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CASE LAW ON UNCITRAL TEXTS
(CLOUT)

Contents

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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/Rev.1). CLOUT documents are available on the UNCITRAL website (http://www.uncitral.org).

Issues 37 and 38 of CLOUT introduced several new features. First, the table of contents on the first page lists the full citations to each case contained in this set of abstracts, along with the individual articles of each text which are interpreted by the court or arbitral tribunal. Second, the Internet address (URL) of the full text of the decisions in their original language is included, along with Internet addresses of translations in official United Nations language(s), where available in the heading to each case (please note that references to websites other than official United Nations websites do not constitute an endorsement by the United Nations or by UNCITRAL of that website; furthermore, websites change frequently; all Internet addresses contained in this document are functional as of the date of submission of this document). Third, abstracts on cases interpreting the UNCITRAL Model Arbitration Law now include keyword references which are consistent with those contained in the Thesaurus on the UNCITRAL Model Law on International Commercial Arbitration, prepared by the UNCITRAL Secretariat in consultation with national correspondents, and in the forthcoming UNCITRAL Digest on the UNCITRAL Model Law on International Commercial Arbitration. Finally, comprehensive indices are included at the end, to facilitate research by CLOUT citation, jurisdiction, article number, and (in the case of the Model Arbitration Law) keyword.

Abstracts have been prepared by national correspondents designated by their Governments, or by individual contributors, when so indicated. It should be noted that neither the national correspondents nor anyone else directly or indirectly involved in the operation of the system assumes any responsibility for any error or omission or other deficiency.

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

Case 490: CISG 4; 9(1); 14(1); 15; 18(1)
France: Court of Appeal of Paris
2002/02304
10 September 2003
Société H GmbH & Co. v. SARL M
Original in French
Published in French: http://witz.jura.uni-sb.de/CISG/decisions/100903.htm
Abstract prepared by Claude Witz, National Correspondent, with the assistance of W.-Thomas Schneider

This case involved a German seller of textiles and a French buyer. In the normal course of their commercial relationship, the seller's sales representative visited the buyer's headquarters on 9 September 1998. During this visit, the seller's representative showed the buyer a new Lycra-type fabric and offered it to the buyer for sale.

On 28 September 1998, the seller sent the buyer a letter in German, headed "Confirmation of order", regarding the sale of 100,000 metres of fabric at a cost of 11.4 French francs per metre. The letter stated that the fabric would be delivered, at the buyer's request, in 25,000-metre batches between November 1998 and February 1999. This procedure for confirming an order made orally had already been followed with previous orders by the buyer.

The buyer subsequently requested a first delivery of 1,718 metres. This delivery was the subject of an invoice issued on 15 March 1999, which referred to the balance of 98,772 metres remaining to be delivered. The buyer paid the invoice without expressing any reservations but made no further request for delivery of the outstanding amount of fabric.

The seller claimed that a sales contract to supply 100,000 metres of fabric had been concluded between itself and the buyer at the time of the representative's visit. The seller therefore on 7 September 1999 issued a writ against the buyer before the Commercial Court of Paris seeking an order requiring the buyer (1) to pay 330,480 francs, corresponding to the balance of the unclaimed fabric after a deduction for stock sold on to third parties, (2) to take delivery of the outstanding amount of fabric and (3) to pay 242,315 francs in damages to compensate for losses resulting from the resale to third parties at a lower price. In its judgement of 13 September 2001, the Court dismissed the seller's claim.

The Court of Appeal of Paris, hearing the seller's appeal, upheld the first instance decision on the grounds that there was no contractual relationship between the parties which would substantiate the seller's claim.

The Court noted first that, under article 1315 of the French Civil Code, it was for the seller to prove the claimed obligation.

The Court further noted that the sale concerned parties based in two different States that were Contracting States of CISG, article 4 of which provided that CISG governed only the formation of the contract of sale and the rights and obligations of the seller and the buyer arising from such a contract.

The Court began by considering whether a sales contract could have been formed orally during the visit by the seller's representative to the buyer. It ruled that, in view of the buyer's categorical denial of the formation of a contract, the seller had failed to provide the proof required to establish that a contract had been formed.

