La Kanzlei

On the waiting period for late delivery in France

Vertragsrecht / AGB



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The French Supreme Court (Cour de Cassation) has recently answered the question of when the commercial buyer can withdraw from the contract in the event of late delivery if no agreement has been reached on the time of delivery (judgment of 9 October 2019, file no. 18-13.286).

According to French law, in the absence of a contractually agreed time limit, delivery must be made within a "reasonable" period, in case of doubt the duration this period must be determined by the judge. If the "reasonable" period is exceeded, the buyer may also withdraw from the contract without granting a grace period.

The above-mentioned judgment concerned a case in which a winegrower demanded the refund of an advance payment for a bottling plant ordered on the 21th of July, as it hadn't been delivered until 14 September of the same year. The seller, for his part, sued for payment of the remaining purchase price. A delivery deadline had not been contractually agreed. The court of appeal had considered a waiting period of almost two months to be reasonable for abstract reasons and had ordered the buyer to pay the remaining purchase price.

The Cour de cassation rejected this argumentation on the grounds that it depended on the individual circumstances of the case: It had to be examined whether the delivery period still allowed the buyer to "use the goods as intended". The specific circumstances of the individual case had to be considered. It was therefore necessary to examine whether the purchaser, a winegrower, was still able, in view of the time of year and his practical intentions, to use the ordered bottling plant for the intended purpose. It remains unclear, however, after the judgment, whether and to what extent the seller must have been aware of the purchaser's specific intention.

Practical advice:

As a seller, always make sure to specify concrete and precise delivery dates in sales contracts. This

creates legal certainty and prevents the need to decide in court in case of doubt whether the delivery was still on time.

2020-01-28

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