed price for the goods and the price obtained in the substitute transaction. It also claimed statutory interest on this debt.

The court of first instance awarded the seller a part of the claimed damages in the amount of 96,992,48 EUR. It ordered the seller to reimburse the buyer for the costs of litigation. Both of the parties appealed.

On appeal, the buyer asserted that the court of first instance had failed to correctly determine whether the seller had fulfilled the conditions stipulated by article 75 CISG as well as whether the price in the substitute transaction actually represented the market value of the goods.

The appellate court applied the CISG.

Regarding the seller's claim for the difference between the contract price and the price obtained in the substitute transaction, the court first sought to determine whether the conditions from article 75 CISG had been fulfilled, i.e. whether the seller, after having avoided the contract, had sold the goods within a reasonable time and in a reasonable manner. The buyer asserted that the seller had not resold the goods in a reasonable manner because it had obtained a price below the market value. The seller, on the other hand, maintained that, being a foreign company unfamiliar with the circumstances on the Slovenian market, it had considered the resale price to be favourable. In fact, it had arrived at that price after negotiating for a 30 per cent increase on the initial offer by the new buyer.

The appellate court ruled that the reasonableness of the manner of the substitute sale of goods cannot be ascertained merely by determining the market price of the goods. It held that there is a common position in jurisprudence and scholarly writings which requires an examination as to whether the seller has acted with due diligence to be determined through consideration of the seller's subjective properties (e.g. foreign/domestic entity, knowledge of the market, business connections) as well as the objective properties of the goods (e.g. whether the goods are intended for specialized industries with limited markets or for general consumption).

As the court of first instance failed to clarify whether the seller had resold the goods at a reasonable manner in accordance with article 75 CISG, the appellate court reversed the decision and ordered a retrial.