The Court further ruled that a contract had also not been formed in accordance with the usage established between the parties, even though the same procedure, whereby an order was made orally by the buyer and confirmed in writing by the seller, had been followed before. The Court held that the existence of such usage did not absolve the parties of their obligations arising out of article 14(1) and article 18(1), which provided, respectively, that an offer should be sufficiently definite and that silence on the part of the offeree did not in itself amount to acceptance. The Court concluded that, in the case in point, the seller, who wished to supply the buyer with a new kind of fabric, very different from the fabrics sold previously, could therefore not rely on the previous usage developed by the parties for transactions concerning standard fabrics. Since the usage was immaterial, the "confirmation of order" should be regarded as an offer of goods to buy which the buyer had not accepted.

In addition, the Court considered that the buyer, not knowing German, was entitled not to have understood the meaning of the "confirmation of order", which was drawn up in German only.

Lastly, the Court held that the delivery of 1,718 metres of fabric did not constitute partial fulfilment of a presumed total sale of 100,000 metres.

Case 491: CISG 42
France: Court of Appeal of Colmar
1 B 98/01776
SA HM v. AG K.
13 November 2002
Original in French
Published in French: D.2003, Somm., p. 2367, obs. Claude Witz
http://witz.jura.uni-sb.de/CISG/decisions/131102v.htm
Abstract prepared by Claude Witz, National Correspondent

In 1994, the company HM, which owned six clothing shops in eastern France, acquired a batch of shirts from the company K, based in Germany. The shirts were made of a fabric that reproduced the features of two types of fabric to which the industrial textile group D-M & Cie had exclusive rights. Sued for infringement by D-M & Cie, HM brought warranty proceedings against its supplier K.

In its judgement of 5 March 1998, the Colmar District Court found HM guilty of infringement and ordered K to indemnify HM for the awards made against it.

In its judgement of 7 March 2001, the Court of Appeal upheld that ruling insofar as the ruling accepted that there had been an infringement of which HM was guilty vis-à-vis D-M & Cie, but it reduced the amount of damages due from HM to D-M & Cie. The Court further ordered that the warranty proceedings should be reopened. It thus invited the parties to give their views on whether CISG of 11 April 1980, particularly article 42, was applicable to the case. The two parties took the view that CISG was applicable.

The Court of Appeal of Colmar applied CISG, with particular reference to article 42, from which it quoted at length.

It ruled that the buyer, HM, "could not, in its professional capacity, have been unaware of this infringement. It therefore acted with knowledge of the intellectual property right that has been invoked and, under CISG of 11 April 1980, article 42(2)(a), the company K (the seller) was no longer required to provide goods free of all intellectual property rights (Court of Cassation, First Civil Division, 19 March 2002)".

The Court of Appeal accordingly set aside the District Court's ruling and dismissed the warranty proceedings brought by HM.

Case 492: CISG 35; 38; 47
France: Court of Appeal of Lyon
01/02620
18 December 2003
Société P et al. v. S SA et al.
Original in French
Published in French: http://witz.jura.uni-sb.de/CISG/decisions/181203v.htm
Abstract prepared by Claude Witz, National Correspondent, with the assistance of W.-Thomas Schneider

Under a contract signed on 31 July 1995, the buyer S, a French public transport company, ordered 40 banknote-to-coin change machines from the seller P, which was also based in France. The machines were manufactured by a company based in Germany and used software supplied by another German company.

The first batch of 18 machines was delivered in October 1995 and faults became apparent as soon as the machines were installed. On 26 October 1995, the buyer S notified the seller P of a number of complaints concerning the non-conformity and various faults of the machines.

In January 1996, at the request of the computer programmer, his French distributor conducted tests on the machines but failed to correct the faults.

Following a lengthy correspondence between the three French companies, a decision was taken to send one of the machines to the German manufacturer for testing and any modifications that might be necessary. At the end of 1996, the buyer S was still in possession of nine machines that were still not functioning but had paid the seller P the sale price of 800,000 French francs.

On 23 October 1996, the buyer S issued a writ against the seller P before the Commercial Court of Lyon for avoidance of the sales contract, reimbursement of the sum paid and payment of damages. Claims for damages were subsequently lodged with the same court against the two German companies by the buyer S, on 23 October 1996 and 16 January 1997, and by the seller P.

