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Case Comment on Interag Co. Ltd vs Stafford Phase Corp, 2nd instance, 983 F 2d 1047

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ABSTRACT

The objective of Article 50 of the United Nations Convention on Contracts for the International Sale of Goods (the “Convention” or “CISG”) is to give the buyer an opportunity to keep the received goods which, even though not entirely conforming to what had been agreed on in the contract, he may still make use of but may take the non-conformity into account when paying the purchase price. This means that price reduction is a remedy that is available to the buyer only if the goods are not in conformity with what the parties had agreed on in the contract and not, for example, in cases where the price of the contracted goods has gone down in the world market after the conclusion of the contract and the buyer feels trapped in a bad contract.

The case of Interag co Ltd vs Stafford phase corp, 2nd instance, 983 F 2d 1047, raises the issue of buyer's right to reduce price for non-conforming good, and decides on a formula for price reduction. The paper has tried to analyse the case, by discussing binding precedents, and formulating a conclusion from the same.

I. INTRODUCTION

The matter of dispute in the present case arose when the buyer, i.e, Stafford, stopped the payment of the seller, i.e, Interag. The buyer alleged that there was a defect in goods, supplied by the seller, because of which the seller sued the buyer for fraud and the buyer counter-claimed for damages. The damages were based on the loss incurred by the buyer on the resale of the said goods. The seller filed a motion to make the buyer produce documents of resale, however, the buyer refused to do so. Henceforth, the question of determination of the buyer's remedy for price reduction concerning the resale of goods was questioned.

II. KEY ISSUES:

1. Whether the buyer is entitled to the remedy of Price Reduction as per Article 50 of the CISG?
2. Whether it is possible to measure the value of goods without resale information?

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III. ANALYSIS:

Article 50 of the CISG lays down the remedy for reduction of the price of goods for a buyer in cases where the seller has supplied goods which do not conform to the contract. As per the article, the buyer may reduce the price taking into account the reduced value of non-conforming goods. The Article enumerates as follows:

“Article 50:

If the goods do not conform with the contract and whether or not the price has already been paid, the buyer may reduce the price in the same proportion as the value that the goods actually delivered had at the time of the delivery bears to the value that conforming goods would have had at that time. However, if the seller remedies any failure to perform his obligations in accordance with article 37 or article 48 or if the buyer refuses to accept performance by the seller in accordance with those articles, the buyer may not reduce the price.”²

This remedy has been derived from Roman law of *actio quanti minoris* which remedied a buyer by sustaining an action against a seller to reduce the cost price in the event of goods not conforming to the set standard.

This article demonstrates the approach of CISG in balancing the rights of the buyer with the rights of the seller. This is done by giving the buyer the right of price reduction along with the option to the seller to remedy the same and receive the original price. It is to be noted that the buyer is not entitled to this remedy if the seller has fixed the goods as per the contract or if the buyer did not give the chance to the seller to do the same. This has been enumerated in Articles 37 and 48 of the CISG.

Therefore, it can be said that it provides the buyer with the option of choosing between specific performance or damages or avoidance of the contract.

In the present case, the buyer did not communicate about the goods not being in conformity with the contract, instead, the buyer sold the goods first and then refused payment. This was in violation of the set standard, as this is regarded as a pre-procedural remedy, wherein it is presumed that the buyer presumably asks for a reduction in price in exchange for retaining the goods, even though they do not meet the standard set in the contract. In the event of non-acceptance by the seller, the

² <https://cisgw3.law.pace.edu/cisg/text/e-text-50.html>

dispute is dealt with in court. Furthermore, no chances were given to the seller to improve or replace the said goods. It has been stated that it is pertinent that the buyer gives a notice of non-conformity of goods, in accordance with Article 39 or 43, and without a due notice the buyer's rights to remedies based on the lack of conformity are forfeited.³ This furthermore points out the malafide intentions of the buyer. The court also concluded that the value of the goods cannot be ascertained by expert testimony and it is necessary for the buyer to produce in court the resale information for proper valuation of goods.

It is also submitted that as per the interpretation of Article 50, the burden of proof to show that the goods were not of conformity and hence the reduction in value of the goods, is on the buyer.⁴

IV. PRECEDENTS

1. Oberlandesgericht München, Germany, 2 Mar. 1994

This is one of the cases where a Swedish vendor who was also the plaintiff signed a contract with a buyer from Germany. The Swedish person was supposed to provide some volume of coke in the SFRY (Socialist Federal Republic of Yugoslavia). When the coke was delivered, the German refused to pay the actual decided price. This was because the buyer thought the quality of the coke was inferior to what he had expected. The seller disagreed and took against the buyer and asked for immediate payment of the originally decided price.

The court in Germany decided that the buyer was not entitled to any reduction in the payment of what the two parties had initially decided. This was primarily because the German had not expressed his intent to reduce the price that he was supposed to pay to the Swedish person in case he found out that the quality of the product did not match his expectations. The decision of the court seemed to be based on its interpretation of Article 50 based on which the German buyer should have declared his intent beforehand, to the Swedish plaintiff if he ever wanted to resort to reducing the price of the commodity once it was delivered to her/him.

The decision of the court of Germany was very fair in this particular case. Though there are people of different schools of thought who believe that Article 50 nowhere mentions that a buyer is ever supposed to provide a written declaration of his intention of reducing a commodity's price before signing a contract in order to reap reductions in the pre-decided value, but relying upon the "Golden Rule" of the rules of interpretations of statutes which

³ https://www.uncitral.org/pdf/english/clout/CISG_Digest_2016.pdf

⁴ CLOUT case No. 938 [Kantonsgericht des Kantons Zug, Switzerland, 30 August 2007]

concludes that a liberal and wider interpretation of statutes hold much more importance than the literal language and words used. This is very necessary to avoid injustice, inequity, ambiguity, hardship, inconvenience both for the buyer and the seller.

2. Braun v. Alitalia

This was a case between a German vendor who sold material for bathing suits to NikeX who was a Hungarian purchaser. NikeX stopped the payment of \$100,000 from a total payment of \$339,401.47 saying that it was not satisfied with the quality of the material. It also alleged that it did not receive the decided quantity. However, Braun said in its defence that this was a mistake by the carrier Alitalia and it had badly damaged Braun's position of bargaining and it was not to be blamed and punished monetarily for the carrier's mistake. The court however found inconsistency with Braun's arguments stating that NikeX would not have held the payment had Braun delivered product as decided in the contract.

V. CONCLUSION:

It is thus submitted that the reduction of the purchase price is a remedy available to the buyer in the event of the seller not remedying the failure of delivering sub-standard goods and not performing his obligations as per Article 37 or 48, and the buyer not refusing the seller's offer of remedy.

The parties are allowed to concede to a particular method to figure out the reduction in price. In a scenario where the parties concurred mutually that the purchaser will resell non-conforming merchandise at the most ideal value, it was held that the purchaser could reduce the original agreed price by the difference in the sale price against the cost price.⁵

In the present case the court also concluded that the value of the goods cannot be ascertained by expert testimony and it is necessary for the buyer to produce in court the resale information for proper valuation of goods.

Furthermore, from the discussion done in the aforementioned paragraphs, it can be concluded that price reduction as a remedy is on a lower pedestal as compared to the seller's right to remedy. Hence, the decision taken by the Court in this case is in line with the set standards for international sale of goods.

⁵ CLOUT case No. 825 [Oberlandesgericht Köln, Germany, 14 August 2006]