

Case 1450: CISG 11; 12; 13; [66; 69;] 96

Czech Republic: Supreme Court of the Czech Republic

23 Cdo 1308/2011

Ideal Bike Corporation v. IMPEXO spol. s r.o.

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Original in Czech

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This case primarily deals with application of Article 13 CISG in relation to the use of e-mail correspondence in the conclusion of a contract.

The plaintiff (a Taiwanese seller) claimed payment of the purchase price for the delivery of bikes from the defendant (a Czech buyer). In order to conclude the contract, the plaintiff had authorized a third party, a German company, to act on its behalf. The defendant sent two orders by e-mail to the German company, which the latter confirmed by issuing two pro forma invoices that were sent to the defendant. In the resulting e-mail correspondence, the German company sent a revised pro forma invoice relating to the first order with the text: "JÍZDNÍ KOLA — F.O.B. TAIWAN" and requested this to be checked by the defendant. The defendant answered by e-mail with the text "OK". Both orders were then dispatched from Taiwan by the plaintiff. The goods however never reached the final destination, thus the defendant did not pay any money.

The key issue for the Courts was whether a valid contract was concluded; the second issue was the passing of risk in light of Articles 66 and 69 CISG. The Court of first instance held that the contract was validly concluded. However, the Appellate Court was of the opinion that the requirements for written form in accordance with the Article 13 CISG were not met. The Supreme Court of the Czech Republic, in turn, held that e-mail communication is to be considered as a valid written form of contract. The court's argument referred to the time when the CISG was being drafted, a period when the notion of correspondence could not logically refer to e-mail communication. The Supreme Court argued that Article 13 CISG does not contain an exhaustive list of forms that may be considered as made in writing. The forms listed in that article require that recorded information be remotely transmitted and that the addressee shall have a text at his disposal. Both requirements are now satisfied also by way of email or fax. The Supreme Court further argued that this conclusion was supported by academic literature of the nineties. The court also noted that Article 11 CISG (although subject to the limitation of Article 12 CISG) provides that the contract may not necessarily be concluded or evidenced in writing. Referring to Article 6 CISG, the court stated that the parties can agree on a specific form requirement to conclude a contract and that unless otherwise provided for by the existing practice between the parties or by the customs, electronic communications can be also considered as "writing". The court finally took into consideration the reservations of the People's Republic of China to Articles 12 and 96 CISG, as a result of which Article 11 CISG does not apply in this case, since the Czech Republic made a reservation to Article 1 (1) (b) CISG and one of the parties to the contract had its place of business in China. Because of the reservations, the valid form of the contract had to be determined in accordance with Chinese law, which was applicable under the Czech conflict-of-laws rules. The Supreme Court finally reminded that Article 13 CISG is applicable even if Chinese law requires a written form for the contract of sale. The Supreme Court thus reversed the decision of the Appellate Court and referred the case back to it for further proceedings. If the Appellate Court comes to a conclusion that the contract was validly concluded, it shall assess whether the contract included provisions relating to transport which might be decisive for the issue of passing of risk and the claim for payment of the purchased price according to Articles 66-69 CISG.