

CISG-online 3990	
Jurisdiction	Finland
Tribunal	Turun hovioikeus (Court of Appeal Turku)
Date of the decision	18 December 2013
Case no./docket no.	S 13/1060
Case name	<i>Oy Pokostore Systems Ltd. v. TP-Konepajat Polska Ps.z. o.o</i>

*Translation\* Elias Eronen\*\**

## Issue before the Court of Appeal

### Appeal

OY POKOSTORE-Systems Ltd. (hereinafter also «Pokostore») has requested that the claim filed by TP-Konepajat Polska Sp.z. o.o bankruptcy estate (hereinafter also «Polska/bankruptcy estate») shall be dismissed, and that the bankruptcy estate is obliged to compensate for its legal expenses with interest. 1

Pokostore has reformed its justifications presented at the Court of First Instance for its claims, that the delivery made by Polska was not in line with what had been agreed on. A large part of the bars delivered by Polska have not been painted, as had been agreed. The matter has been brought to Polska's attention and therefore a complaint has been made. Polska has known, or at least it could not have been unaware, about the defect, but it has not brought the defect to the attention of Pokostore. Therefore, Polska cannot receive judicial relief on the basis of a possible delay or lack of the complaint. Pokostore itself had to take care of the painting of the bars, which has resulted in additional expenses for Pokostore. The delivery had also been substantially late from the agreed schedule, which has resulted in the construction site's completion being delayed. Pokostore had to pay late payment interest. Even though it has not been shown that Pokostore and Polska have agreed on a late payment penalty clause, Polska is liable for delayed payment penalty based on the principle of liability beyond the direct contractual relationship. The UN Convention on Contracts for the International Sale of Goods (UN Sales law) is the applicable law in the matter and not the significantly stricter Finnish Sale of Goods Act, because the contractual parties are located in different countries. 2

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\* All translations should be verified by cross-checking against the original text.

\*\* Elias Eronen is a law student from the University of Eastern Finland. Eronen has taken part in the 29th annual Willem C. Vis Moot Court Competition.

The Court of First Instance has incorrectly applied the Finnish Sale of Goods Act on the basis that the seller's representative, Ceder, has received the order in Finland. However, Ceder did not have the authority to act on behalf of the seller company as it only acted as a messenger.

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### **Response**

Polska has requested that the appeal shall be rejected and that Pokostore reimburse its legal expenses at the Court of Appeal with interest.

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Polska has stated, as its justifications, that Ceder has acted as Polska's representative, when Pokostore and Polska had agreed on the sale. The Contract also has a closer connection to Finland. The sale has been concluded in Finland, the objects have been inspected in Finland and installed to a building located in Finland. Therefore, the Finnish Sale of Goods Act must be applied to the matter. Pokostore has not complained about the defects in the delivery. It has only made claims about faults in the bars in its response to the claim. No evidence about the delay of the delivery has been demonstrated.

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### **Presentation of evidence in the Court of Appeal**

Same as in the Court of First Instance.

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## **Decision of the Court of Appeal**

### **Reasoning**

The witnesses heard at the Court of Appeal have given testimony on the relevant matters in this case in same manner as has been transcribed in their statements in the decision of the Court of First Instance.

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### **The applicable law**

Both Poland and Finland are parties to the United Nations Convention on Contracts for the International Sale of Goods signed 11 April 1980 in Vienna («CISG»). From Article 1(1) of the CISG it is apparent that the convention is applicable to contracts on the sale of goods when the contractual parties have their places of business in different contracting states, amongst other things. In cases such as this, the UN Sales law must be applied irrespective of what the rules of private international law would dictate. The contractual parties' registered offices are located in different contracting states, Polska's in Poland and Pokostore's in Finland. Therefore, the Court of Appeal holds that the UN Sales law is applicable in this matter (Finnish Supreme Court KKO 2005:114).

