

Case 632: CISG 53; 54; 57

United States: U.S. [Federal] Bankruptcy Court, Northern District of Ohio

No. 00-18761 and Adversary No. 01-1045

In re Victoria Alloys, Inc. (Victoria Alloys, Inc. v. Fortis Bank SA/NV)

10 April 2001

Published in English: Bankruptcy Reporter 261, 424; Collier Bankruptcy Cases, Second Series 46, 242; Bankruptcy Court Decisions 37, 213; UCC Reporter Service, Second Series (Callaghan) 44, 722

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ケース632 : CISG53条、54条、57条

アメリカ合衆国 : アメリカ合衆国連邦オハイオ州北部地区破産裁判所

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2001 年 4 月 10 日

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要約は国選記者のPeter Winshipによる

The issue before the bankruptcy court was whether the estate of the bankrupt debtor included goods allegedly sold to the debtor.

破産裁判所での争点は、破産債務者が自己に売却されたと申し立てている物品が破産債務者の財産に含まれる否かであった。

The bankrupt debtor, a corporation with its place of business in the United States, concluded a contract to purchase pig iron from its parent corporation, a company with its place of business in the United Kingdom. The contract provided that the debtor was to pay against tender of documents of title (articles 54 and 57 CISG).

アメリカ合衆国に営業所を持つ会社である破産債務者は、英国に営業所を持つ親会社から銑鉄を購入する契約を締結した。その契約には、債務者は権利証の交付と引換えに代金を支払う旨が規定されていた (CISG54 条、57 条)。

The parent corporation in turn concluded a contract to purchase pig iron from a Russian manufacturer and financed the transaction by granting a security right in the pig iron to its bank. This arrangement was made because of the poor credit rating of the bankrupt debtor. The bankrupt debtor neither signed the written contract with its parent nor did it make payments under that contract before bankruptcy proceedings commenced. The pig iron was shipped from Russia to the United States and stored in warehouses there. The bills of lading and warehouse receipts did not mention the debtor and the debtor never had possession of these documents. The warehousemen acknowledged that they held the pig iron for the parent's bank. The debtor commenced bankruptcy proceedings and brought a claim that the pig iron was part of the bankruptcy estate.

そこで、親会社は銑鉄をロシアの製造業者から購入する契約を締結し、銑鉄に担保権を設定することによって銀行から当該取引の資金を調達した。この手配は破産債務者の信用格付けが低いがゆえにとられたものであった。破産手続きが開始されるまで、破産債務者は親会社と書面で契約せず、契約に基づく支払も行っていない。銑鉄はロシアからアメリカ合衆国に発送され、そこの倉庫に保管された。船荷証券および倉荷証券は当該債務者について言及しておらず、当該債務者はそれらの書類を保有したこともない。倉庫業者は親会社の銀行のために銑鉄を保管することを承認した。債務者は破産手続きを開始し、銑鉄は破産財団の一部であると主張した。

The bankruptcy court found that the debtor had not carried its burden of establishing that the pig iron was part of the bankruptcy estate. Citing both the CISG and domestic law, the court stated that payment of the price was a significant factor in the transfer of title (article 53 CISG) and that the debtor had failed to pay the price in this case.

破産裁判所は、債務者は銑鉄が破産財団の一部であることの立証責任を果たさなかったと認定した。CISG および国内法の双方を引用し、裁判所は代金の支払は権利移転の重要な要素であり（CISG53条）、本件において債務者は支払をしなかったと述べた。