

Case number: 169

Article number: sales convention / 7(2); 53; 61(1)(b); 74

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Case 169: CISG 7(2); 53; 61(1)(b); 74

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The German plaintiff produces engines for lawn-mowers. The Italian defendant distributes these engines in Italy according to an exclusive distribution agreement with the plaintiff. The plaintiff demanded payment for delivered engines. Against this claim, the defendant set off a claim for damages caused by an alleged breach of the distribution agreement owing to plaintiff's refusal to deliver further engines.

The appellate court held that the plaintiff could demand payment under article 53 CISG but that a set-off was not possible. The appellate court distinguished between the distribution agreement as a framework contract and the separate sales contracts for the delivery of engines. The separate sales contracts were governed by the CISG. However, the CISG did not cover the distribution agreement, which was governed by the applicable law under conflict-of-laws rules. Under German conflict-of-laws rules, the distribution agreement in this case was governed by Italian law (article 7(2) CISG).

Similarly, the appellate court held that the set-off was not covered by the CISG since it arose from a distribution agreement and had to be determined by the applicable national law, which, in this case, was German law. However, according to German law, the defendant did not demonstrate that it had sustained damages. The appellate court also held that, under articles 61(1)(b) and 74 CISG, the plaintiff could claim attorney's fees for a reminder that was sent prior to the lawsuit.