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## Complaint

According to Article 38(1) of the CISG the buyer must examine the goods or cause them to be examined, within as short a period as is practicable in the circumstances. According to Article 39(1) the buyer loses the right to rely on a lack of conformity of the goods if he does not give notice to the seller specifying the nature of the lack of conformity within a reasonable time after he has discovered it or ought to have discovered it. However, according to Article 40 of the CISG the seller is not entitled to rely on the provisions of Articles 38 and 39 if the lack of conformity relates to facts of which he knew or could not have been unaware and which he did not disclose to the buyer.

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From the Purchase Order, which has been presented as written evidence in the matter, it is apparent that the ordered bars were to be delivered painted, which is also supported by the testimonies from the witnesses Ceder and Sauli Antero Määttä. Therefore, in the view of the Court of Appeal, it has been agreed between the parties, that all the bars were supposed to be delivered painted. Most of the bars had, however, been delivered without being painted. Therefore, Polska cannot, based on Article 40 of the CISG, appeal to the lateness of the notice, because while manufacturing the goods it could not have been unaware about the mistakes which occurred during the production process causing the goods to be defective and which it has not brought to the buyer's attention.

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## Price reduction and damages

According to the CISG the buyer can, in cases of a delay by the seller, demand the fulfilment of the contract or an annulment of the sale and damages. If the goods are defective, the buyer can also demand a price reduction. According to Article 50 of the CISG, if the goods do not conform with the contract and whether or not the price has already been paid, the buyer may reduce the price in the same proportion as the value that the goods actually delivered had at the time of the delivery bears to the value that conforming goods would have had at that time. According to Article 74 CISG, damages for breach of contract by one party consist of a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach. Such damages may not exceed the loss which the party in breach foresaw or ought to have foreseen at the time of the conclusion of the contract, in the light of the facts and matters of which he then knew or ought to have known, as a possible consequence of the breach of contract.

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According to what Määttä has told, the element installations at the construction site have been delayed because the bars have not been delivered in the correct order. According to him, Salmenaho has said that the bars have not been delivered when they were promised and that the designs had been late. From the evidence provided in the matter, it is apparent that that the designs had been late and that blueprints had been delivered when the design was finished. According to the document named "Order Confirmation" the delivery date was agreed to be 8 weeks after the final technical drawings were completed. The first loads were supposed to be delivered at the end of 2010 with the delivery containing six truckloads. As stated in the reasoning of the court of first instance, it has been established that Pokostore

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has delivered technical drawings still on week 11. In addition, it is undisputed that changes have been made to the bars based on Pokostore's request, which has caused an increased need in time. In the matter is has not been shown that the alleged delays in deliveries have happened because of Polska. Pokostore is therefore not entitled to damages.

According to chapter 17 paragraph 6 of the Finnish Code of Judicial Procedure if the issue relates to the quantum of damages and no evidence is available or if evidence can only be presented with difficulty, the court shall have the power to assess the quantum within reason.

Pokostore has not provided evidence on what damages or expenses the bars not being painted has caused them. Because Pokostore has not provided any evidence on the alleged damages or amount thereof caused by the lack of painting, even though it could have been done without difficulty, the claim for damages must be rejected as unproven.

### **Legal expenses**

With the matter ending as such, Pokostore is obliged to compensate for the bankruptcy estate's legal expenses, which have been found to be correct in terms of quantity, with interest.

The Court of Appeal has decided the matter as is apparent from the judgment statement.

### **Judgment statement**

The decision of the Court of First Instance remains unchanged.

OY POKOSTORE-Systems Ltd. is obligated to compensate 6.054,10 EUR (VAT 24%) TP-Konepajat Polska Sp.z o.o's bankruptcy estate as legal expenses. After a month has passed from the date of the decision for the compensation, delayed payment interest must be paid with the interest rate according to section 4 paragraph 1 of the Interest Act.

### **Appels**

An appeal to this decision may be sought from the Supreme Court, if the Supreme Court grants a leave to appeal based the specific grounds which are apparent from the appeal instructions.

The deadline for requesting the leave to appeal and filing the appeal is 17 February 2014.

The matter has been decided by: Justice, Court of Appeal Leena Virtanen-Salonen, Justice, Court of Appeal Matti Jalava and Justice, Court of Appeal Kaarina Syysvirta.

The decision is unanimous.