

# Commercial Chamber : Scope of protection of United Nations Convention on Contracts for International Sale of Goods

03/02/2021



**Scope of the United Nations Convention on Contracts for International Sale of Goods (CISG) : application to the recourse action of the intermediate seller against its own seller**

Ruling no 100 of 3 February 2021 (19-13.260) - Cour de cassation (Court of Cassation) - Commercial Chamber -  
ECLI:FR:CCASS:2021:CO00100

**Partial quashing**

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## Summary

**Pursuant to Article 39 of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (the CISG), A buyer loses the right to rely on a lack of conformity of the goods if he does not give the seller notice thereof at the latest within a period of two years from the date on which the goods were actually handed over to the buyer.**

**The cour d'appel (Court of Appeal), to which the final seller brought a recourse action against his own seller, infringed this provision by refusing to apply it, when ruling that Article 39 does not apply to such an action, which finds its cause not in the lack of conformity itself, but in the action taken by the consumer against the final seller.**

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*Appellant(s) : Ceramiche Marca Corona Spa*

*Respondent(s) : Bois et matériaux, simplified joint-stock company*

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## Facts and procedure

1. According to the ruling under appeal (Poitiers, 13 March 2018), delivered on remand after quashing (Commercial Chamber, 2 November 2016, appeal no 14-22.114), on 18 April 2003, the Italian company, Ceramiche Marca Corona (CMC), a manufacturer and marketer of tiling, sold products to Malet matériaux, whose rights were transferred to Bois et matériaux (the seller), who resold the products on 9 May 2003 in France to Mr and Mrs O... (the buyers).
2. Claiming that the tiling had micro-scratches, the latter parties initiated legal proceedings for compensation against their seller, who called CMC (the supplier) as guarantor.

## Reviewing pleas

### On the second part of the first plea, appended hereafter

3. Pursuant to Article 1014, paragraph 2 of the Civil Procedure Code, there is no need to rule by a specially reasoned decision on this plea, which is clearly not of a nature to lead to quashing.

### On the first part of the first plea

#### Statement of plea

4. CMC criticises the ruling for declaring admissible the legal proceedings brought against CMC by Bois et matériaux, whereas "Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999, on certain aspects of the sale of consumer goods and associated guarantees, serves to protect the consumer purchasing goods in a member state other than where the consumer resides. He claims that the cour d'appel (Court of Appeal) infringed Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 by declaring admissible the legal proceedings brought by Bois et matériaux against Ceramiche, a manufacturer, on the ground that Bois et matériaux is entitled to the provision

of the Directive all the while stating that Bois et matériaux is a professional seller and not a consumer according to the meaning of the directive."

### **Court's response**

5. Under the terms of Article 4 of Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees, when the final seller is liable to the consumer because of a lack of conformity resulting from an act or an omission by the producer, a previous seller found in the same chain of contracts, or any other intermediary, the final seller shall be entitled to pursue remedies against the person or persons liable in the contractual chain. The person or person liable against whom the final seller may pursue remedies, together with the relevant actions and conditions of exercise, shall be determined by national law.

6. Having noted that by a ruling of 29 September 2009 Bois et matériaux was ordered to compensate the damage caused to Mr and Mrs O... because of the lack of conformity of the tiling that they were sold, then held that CMC was a previous seller in the contractual chain, the cour d'appel (Court of Appeal) exactly deduced from this that the recourse action initiated by Bois et matériaux (the final seller) against CMC (its supplier) was admissible.

7. The plea is therefore unfounded.

### **On the third part of the first plea**

8. CMC criticises the ruling for declaring the proceedings initiated by Bois et matériaux as admissible, whereas "Article 4 of the directive provides that, "where the final seller is liable to the consumer because of a lack of conformity resulting from an act or omission by the producer, a previous seller in the same contractual chain or any other intermediary, the final seller shall be entitled to pursue remedies against the person or persons liable in the contractual chain. The person or persons liable against whom the final seller may pursue remedies, together with the relevant actions and conditions of exercise, shall be determined by national law" is limited to acting so that this recourse action is referred to national law, in this case Italian law.

CMC claims that by deducing from Article 4 of the directive that the applicable Italian provisions in consideration of the European directive "are the provisions of the Italian Consumer Code (Article 131 et seq.) taken pursuant to said directive," the cour d'appel (Court of Appeal) which did not refer to the law designated by the rules of conflict as it did not examine if, according to Italian law, the professional seller can make a claim against the manufacturer based on Italian consumer law, did not legally justify its decision, and as such infringed Article 4 of Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999."

### **Court's response**

9. Having set aside the application of provisions of the Italian Civil Code due to lack of relevance, when there is a recourse action by the final seller against a previous seller, then held that Article 131 of the Italian Consumer Code allowed the final seller deemed liable to the consumer for a lack of conformity to carry out legal action against any person liable in the same distributional chain, the cour d'appel (Court of Appeal), therefore, carried out the research that was claimed to have been omitted. 10. The plea is therefore unfounded.

### **On the first part of the second plea**

#### **Statement of plea**

11. CMC criticises the ruling for ordering it to guarantee Bois et matériaux for all of the claims against it in favour of Mr and Mrs O..., whereas "according to Article 39 of the Vienna Convention, "1. The buyer loses the right to rely on a lack of conformity of the goods if he does not give notice to the seller specifying the nature of the lack of conformity within a reasonable time after he has discovered it or ought to have discovered it. 2. In any event, the buyer loses the right to rely on a lack of conformity of the goods if he does not give the seller notice thereof at the latest within a period of two years from the date on which the goods were actually handed over to the buyer, unless this time limit is inconsistent with a contractual period of guarantee." He claims that by setting aside the cited time limit in this case on the ground that the convention provides rules for contractual relations between the seller and the buyer, including for lack of conformity in the instance, for example, of a difficulty that occurred prior to resale to a consumer according to the meaning of the directive and does not resolve the recourse action of the final seller against their own seller, the cour d'appel (Court of Appeal) infringed Article 39 of the Vienna Convention of 11 April 1980."

## Court's response

In view of Article 39 of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (the CISG) :

12. According to this text, a buyer loses the right to rely on a lack on conformity of the goods if he does not give the seller notice thereof at the latest within a period of two years from the date on which the goods were actually handed over the buyer.

13. To order CMC to guarantee Bois et matériaux, the ruling holds, firstly that the recourse action of the final seller is founded not in the lack of conformity itself, but in the legal action taken against this final seller by the consumer, secondly, that the CISG governs contractual relations between the seller and the buyer and does not apply to such a recourse.

As such it infers that the debate on the application of Articles 39 and 40 of the CISG is irrelevant.

14. In so ruling, the cour d'appel (Court of Appeal) infringed the aforementioned provision by refusing to apply it.

## ON THESE GROUNDS, and without it being necessary to rule on the last plea, the Court :

QUASHES AND SETS ASIDE, except in so far it declares admissible the legal action brought on elements it declares admissible concerning the legal action taken by Bois et matériaux against Ceramiche Marca Corona, the ruling issued on 13 March 2018, between the parties, by the cour d'appel (Court of Appeal) of Poitiers ;

RETURNS the case and the parties, except on this point, to the status existing prior to the said ruling and refers them to the cour d'appel (Court of Appeal) of Bourges ;

**President : Mrs Mouillard,**

**Reporting Judge : Mrs Fontaine**

**Advocate-General : Mr Lecaroz**

**Lawyer(s) : SCP Ricard, Bendel-Vasseur, Ghnassia - SCP Piwnica et Molinié**

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