In its judgement delivered on 16 March 2001, the Commercial Court accepted the claim of the buyer S, pronounced the sales contract of 31 July 1995 void and ordered the seller P to refund the sums paid and to pay damages. The Court dismissed the claims for damages against the two German companies, however, on the grounds that they were inadmissible under the time-barring provisions of

paragraph 477 of the German Civil Code (BGB), in the version which was in force until 31 December 2001.

The Court of Appeal upheld the part of the judgement by the Commercial Court in which it had pronounced the sales contract of 31 July 1995 void. It varied, however, that part of the ruling in which the claims against the German companies had been declared inadmissible under German law.

With regard to the action by the French seller P against the two German companies, the Court noted that the contractual relationship was governed by CISG. It nonetheless dismissed the French seller P's claim on the grounds that P was itself responsible for the breach of contract with regard to the buyer S and that P had not shown that the expenses borne by it related to errors committed by the German companies.

With regard to the claim by the buyer S for damages from the two German companies, the Court began by considering the applicable law and, in that context, debated the nature of the contract. First, it noted that the fact that the manufacturer was supposed to supply machines to the specifications of the buyer S was not sufficient reason to describe the contract as a manufacturing contract and that, since the product had failed to meet the owner's very specific special requirements, the contract was, in this case, a sales contract.

In determining the applicable law, the Court agreed with the argument put forward by the German companies invoking the Convention on the Law Applicable to International Sales of Goods (The Hague, 15 June 1955), under which, in default of a law declared applicable by the parties, a sale was governed by the domestic law of the country in which the seller had its habitual residence at the time when it received the order; they argued that the direct action taken by the buyer against the manufacturer was of a contractual nature and therefore subject to German law. According to the defendants, the action was time-barred, since the German Civil Code provided for a limitation period of six months from the delivery of the movable goods.

The Court noted, however, that German law incorporated CISG, that the parties had not set it aside and, indeed, that the reference to German law in the general conditions of sale fully supported the statement that CISG was applicable.

The Court found that, by failing to meet the specifications of the buyer S, of which they had known, the German companies had breached the obligation imposed on them by article 35 CISG to deliver goods fit for any particular purpose expressly or impliedly made known to them at the time of the conclusion of the contract.

The Court then stated that "article 38(2) [sic] of the Convention provides that the buyer is time-barred if the seller has not been given notice of the lack of conformity of the goods within a period of two years from the date on which they were handed over". Without referring to the "reasonable time" mentioned in article 39(1), the court noted that the first machines had been installed on 24 October 1995 and that on 26 October 1995 the buyer S had made a number of complaints concerning the conformity of the goods.

Moreover, the Court observed that the buyer S could, under article 47 CISG, fix an additional period of time of reasonable length to allow the seller P to perform its obligations; during that period, S was not deprived of the right to bring

proceedings against the seller P. The Court stated that the period provided for in CISG—i.e. the two-year period—must run from the date of expiration of the additional period of time. The Court observed that the time-barring could also be interrupted by the acknowledgement of liability by the seller P; and such acknowledgement had been made. The Court concluded that the action initiated by the French buyer S against the two German companies had not been brought too late and was therefore admissible.

The Court therefore found that the action of the buyer S in instituting direct proceedings against the two German companies for reparation for damage was admissible and well-founded.

Case 493: CISG 39
France: Court of Appeal of Paris
2003/01961
Société V Ltd. v. Société A AG
19 September 2003
Original in French
Published in French: http://witz.jura.uni-sb.de/CISG/decisions/190903v.htm
Abstract prepared by Claude Witz, National Correspondent, with the assistance of W.-Thomas Schneider

The case concerned an Austrian seller of foodstuffs and a French company engaged in the trading of food products, including powdered milk.

In the spring of 2000, the seller supplied the buyer with 30.75 tons of organic powdered milk. The delivery was the subject of three invoices, dated 27 April, 19 May and 7 June 2000, for a total sum of 208,290 deutsche mark (98,822.5 euros).

The buyer refused to pay that amount, on the grounds that the product did not conform to that ordered and that there was no proof that the product was organic. In a letter of 20 December 2001, the buyer finally informed the seller that one client to whom the powdered milk was to have been sold on had suddenly withdrawn and that another had refused to pay the full price, on the same grounds.

