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CASE LAW ON UNCITRAL TEXTS (CLOUT)

United Nations Convention on Contracts for the International Sale of Goods

Case 2204: CISG 11; 35(2)(a); 51(1); 81; 84 (1)

People's Republic of China: Zhejiang Province Higher People's Court

Case No.: (2022) Zhemin Zhong No. 1205

MaRa Medical-Technical-Aid GmbH v. Ningbo Laida Automotive Technology Co., Ltd.

16 February 2023

Original in Chinese

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Abstract prepared by Zhang Bona, National Correspondent

This case involves the partial avoidance of a contract for the international sale of goods and the standard for calculating interest when the Seller refunds the payment. On 3 April 2020, Ningbo Laida Automotive Technology Co., Ltd. (the Seller) and MaRa Medical-Technical-Aid GmbH (the Buyer) entered into a contract for the sale of face masks. Subsequently, the Buyer paid the full amount. Some of the masks delivered by the Seller were confiscated at customs and the remaining quantity could not be delivered. The Buyer then sued the Seller, requesting a refund of the amount paid and the payment of interest for the period the funds were blocked. The Seller argued that the termination of the contract could not be attributed to it. The confiscation of the masks in question was due to the Buyer's request to affix the "CE" mark, which led customs to believe that the masks required commercial inspection, ultimately resulting in their confiscation. Therefore, the Seller claimed that it should not be held liable for breach of contract.

With regard to the application of CISG, the court of first instance (Ningbo Municipal Intermediate People's Court, Zhejiang Province) held that the places of business of the Buyer and Seller were located in Germany and China, respectively. The case involved a dispute over a contract for the international sale of goods. Both China and Germany were CISG contracting States and the parties did not exclude the application of the Convention. Therefore, CISG was applicable for the adjudication of the case. Regarding the dispute in the case, the court of first instance held that the Seller's inability to deliver the remaining masks was of their own making, with no valid grounds for exemption from liability. The Seller should bear the corresponding liability for breach of contract for the portion of the contract that could not be performed. The Buyer, as the party that fully performed its contractual obligations, could, in accordance with article 51 (1) of CISG, request termination of the contract for the undelivered portion and demand that the Seller refund the price corresponding



to the undelivered portion and pay interest. Regarding the issue of the standard to apply for the interest rate, as article 84 of CISG does not specify an applicable interest rate, it would be appropriate to refer to the opinion of the CISG Advisory Council. In this case, the interest rate should be determined with reference to CISG Advisory Council Opinion No. 9, Consequences of Avoidance of the Contract, based on the prevailing commercial investment rate at the Seller's place of business. However, since the Buyer did not object to the annual interest rate of 4.12 per cent claimed by the Seller, this rate was used to determine the interest payable by the Seller. The Seller, dissatisfied with this judgment, filed an appeal.

The court of second instance (Zhejiang Province Higher People's Court) held that, according to CISG article 35, unless the parties agreed otherwise, the determination of whether the goods conformed to the contract should primarily be based on the intended purpose for which goods of the same description were normally used. Since the Buyer was located in Germany, the masks in question must comply with the entry standards of the European Union. The Seller could not attribute the inability to deliver the remaining masks to the Buyer, owing to the substandard quality of their masks and failure to declare them for export, as required by law. Therefore, the court rejected the Seller's corresponding claims. Regarding the first-instance judgment based on the relevant provisions of CISG and the losses of principal and interest determined by reference to the relevant opinions of the CISG Advisory Council, the court of second instance upheld the findings.

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