

Case 155: CISG 19(2); 86(1)

France: Court of Cassation (1st Civil Division)

Decision dismissing the appeal on points of law brought against the decision of the Court of Appeal of Paris of 22 April 1992

4 January 1995

Société Fauba v. Société Fujitsu Original in French

Published in French: Recueil Dalloz Sirey 1995, Jurisprudence, 289; [1996] UNILEX; Witz, Claude, Les premières applications jurisprudentielles du droit uniforme de la vente internationale - Convention des Nations Unies du 11 avril 1980, Librairie Générale de Droit et de Jurisprudence (L. G. D. J.), Collection Droit des Affaires, Paris (1995) 140

Commented on in French by Witz, see Recueil Dalloz Sirey 1995, Jurisprudence, 290; Witz, see L.G.D.J. above (1995) 61; 69

Reported on in English: [1996] UNILEX

The Court of Cassation dismissed the appeal on points of law brought by the French buyer against the decision of the Court of Appeal of Paris regarding the formation of the sales contract. The buyer asserted that the contract had not been formed and that, by deciding the contrary, the Court of Appeal had violated article 19 CISG.

The Court of Appeal was also held by the buyer to have violated article 86 CISG by finding that the buyer should have immediately returned the surplus goods delivered.

The Court of Cassation agreed with the ruling of the trial and court on the question of the existence of an agreement between the parties regarding the object at issue and the price, including the part of the agreement relating to an adjustment of the initial price in accordance with the market and the alterations made in the content of the order. Having done so, the Court of Cassation made no reference to any provision of CISG.

Secondly, the Court of Cassation referred to article 86(1) CISG, under which the buyer who had received the goods and intended to reject them was entitled to retain them until it had been reimbursed by the seller its reasonable expenses for preserving them.

In dismissing the appeal on this point, the Court of Cassation found that the buyer “had never claimed to have incurred such expenses for those goods which did not correspond to its orders” .

破棄院は、売買契約の成立に関するパリ控訴院の判決に対してフランスの買主から提起された上告を棄却した。買主は、契約が成立していない旨、および、それとは逆の判決をした控訴院は CISG19 条に違反している旨を主張した。

買主は、また、引き渡された余剰な物品を買主は即時に返還すべきであると認定した控訴院は CISG86 条に違反していると主張した。

当該目的物と代金に関しての両当事者の合意が存在しているかどうかの問題について、市場価格に従った当初の代金額の修正についての合意部分、および、注文内容の変更を含めて、破棄院は原審判決に同意した。そのように判断するに際し、破棄院は CISG のどの規定も参照しなかった。

次いで、破棄院は CISG86 条 1 項を引用した。それによれば、物品を受けとったがこれを拒絶する買主は、物品の保存にかかる合理的費用を売主が償還するまで物品を保持しておく権利を有する。

破棄院は、この点についての上告を棄却するに際し、買主は「注文に合致しない物品についてそのような費用を負担したことを主張していない」と認定した。