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CASE LAW ON UNCITRAL TEXTS (CLOUT)

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INTRODUCTION

This compilation of abstracts forms part of the system for collecting and disseminating information on court decisions and arbitral awards relating to Conventions and Model Laws that emanate from the work of the United Nations Commission on International Trade Law (UNCITRAL). Information about the features of that system and about its use is provided in the User Guide (A/CN.9/SER.C/GUIDE/1). CLOUT documents are available on the website of the UNCITRAL secretariat on the Internet (<http://www.un.or.at/uncitral>).

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I. CASES RELATING TO THE UNITED NATIONS SALES CONVENTION (CISG)

Case 223: CISG 57

France: Court of Appeal of Paris

15 October 1997

SARL Sodime-La Rosa v. Softlife Design Ltd. et al.

Original in French

Published in French: CISG-France <http://www.jura.uni-sb.de/FB/LS/Witz/151097.htm>

In October 1993, the French seller entered into a contract with an English buyer for the sale of dressmaker's dummies. Printed on the reverse side of the invoice sent to the buyer were the seller's general conditions of sale, which included a jurisdiction clause in favour of the courts of Paris.

The seller sued the buyer before the Commercial Court of Paris, seeking settlement of an outstanding invoice. The buyer raised a plea of lack of jurisdiction, claiming that the High Court of London was competent.

An objection was lodged by the seller with the Court of Appeal of Paris, which ruled that the matter came under the jurisdiction of the Commercial Court of Paris. The applicable law in the case at issue was French law, which referred to the CISG. The Court of Appeal applied article 57 CISG, in accordance with which the price has to be paid at the seller's place of business, which, in the present case, was located in Paris.

Case 224: CISG 18

France: Court of Cassation, First Civil Division

27 January 1998

Mr. Glyn Hughes v. Société Souriau Cluses

Original in French

Published in French: CISG-France <http://www.jura.uni-sb.de/FB/LS/Witz/27011998.htm>

Commented on in French: Witz, [1998] Recueil Dalloz, 34ème Cahier, Sommaires commentés 312

An English buyer, the defendant, approached a French seller, the plaintiff, with a view to purchasing hooks and sockets for fitting to electrical connectors. Several facsimiles were exchanged between the parties. The buyer filled out a purchase order, stating the quantities, references and unit price per socket. The seller submitted an acknowledgement of receipt of the order, setting out the same terms as the purchase order. The buyer subsequently ordered an additional quantity of hooks from the seller. Following a request from the buyer to change the technical specifications, the seller sent a drawing to the buyer, showing that the original perforations had changed. Nevertheless, some of these parts were delivered. However, the buyer pointed out by letter that it no longer intended to honour its orders for the balance, invoking a confusion over the price. The buyer also pleaded a lack of conformity, the longitudinal perforation of the hooks being shorter than that specified in the contract. The seller accordingly sued the buyer, requesting payment of the price.

The Court of Appeal of Versailles, with which an appeal was lodged against the decision pronounced by the Commercial Court of Versailles, ruled on the merits without first looking into the question of the applicable law. It held that the price had indeed been agreed upon and that the buyer could not demonstrate that it had been the victim of a basic misunderstanding, given the number of documents that had been exchanged. The plea of non-conformity was also rejected by the Court of Appeal.

In its further appeal to the Court of Cassation, the English buyer relied solely on the defence of non-conformity. It invoked the CISG and maintained that the Court of Appeal had deprived its decision of any legal basis by not specifying the rule of law on which its decision was founded and had also disregarded article 18 CISG, which stipulates that silence on the part of the offeree does not amount to acceptance.

The Court of Cassation rejected the further appeal on the ground that the Court of Appeal had not disregarded the rule whereby silence does not in itself amount to acceptance. This superior court ruling was thus pronounced without any express reference to the CISG.

Case 225: CISG 39; 46; 47; 49

France: Court of Appeal of Versailles

29 January 1998

Giustina International (SpA) v. Perfect Circle Europe (formerly Floquet Monopole (SARL))

Original in French

Published in French: CISG-France <http://www.jura.uni-sb.de/FB/LS/Witz/290198.htm>

A French buyer placed an order with an Italian seller for two items of high-tech equipment.

After carrying out tests on two occasions at the seller's premises, the buyer reported the defects and indicated to the seller the necessary repairs and improvements. Following the delivery of the two machines, the buyer gave notice of non-conformity.

An appeal against the first-instance decision pronounced by the Commercial Court of Versailles was lodged with the Court of Appeal, which held that the buyer's various objections met the requirements of article 39 CISG, particularly since they had not been refuted by the seller. The appeal judges also noted that the buyer, when reporting the defects, had requested their rectification and had thus complied with the requirements set out in article 46 CISG.

With regard to the reasonable time for exercising the right of avoidance, as stipulated in article 49 CISG, the Court of Appeal noted that the buyer had not failed to comply with that provision by suing the seller after giving notice of its intention to have the contract avoided, since the buyer had reasonably endeavoured to maintain the contract in force and the seller had requested additional periods of time, which were granted by the buyer (article 47 CISG). Finally, the Court of Appeal concurred with the Commercial Court's ruling of avoidance of the contract, since the delivery of the goods, which did not conform with the order, had substantially deprived the buyer of what it was entitled to expect from the contract.

II. ADDITIONAL INFORMATION

Document A/CN.9/SER.C/ABSTRACTS/2

Corrigenda

(Arabic, Chinese, English, French, Spanish and Russian texts)

Case 21

- (a) The entry "Case 21: CISG 1 (1) (a); 7 (2); 9 (2)" *should read* "Case 21: CISG 1 (1) (a); 7 (2)"; and
- (b) For technical reasons, the final paragraph of the Case *should be deleted*.

Document A/CN.9/SER.C/ABSTRACTS/14

Case 192

Commented on by Claude Witz in [1998] Recueil Dalloz, 35ème Cahier, Sommaires commentés 315.