On 18 September 2002, the Commercial Court of Paris, in a case brought by the seller, issued an interim relief order against the buyer for a provisional payment of €41,741.87. On appeal by the buyer, the Court of Appeal of Paris, in its judgement of 19 September 2003, upheld the first instance order and ordered the buyer to pay the total sum of €98,822.50.

On the merits of the case, the Court of Appeal upheld the first instance decision. First, the buyer had, in its letter of 20 December 2001, acknowledged receipt from the seller of the certificates requested by its client. Secondly, the buyer had not produced any written evidence that the milk was not organic.

Lastly, the seller had, according to the Court, pointed out that, under article 39 CISG, the buyer lost the right to rely on a lack of conformity of the goods if it did not give notice to the seller, specifying the nature of the lack of conformity, within a reasonable time after it had discovered the lack or ought to have discovered it. The Court observed that the buyer had not put forward any serious defence against this argument.

Case 494: CISG 35; 36
France: Court of Cassation
Application D 01-16.107; judgement 1312 FS-P
Société A v. Société S
24 September 2003
Original in French
Published in French: D.2003, jur., p. 2502
http://witz.jura.uni-sb.de/CISG/decisions/240903.htm
Abstract prepared by Claude Witz, National Correspondent, with the assistance of W.-Thomas Schneider

The dispute was between a French seller and a company located in the United Arab Emirates. It was the subject of a judgement of the Court of Appeal of Paris on 14 June 2001 (CLOUT case 481).

The buyer had lodged an application for judicial review of that judgement. In the application, the buyer complained that the Court had wrongly imposed on it the burden of proving the cause of the non-conformity of the goods. According to the plaintiff, it was clear from article 36 CISG, under which the seller was liable for any lack of conformity which existed at the time when the risk passed to the buyer, that the burden of proof of the cause of such lack of conformity always rested with the seller. Secondly, the buyer believed that the judgement misinterpreted article 35(2) CISG, inasmuch as the Court had stated that, while the lack of conformity could have resulted from a manufacturing fault, it could also have been due in full or in part to the transport or storage conditions. The Court had not suggested, however, that the transport or storage conditions had been abnormal or that the buyer had failed to take the precautions recommended by the seller.

The Court of Cassation considered that this argument was not well founded. In the first place, no inversion of the burden of proof was involved in the Court of Appeal's finding that, given the conflicting evidence, the faults that were found on the goods in Dubai could not be attributed to the seller. Secondly, the Court of Cassation observed that the Court of Appeal, in noting that the goods had been transported at the buyer's risk by a transporter chosen by the buyer and that no evidence had been brought to show that the packaging of the goods had been defective, had been correct in law.

Case 495: CISG 1; 74; 78
France: Court of Appeal of Grenoble
01/01490
SA A v. Entreprise E
28 November 2002
Original in French
Published in French: JCP 2003, panorama 1083, p. 1215
http://witz.jura.uni-sb.de/CISG/decisions/281102av.htm
Abstract prepared by Claude Witz, National Correspondent, with the assistance of W.-Thomas Schneider.

This case, which was between a seller of machines manufactured by a third company, both domiciled in Cuba, and a French buyer, concerned a claim for payment and damages.

The case dated back to the end of 1997. On receipt of an order, the seller supplied the buyer with a quantity of machines, the price of which was never subsequently paid. During 1998, the buyer sent the seller a number of letters acknowledging the debt and citing temporary cash-flow problems as the reason for the delay in payment. In a fax dated 16 October 1998, the machine manufacturer sent the buyer a detailed breakdown of the debt, which amounted to 48,257.26 United States dollars. However, in a document entitled an act of conciliation, the manufacturer expressed its willingness to reduce the debt to US$ 44,909.46. The act of conciliation was reiterated in a document dated 9 November 1999. At the end of 1998, the buyer put in a new order, but the seller refused to supply any goods until the existing debt had been paid in full.

On 26 January 2001, in what was stated to be an adversary judgement, the Commercial Court of Grenoble, in a case brought by the seller, ordered the buyer to pay the sum of US$ 58,238.57. The Court of Appeal of Grenoble, in a case brought by the buyer, dismissed the appeal in part and upheld the first instance order to pay US$ 44,909.46.

