

Case number: 200

Article number: sales convention / 87; 88

Thesaurus issue:

Country of decision: Switzerland

Year of decision: 1994

Type of decision: Judicial decision

Case 200: CISG 87; 88

Switzerland: Tribunal cantonal de Vaud; 01 93 1308

17 May 1994

Original in French

Unpublished

Abstract published in German in Schweizerische Zeitschrift für Internationales und Europäisches Recht 278 [1995]

The Swiss plaintiff, buyer, concluded a contract with the German defendant, seller, for the purchase of a machine. The buyer paid two installments of the purchase price, but refused to pay

the balance. Therefore, the seller did not deliver the base of the machine, a part without which the machine was worthless to the buyer. The seller threatened to sell the machine part to someone else if the buyer did not pay the balance.

Consequently, the buyer made an application to the court seeking a preliminary injunction prohibiting the seller from selling the machine part. In a counter-claim, the seller applied to the court for either permission to sell immediately the machine part based on article 88 CISG or, alternatively, for permission to store it at the buyer's expense pursuant to article 87 CISG.

The court stated that, when deciding on interim measures, it had to limit itself to a cursory examination of the merits of the case. Therefore, the question of determining whether the claims were justified or not was not decided on the basis of the CISG but rather in accordance with the Swiss *lex fori*. The court did not touch upon whether the CISG was applicable to the merits of the case. The court granted the buyer's application for a preliminary injunction and also permitted the seller to store the machine part, albeit at his own expense.