

Case 1580: CISG 7(1); 7(2); 38; 39; 74; 78; 79; 84(1)

Spain: Girona Provincial High Court

Appeal no. 80/2015²

Depuradora Servimar, S.L. v. G. Alexandridis & CO.O.E.SC

21 January 2016

Original in Spanish

Complete text: <http://www.cisgspanish.com>

Abstract prepared by María del Pilar Perales Viscasillas, National Correspondent.

The dispute involved a Spanish buyer and a Greek seller in connection with a contract for the international sale of live molluscs, which were to be sent to Spain for purification. The parties were in dispute over the condition of the goods, for which reason the buyer did not pay the agreed price. In the light of articles 38 and 39 of the Convention, the Court deemed that, as the goods were perishable, they should have been examined within a very short period of time — two to eight hours — whereas the buyer had examined the goods more than a week after their arrival, by which time the molluscs had died. As the buyer had failed to prove that the loss of the goods was due to causes other than its delay in examining the goods, the court of appeal confirmed the verdict of the court of first instance and ordered the buyer to pay the price stated in the invoices. Furthermore, the Court relied on an analysis of various cases in the UNCITRAL Digest to indicate that, in accordance with article 79 of the Convention, the burden of proof of exemption lay on the party claiming exemption.

The Court ruled on the *dies a quo* for the payment of interest under article 78 of the Convention, the court of first instance having granted interest from 22 February 2013, the date on which the application was filed. The Court deemed, however, that article 7(2) of the Convention was applicable. Considering the principle of full restitution under article 74 and article 84(1) of the Convention, the Court ruled that the starting date for the payment of interest should be the date of the invoices (30 August 2010). However, the Court modified that conclusion by applying the principle of good faith under article 7(1) of the Convention, as it was only on 11 July 2012 that the first out-of-court complaint was recorded; that date was set as the *dies a quo* for the collection of interest in the present case, as the Court did not consider to be in good faith the almost-two-year delay in the seller's filing the complaint in order to claim interest from the buyer for that period. Thus, the Court considered that this was the best solution for ensuring that good faith remained of prime importance in international trade.

² Previously heard by Figueras Court of First Instance No. 4, ordinary procedure no. 116/2013.