On the merits of the case, the Court began by noting that, under article 4, paragraph 1, of the Convention on the Law Applicable to Contractual Obligations (Rome, 19 June 1980), an international contract was, unless the parties chose otherwise, governed by the law of the country with which it was most closely connected and that that country was presumed to be that where the party who was to effect the performance which was characteristic of the contract had its habitual residence or, in the case of a body corporate, its central administration. The Court therefore concluded that Cuban law should apply. The Court then noted that, since the Republic of Cuba had, like France, signed and ratified CISG of 11 April 1980, CISG applied to the current case.

The Court held that it was immaterial that the contracts produced in court did not contain the signature of the buyer's representative, since CISG made no formal requirement with regard to either the validity or the proof of a sales contract.

The Court then upheld the first instance order, on the grounds that the buyer was obliged to pay for the goods under the contract between itself and the seller. The Court thus dismissed the buyer's plea of breach of contract with regard to the order made at the end of 1998, on the grounds that the seller was entitled, at that time, to refuse to supply further goods until the buyer had honoured the commitments arising out of the previous order. However, the Court reduced the amount payable under the first instance order, on the basis of the reduction offered by the manufacturer in its act of conciliation dated 11 November 1998 and 9 November 1999.

In conformity with article 78 CISG, the Court awarded the seller interest on the total sum due. In the absence of a special provision, it held that the legal interest rate in Cuba, as reported by the seller, should apply, but only for the period from 1998 to 2000. Since no information had been provided by the seller on the legal rate in Cuba for 2001 and 2002, the Court applied the legal interest rate obtaining in France during that period.

Lastly, the Court dismissed the additional claim for damages, based on article 74 CISG, on the grounds that the seller had not provided evidence of damage over and above the delay in payment.

Case 496: CISG 1(1)(b); 61; 62
Belarus: Economic Court of the Gomel region
Case No. 55/16
Agropodderzhka Trade House LLC v. Sozh State farm complex
6 March 2003

The case deals with the application of the CISG in case of failure of fulfilment of the obligation of payment by the buyer.

Agropodderzhka Trade House (the seller), a Russian company, concluded on 1 March 2002 in Gomel, Belarus, a contract for the sale of forage wheat with Sozh (the buyer), a Belarusian State farm complex (совхоз-комбинат). The goods were delivered and accepted by the buyer. However, the buyer paid only part of the total agreed price of $175,293. The seller sued the buyer to recover the outstanding sum of $117,293.

The court stated that, when settling the dispute arising from an international economic transaction in relation to which the parties have not determined the applicable law, the court shall determine the applicable law on the basis of the collision norms provided in an international treaty or national law. According to Belarusian legislation, the rights and duties of the parties to the transaction shall be determined in accordance with the legislation of the place when the contract is concluded, unless otherwise provided by the parties' agreement.

In this case, the parties did not choose the law applicable to the contract, which was concluded in Gomel, Belarus. Therefore, the court, based on the relevant norms on conflict of laws, found that Belarusian legislation applies.

The court stated, by virtue of article 11(e) of the Agreement on the Procedure Settlement of Disputes relating to Carrying Out Economic Activity (Kiev, 20 March 1992), that the CISG should apply to the contract, and that the legislation of the Republic of Belarus should apply to the aspects of the contract not covered by the CISG.

In accordance with articles 61 and 62 CISG, in case the purchaser fails to fulfil any of its obligation under a contract, the seller shall be entitled to demand the payment of the price from the purchaser. Since the buyer had failed to make the payment within the specified term, the court entered a judgement against the buyer for the full amount of $117,293 requested by the seller.

Case 497: CISG 1(1)(a); 53
Belarus: Economic Court of the Vitebsk region
Case No. 52-11
Marko SOOO v. R. V. Saitadze
17 April 2003

The case deals with the application of the CISG in case of failure of fulfilment of the obligation of payment by the buyer.

Marko SOOO (the seller), a Belarusian company, concluded on 7 February 2002 a contract for the sale of footwear with R. V. Saitadze (the buyer), an individual entrepreneur domiciled in Russia. The goods were delivered to the buyer. However, the buyer did not pay the agreed price of roubles 618,104.5. The seller

sued the buyer to recover the outstanding sum. The defendant did not appear in court.

