

Exercise Chapter 8

Van Tubergen BV of Lisse, Holland (Van Tubergen) sells 100,000 tulip bulbs to Floricultures de la Maresma 'Florimar' Soc. Coop. Lmta. from Barcelona, Spain (Florimar). Transportation has been arranged by Hendriks, an independent entrepreneur who acts on behalf of Van Tubergen, as agreed on by the parties, and is carried out by Docks de Bourgogne, a Dutch transporting company (Docks), contracted by Van Tubergen. Under the contract of sale Docks will collect the goods at the place of business of Van Tubergen and deliver the goods at the place of business of Florimar. Payment has to be made into an account Van Tubergen has with Rabobank, domiciled in Lisse (Holland).

Florimar has requested and has been given an L/C from the Deutsche Bank, domiciled in Barcelona (Spain), which has sent the L/C plus necessary documents to Van Tubergen's bank, Rabobank established in Lisse (Holland), who has confirmed the L/C.

Because of engine trouble of the truck, a circumstance for which it is responsible, Docks delivers the bulbs two days late in Barcelona: when checking the goods on delivery, Florimar finds that half of the bulbs have gone bad and that the rest of the bulbs is no longer fit for sale. This is due to the delay, but also due to the fact that a truck with cooling equipment and isotherm walls should have been used for transporting these bulbs, instead of a conventional truck, like the one used by Docks. Florimar refuses to pay and to accept the goods. Van Tubergen claims payment of the price of Florimar and compensation of its damages from Docks.

Question 1

In this case, who are the sender, the shipper and the carrier?

Question 2

Does the CMR Convention apply to the transport of the bulbs from Holland to Spain?

Question 3

Under the CMR Convention, who is liable for the damage to the bulbs i.e. the damage of Florimar?

Question 4

Looking at the text of case 1: what Incoterm is used by Van Tubergen and Florimar, and why?

Question 5

Concerning the L/C: in this case, who is the advising bank and who is the issuing bank?

Question 6

Does the confirmation of the L/C by the Rabobank in Lisse (Holland) hold an obligation for Florimar to pay the bulbs for which the L/C was arranged for?

Question 7

In case of a lawsuit of Van Tubergen vs. Florimar as a result of a non-payment by Florimar, what court of law has jurisdiction?

Question 8

Does the CISG apply to the contract of sale between Van Tubergen and Florimar? Does Florimar in general, even though the bulbs have gone bad, an obligation to pay Van Tubergen for these bulbs?

Question 9

In case the CISG applies, what are the legal options for Florimar?