

Case 1492: CISG 79

Spain: Valladolid Provincial High Court (Section 1)¹

Dry Top N.V v. Sociedad Cooperativa Piñón-Sol CYL

6 April 2015

Original in Spanish

Complete text: <http://www.cisgspanish.com/wp-content/uploads/2015/08/SAP-Valladolid-6-abril-2015.pdf>

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The dispute involved a Spanish seller and a Belgian buyer in connection with a contract for the international sale of pine kernels. The parties had regularly been contracting for the supply of pine kernels since 2007. The seller claimed that it was unable to supply all of the contracted goods due to a conifer blight which reduced production and increased prices, and due to problems with some partners in cooperatives, invoking application of article 79 of the Convention. The buyer, for its part, claimed that article 79 of the Convention should not apply, as the incident was not unexpected or unavoidable, as there was high volatility in the pine kernel market insofar as the quantity of pine kernels produced depended directly on harvests, pine kernel quality in other producer countries, and demand for a product that was not a necessity. The Court of First Instance ruled in favour of the seller, and the buyer appealed that ruling.

The Provincial High Court rejected the argument that considerations relating to problems with members of cooperatives fell within the scope of article 79 of the Convention, as such a circumstance remained within its control, referring to its organization and production, being part of the minimum obligations of due diligence and care incumbent on a business person with regard to his or her business. The Court considered the volatility in the pine kernel market and deemed that a reduction in production was not unexpected or unavoidable and that, therefore, the seller might have protected itself from such market-inherent risks by introducing supply and price terms adjusted to such conditions and market characteristics. Further, the Court concluded from the documentary evidence that the seller had been in a position to fulfil its obligations because it had requested to renegotiate the price while still complying with the supply of the contracted pine kernels, without it being able to blame the buyer for its own failure, as the buyer was under no obligation to accept a price other than that agreed. Accordingly, the Court revoked the judgement of the Court of First Instance and ordered the seller to supply the buyer with the pine kernels yet to be supplied under the contract (12,500 kg out of 30,000 kg contracted).

¹ Previously heard by Valladolid Court of First Instance No. 9, 19 February 2014.