The court noted that the contract contained the choice of the Vitebsk forum and of Belarus law, and that therefore, as both Belarus and the Russian Federation are party to the CISG, the CISG applies to the contract.

The court also stated that, according to article 53 CISG, the buyer has an obligation to pay the price of the goods. Since the buyer had failed to make the payment within the term specified in the contract, the court entered a judgement against the buyer for the full amount of roubles 618,104.5 requested by the seller.

Case 498: CISG 1(1)(a); 53
Belarus: Supreme Economic Court of the Republic of Belarus
Case No. 30-10/2002
Belparquet LLC v. STEMAU Srl
4 June 2003

The case deals with the application of the CISG in case of failure of fulfilment of the obligation of payment by the buyer.

Belparquet LLC (the seller), a Belarusian company, concluded on 14 and 21 May 2001 two contracts for the sale of parquet with STEMAU Srl (the buyer), an Italian company. The goods were delivered to the buyer. However, the buyer paid only part of the total agreed price of DM 105,753.6. The seller sued the buyer to recover the outstanding sum of 9,006.68 euros. The defendant did not appear in court.

The court noted that the parties did not declare the applicable law in their contracts. Therefore, the court stated that, by virtue of article 8 of the Constitution of Belarus, international treaties are part of the legislation in force in the Republic of Belarus. Therefore, as both Belarus and Italy are party to the CISG, the court declared that the CISG applies to the contract.

The court also stated that, according to article 53 CISG, the buyer has an obligation to pay the price of the goods. Since the buyer had failed to pay in full the price of the goods, the court entered a judgement against the buyer for the full amount of 9,006.68 Euros requested by the seller.

Case 499: CISG 78
Belarus: Supreme Economic Court of the Republic of Belarus
Case No. 7-5/2003
Holzimpex Inc. v. Sozh State farm complex
20 May 2003

The case deals with the application of the CISG in case of failure of fulfilment of the obligation of payment by the buyer, and, in particular, with the determination of the amount of interests due on the outstanding sum.

Holzimpex Inc. (the seller), an American company, concluded on 26 April 2001 a contract for the sale of fish flour with Sozh (the buyer), a Belarusian State farm complex (совхоз-комбинат). The goods were delivered and accepted by the buyer. However, the buyer did not pay the agreed price of $38,732.8. The seller sued the buyer to recover the outstanding sums of $38,732.8 for the price of the goods,

$2,374.3 for a penalty clause for the delayed payment of the price, and interests on the price of the goods in the amount of $9,802.4.

The court noted that the contract contained the choice of the forum of the Supreme Economic Court of the Republic of Belarus and of Belarus law. The court then stated that, by virtue of article 8 of the Constitution of Belarus, international treaties are part of the legislation in force in the Republic of Belarus. Therefore, as both Belarus and the United States of America are party to the CISG, the court declared that the CISG applies to the contract.

After declaring the liability of the buyer for the payment of the price of the goods, the court moved to discuss the demand related to the penalty clause inserted in the contract between the parties to recover losses related to the delay in payment of the price of the goods. Referring to article 14 of the Civil Code of the Republic of Belarus, the court dismissed the demand as the plaintiff had failed to prove any loss. The court then examined the demand of the plaintiff to recover the interests based on article 78 CISG, and stated that in case of delay in payment of the price, the seller is entitled to claim the interest which is to be determined pursuant to article 7.4(9) of the (1994) UNIDROIT Principles of International Commercial Contracts. Accordingly, the court determined the applicable interest rate in the case in the current Belarusian bank rate for short-term crediting of legal entities in US dollars.

The court entered a judgement in favour of the plaintiff for $38,732.8 for the price of the goods and for $9,802.4 for interests.

II. CASES RELATING TO THE UNCITRAL MODEL LAW ON ELECTRONIC COMMERCE (MLEC)

Case 500: MLEC 11(1)
Singapore: Singapore High Court
Suit No. 202 of 2003
12 April 2004
Chwee Kin Keong & Others v. Digilandmall.com Pte Ltd.
Published in English: [2004] 2 SLR 594; [2004] SGHC 71
Abstract prepared by Charles LIM Aeng Cheng, National Correspondent, with the assistance of Andrew Abraham and April Phang

This case deals primarily with the application of the doctrine of mistake to commercial transactions conducted via Internet.

