TITLE: *Ginza Pte Ltd v Vista Corporation Pty Ltd [2003] WASC 11 (17 January 2003)*

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Editorial comments by Dr Bruno Zeller

Facts

Vista imported contact lens solutions from Ginza, which is incorporated and conducts business in Singapore. Two express clauses in the contract are of importance (1) that goods supplied would be manufactured according to the requirements of the Australian Therapeutic Goods Administration (TGA); and (2) hat the goods would be sterile.

In brief the goods upon examination by the TGA were found to be contaminated with bacteria. An audit of the Singapore plant by the TGA resulted in a recommendation that all the goods manufactured by Ginza were to be recalled. Ginza sued for payment for outstanding invoices whereas Vista sued for damages pursuant to articles 50 and 51(1) of the CISG.

Comments

This case is characterized by a lack of a basic understanding of the CISG. It is disappointing to note that relevant international case law or academic writing has not been used. It is interesting to note that counsel for the defendant attempted to rely upon the provisions of “the Sale of Goods Act 1895 (WA) or the CISG”. It is patently clear that pursuant to article 1(1) the CISG is the only applicable law in this case. However Barker J in a rather tentative approach commented that “on the face of it, the terms of the Convention would appear to govern all relevant issues.” Furthermore Barker J in several instances made comments such as that fitness for purpose and merchantable quality “find expression both in the Sales of Goods Act and the CISG.” Such observations are irrelevant as only the CISG is applicable.

Article 35 was correctly isolated but logically there should have been an inquiry whether articles 38 and 39 as well as article 40 are applicable. This question was never addressed by either party. The facts are not clear enough to determine whether the seller could have relied on article 38 and 39.

The court found that the buyer could rely on articles 50, 51(1) and 74. Again one can only assume that in this particular case article 50(2) does not apply, as the whole factory was declared unsafe. In essence the buyer should have avoided the contract under article 25 as the seller has committed a fundamental breach.