Buyer beware… of the goods description

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Agreed qualities and good faith expectations of the Buyer in the sale of goods that can be used for multiple purposes.

Judgment of the Federal Supreme Court of 5 August 2020
Case Reference : 4D_7/2020

Facts

A. SA (the Buyer) bought from B. (the Seller) 21 tons of oranges. At the time of conclusion of the contract, the parties did not agree on specific qualities or characteristics, nor did the Buyer disclose the purpose of the contract.

During the delivery, the Buyer tested and tasted the oranges, and refused the goods, arguing they were too acidic for their intended purpose, which in this case was the production of orange juice. The sugar content of the oranges delivered was indeed too low for the juice to be sold as orange juice under Swiss regulations.

The goods were temporarily stocked in the Buyer's warehouse, but the parties failed to reach an agreement and the oranges were eventually donated to a charity after the Buyer had terminated the contract.

The Buyer claimed damages for the storage costs and the Seller claimed payment of the purchase price. The Buyer prevailed before the first instance court, but the appellate court reversed the decision. The Buyer appealed to the Supreme Court.

Issue

The Federal Supreme Court was called upon to decide whether the oranges delivered were of the quality required by the contract.

Decision

The Buyer claimed to have lawfully terminated the contract and, as such, refused to pay the purchase price and sought damages for the storage costs. The buyer bears the burden of proving non-conformity.

The first step of the reasoning was that the parties did not agree on the quality. Indeed, no specific quality or purpose – such as a minimal sugar content – was explicitly included in the contract. The Federal Supreme Court also pointed out that no implied quality or purpose could be deduced from the circumstances of the case. The Buyer was active not only in the production and sale of orange juice, but also various other (fruit-based) meals. The Seller could not reasonably deduce the intended purpose of the sale from this information. Nor could the price or size give any indication as to their use.

The second step of the reasoning was that the Buyer could not have expected the intended quality in good faith (Art. 197 of the Swiss Code of Obligations [SCO]). In this case, the standard should not have been whether the oranges were suitable for producing orange juice – as this could not reasonably be deduced from the circumstances of the case – but whether they were suitable for human consumption. Under this standard, the Buyer failed to prove that the goods did not conform to the contract, especially given that they were donated to charity.

Finally, the Buyer did not specify before the conclusion of the contract that the sugar content would be tested or the oranges would be sampled. The appellate court and the Federal Supreme Court stated that the Buyer could not rely on its own negligence to terminate the contract, especially in view of the fact that it had been active for far longer than the Seller on this market (thirteen years, rather than one year, at the time of conclusion of the contract).

In conclusion, the Seller delivered goods that conformed to an agreed standard and to the good faith expectations of the

Buyer, and the appeal was therefore dismissed.

Key takeaway

Swiss law imposes a series of duties on buyers wanting to terminate their contracts or claim damages (examination, notice of defects, statute of limitations), but this case serves as a reminder that buyers are required to be careful even before the conclusion of the contract. The Buyer cannot simply rely on a general description of the goods, especially where those goods can be used for multiple purposes.

Comments

This case applies Swiss (domestic) law, but the reasoning of the Federal Supreme Court would have been similar under the United Nations Convention on Contracts for the International Sale of Goods (CISG). Indeed, Art. 35(2)(a)-(c) CISG list three similar conditions, namely "fit[ness] for the purposes for which goods of the same description would ordinarily be used"; "fit[ness] for any particular purpose expressly or impliedly made known to the seller at the time of the conclusion of the contract […]" and "qualities of goods which the seller has held out to the buyer as a sample or model".

The Buyer's claim would certainly have also been rejected under the CISG, as the oranges were fit for ordinary use (human consumption) and no particular purpose was disclosed by the Buyer. As the Seller did not hold out a sample – nor did the Buyer request one – the Buyer could not rely on it. The goods would therefore be considered to conform to the contract.

Other sources presenting the case

Dario Galli/Markus Vischer, Zum Fehlen einer vorausgesetzten Eigenschaft bei Orangen, in: dRSK, publiziert am 16. Juni 2021

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