On 8 January 2003, a website operated in Singapore by Digiland, a Singaporean company (the defendant), started advertising a laser colour printer worth Singaporean dollars (S$) 3,854 for the price of only S$ 66. This was due to the inadvertent uploading on the website of a set of figures prepared for a training session. By the time the mistake was discovered several days later, 784 individuals (six of whom were the plaintiffs for this case) had already placed 1,008 purchase orders via the Internet for over 4,086 laser printers. The plaintiffs were friends and familiar with the usage of the Internet and its practices. In total, they ordered 1,606 printers for a total price of S$ 105,996 against a market value of S$ 6,189,524.

The plaintiffs' orders were processed by the defendant's automated order system and confirmation notes were automatically dispatched via e-mail within minutes. Each of the automated confirmatory e-mail responses carried under "availability" of the product the notation "call to enquire". Moreover, the web page entitled "checkout—order confirmation" carried the following statement: "The earliest date on which we can deliver all the products to you is based on the longest estimated time of stock availability plus the delivery lead time."

After the discovery of the pricing error on the website, the defendant refused to honour the contracts on the basis that they were vitiated by a unilateral mistake on the posted price. The plaintiffs then commenced action in the Singapore High Court.

The court applied in its judgement the Singapore Electronic Transactions Act (ETA), which follows closely the UNCITRAL Model Law on Electronic Commerce (MLEC).

The court discussed the general principles pertaining to the formation of contract although noting that the parties had not addressed the court on the issue of when the contract was formed. The court stated that the usual principles of contract law applied under the ETA, although the way Internet merchants presented an advertisement would determine whether it would be construed as an invitation to treat or a unilateral contract. The court recognized that different rules might apply to Internet sales on one hand, and e-mail and worldwide web transactions on the other. In particular, the court stated that under section 15(1) of the ETA read together with section 24 of the CISG, the appropriate default position in e-commerce transactions, whether international or domestic, would be the "receipt rule". However, this rule should be applied flexibly to minimize unjustness. The court applied the rule by analogy in the context of the proceedings, although one of the plaintiffs did not receive a confirmation e-mail because his e-mail box was full.

The court then moved to discuss the issue of mistake in contract law. On this subject, the court stated that mistakes inevitably occur in electronic transmissions. Examples of such mistakes were: (a) human errors; (b) software errors and (c) transmission problems in the communication systems. The court highlighted that, while the electronic nature of the transaction could magnify such errors almost instantaneously, they might be harder to detect than if made in a face-to-face transaction or through physical document exchanges. The court characterized the case as a paradigm example of a human error.

The court recognized the following leading principles for risk allocation in electronic commerce:

(a) The need to observe the principle of conservation of contract;

(b) The need to facilitate electronic commerce transactions;

(c) The need to reach commercially sensible solutions while respecting traditional principles applicable to instances of genuine error or mistake.

The court also discussed the doctrines of unilateral mistake and of snapping up action. The court found that the elements of an offer and acceptance were in principle satisfied in every transaction asserted in the plaintiff's claim and stated

that there was no ground for refusal on the basis that the defendant's acceptance derived from automatic responses.

Be that as it may, the court stated that a manifest mistake had occurred. The court found that the character of the mistake was such that any reasonable person in circumstances similar to each of the plaintiffs would have had every reason to believe that a manifest error had occurred, and that the plaintiffs' behaviour constituted a "snapping up" action. The court reached this conclusion by giving significant evidentiary weight to transcripts of the "Internet chatlinks" (instant messaging) conversations held between the plaintiffs as they were about to purchase the printers.

The court concluded that the purchase contracts are void under common law due to unilateral mistake and dismissed the claims accordingly.

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CISG 1(1)(a)

Case 497:—*Belarus: Economic Court of the Vitebsk region, Case No. 52-11, Marko SOOO v. R. V. Saitadze (17 April 2003)*

Case 498:—*Belarus: Supreme Economic Court of the Republic of Belarus, Case No. 30-10/2002, Belparquet LLC v. STEMAU Srl (4 June 2003)*

CISG 1(1)(b)

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