

Article 83

A buyer who has lost the right to declare the contract avoided or to require the seller to deliver substitute goods in accordance with article 82 retains all other remedies under the contract and this Convention.

OVERVIEW

1. Article 83 states that a buyer who has lost the right to avoid the contract or to require the seller to deliver substitute goods under article 82 nevertheless retains its other remedies, whether those remedies have their origin in provisions of the contract or in CISG itself. Decisions have devoted very little attention to article 83. The provisions of Part III, Chapter V, Section V of CISG (“Effects of avoidance”), which include article 83,¹ have been cited in support of certain broad propositions concerning avoidance under the Convention. Thus, it has been asserted that “[t]he avoidance of the contract is thus a constitutive right of the buyer, which changes the contractual relationship into a restitutional relationship (articles 81-84 CISG).”² And in a decision holding that a buyer was not responsible for damage to goods that occurred while they were being transported by carrier back to the seller following the buyer’s avoidance of the contract, the court asserted that “Articles 81-84 CISG contain at their core a risk distribution mechanism, which within the framework of the reversal of the contract (restitution), overrides the general provisions on the bearing of risk contained in

article 66 et. seq. CISG.”³ In addition, an arbitral tribunal has asserted that, where the contract is avoided and damages under article 74 are claimed, “one uniform right to damages comes into existence, which can be compared to the right to damages for non-performance under [applicable domestic law] and prevails over the consequences of the termination of a contract provided for in articles 81-84 CISG.”⁴

2. In one decision, a buyer’s attempt to avoid the contract was found impermissible because the goods’ lack of conformity did not constitute a fundamental breach as defined in article 25; citing article 83, the court nevertheless permitted the buyer to reduce the price for the non-conforming goods as provided in article 50.⁵ In another decision a buyer was found to have lost the right to avoid the contract both because he failed to set an additional period of time for performance under article 47 and because he was unable to make restitution of the goods as required by article 82; the court noted that the buyer nevertheless retained a right to damages for breach of contract (although the buyer had not sought them), but the court did not cite article 83 in support of its assertion.⁶

Notes

¹ Chapter V, Section V of Part III comprises articles 81 through 84 of CISG.

² Landgericht Düsseldorf, Germany, 11 October 1995, Unilex.

³ *Ibid.*

⁴ CLOUT case No. 166 [Schiedsgericht der Handelskammer Hamburg, Germany, 21 March, 21 June 1996] (see full text of the decision).

⁵ Oberlandesgericht Stuttgart, Germany, 12 March 2001 (Apple juice concentrate case), English translation available on the Internet at www.cisg.law.pace.edu.

⁶ CLOUT case No. 82 [Oberlandesgericht Düsseldorf, Germany, 10 February 1994].