

**Case name:** “Ruas D’Outrora - Unipessoal, Lda.” v.s. “Casa H, Lda.”

**Jurisdiction:** Portugal

**Court:** Supremo Tribunal de Justiça (Portuguese Supreme Court)

**Judges:** Nuno Manuel Pinto Oliveira (Reporter); José Maria Ferreira Lopes; Manuel Pires Capelo

**Type of contract:** Construction contract between Portuguese parties

**CISG applied:** No (it is not a contract for the sale of goods)

**CISG provisions cited:** Article 75 and Article 76 (details below)

The parties concluded a construction contract. Due to breach of contract by the constructor, the other party declared the contract avoided and claimed compensation for damages.

The Court of Appeal has modified the decision of the Court of First Instance and held that despite avoidance the aggrieved party should be placed in the position that it would have been in had the contract been performed.

The Supreme Court of Justice confirmed the decision of the Court of Appeal, considering that the party that has been affected by a breach and that has declared the contract avoided, can cumulate avoidance with a claim for compensation based on positive damages.

The Supreme Court based its decision in two recent legislative developments:

- 1- On 23 July 2020, Portugal's accession to the CISG was approved and, according to articles 75 and 76, the compensation is intended to place the creditor in the position it would be in if the contract were performed and the compensation can be cumulated with avoidance of contract.
- 2- On 20 May 2019, Directive 2019/771 / EU on the sale of consumer goods was published and according to its introductory remark number 61 the compensation “should put the consumer as much as possible into the position in which the consumer would have been had the goods been in conformity”.