

instructions it had received from the plaintiff, the first U.S. corporation directed the defendant to make payment to the first corporation's financier, which had purchased its receivables. The defendant paid this financier and the plaintiff received no payment for the shoes. The plaintiff sued the defendant for the price of the shoes and the defendant moved for summary judgment. The issue before the court was whether the defendant was entitled to summary judgment.

The Court held that the plaintiff and the defendant had not entered into a contract of sale. The Court noted that the CISG did not require a written contract and that evidence of the parties' negotiations, if any, could be considered. If the first U.S. corporation acted as an agent within its authority, then it was authorized to direct how payment was to be made and to enter into the agreement amending the terms of the plaintiff's invoice. If, on the other hand, the first U.S. corporation was not acting within its authority then the only contract was between the second U.S. corporation and the defendant. The Court therefore granted the defendant summary judgment.

Case 415: CISG [18(3)]

United States: U.S. [Federal] District Court for the Southern District of New York; No. 95 Civ. 10506(DLC); reversed, U.S. [Federal] Court of Appeals for the Second Circuit; No. 97-9436 6 August 1997; reversed, 29 July 1999
Kahn Lucas Lancaster, Inc. v. Lark International Ltd.

Published in English: 1997 WL 458785; 1997 U.S. Dist. LEXIS 11916; <http://cisgw3.law.pace.edu/cases/970811u1.html>; reversed, 186 Federal Reporter 3d series 210, 1999 U.S. App. LEXIS 17877

A U.S. corporation engaged in the childrens' clothing business, plaintiff, sent two purchase orders to a Hong Kong corporation, defendant, that acted as agent in Asia for U.S. buyers. The purchase orders were for finished fleece clothing to be acquired from manufacturers in the Philippines. The purchase orders indicated that the defendant was the seller and none of the manufacturers' names appeared on the orders, but the word "agent" also appeared next to the defendant's name. Payment was to be made by letters of credit naming the defendant as beneficiary. The purchase orders included clauses submitting disputes between the parties to arbitration and designating New York law as the applicable law. The defendant assisted plaintiff in dealing with manufacturers, inspected the clothing before shipment, and arranged shipping to the United States. The plaintiff alleged, however, that some of the delivered goods were nonconforming and many were delivered late or not delivered at all. The plaintiff brought a court action seeking an order to compel arbitration of its claim. The issue before the Court was whether the parties had entered into an enforceable arbitration agreement. The defendant argued that it had not agreed to arbitrate because it was acting merely as agent for the plaintiff in contracts of sale between the plaintiff and the manufacturers.

The district court found, however, that the defendant acted as seller. The court held that the purchase orders were offers that the defendant accepted by performing in accordance with the orders. The court cited contract formation provisions of U.S. domestic law but indicated in a footnote that the result would be the same under the CISG if it were applicable. The District Court ordered the parties to arbitrate. On appeal, the

Court of Appeal reversed on the ground that article II (2) of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards required that defendant sign the agreement to arbitrate and the defendant had not done so.

Case 416: CISG [4]

United States: Minnesota State District Court for the County of Hennepin; CT 98-013101; affirmed, Minnesota Court of Appeals; C7-99-770

9 March 1999; affirmed, 14 December 1999

KSTP-FM, LLC v. Specialized Communications, Inc. and Adtronics Signs, Ltd.

Published in English: <http://cisgw3.law.pace.edu/cases/990309u1.html>

A U.S. buyer, plaintiff, bought music board systems and electronic displays from a U.S. seller, first defendant. To fulfill this sales contract the U.S. seller bought some of the items from a Canadian supplier, second defendant. The supplier sent these items directly to the plaintiff. The items did not work satisfactorily and the supplier attempted unsuccessfully to fix the items it supplied. The plaintiff brought a court action for breach of contract against both the first and second defendants. The plaintiff's claim against the Canadian supplier was for breach of an express or implied representation made by the supplier to the buyer's seller. The District Court ordered the plaintiff to submit its claim against the first defendant to arbitration in accordance with an arbitration agreement in the sales contract. As for the plaintiff's claim against the second defendant, the District Court held that the CISG governed the relationship between the plaintiff and the second defendant but dismissed the claim because the CISG does not contain provisions with respect to the rights of parties that are not in contractual privity.

On appeal, the State Court of Appeals affirmed dismissal of the plaintiff's action against the second defendant on the ground that the state courts did not have personal jurisdiction over the second defendant. The Appellate court did not address the reasoning of the District Court.

Case 417: CISG 8, 14(1), 19, 25, 28, 46, 72

United States: U.S. [Federal] District Court for the Northern District of Illinois ; No. 99 C 5153

7 December 1999

Magellan International Corp. v. Salzgitter Handel GmbH

Published in English: 76 Federal Supplement, 2d series 919; 1999 U.S. Dist. LEXIS 18855; 40 UCC Reporting Service (Callaghan), 2d series 321; <http://cisgw3.law.pace.edu/cases/991207u1.html>

An Illinois distributor of steel products, plaintiff, negotiated with a steel trader with headquarters in Germany and a sales office in Illinois, defendant, to purchase steel to be manufactured in the Ukraine to the plaintiff's specifications. When purportedly accepting plaintiff's offer, the defendant appended general conditions to its order confirmations that differed from plaintiff's conditions with respect to vessel loading conditions, dispute resolution and choice of law. The parties continued to negotiate until plaintiff, under pressure from the defendant, agreed to the contract and arranged to have a letter of credit