CASE CITATION:	NAME AND LEVEL OF COURT:	PLAINTIFF:
21 November 2007, LJN BC0337[1]	**Rechtbank (Lower Court) Amsterdam**	**Canon Nederland N.V.** DEFENDANT: **G-Sus Wholesale and Design B.V.**

Facts

In this case, G-Sus Wholesale and Design refused to pay the terms of a service contract for a photocopy machine and subsequently rescinded the contract, because Canon Nederland failed to respond to the repeated failure of the machine to function. G-Sus Wholesale and Design sent a declaration to Canon Nederland by e-mail in default in accordance with article 6:82 of the Dutch Civil Code.

Article 6:82 of the Dutch Civil Code provides that a party must give the other party to a contract notice in writing to observe the terms of the contract, and a reasonable period of time must be given for the defaulting party to rectify the faults. Once the period has lapsed, and the defaulting party has failed to observe the terms of the contract, there is contractual default. The aggrieved party may subsequently act upon the default by claiming damages or rescinding the contract.

Dutch law does not provide a definition of 'writing'. However, with the implementation of Directive 2000/31/EC on electronic commerce (Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market, [2000] OJ L178, 1), amongst others, a provision on the legal status of electronic contracts has been implemented into the Dutch Civil Code by article 6:227a. This provision takes as a starting point, what may be called a functional equivalence test, which means that where electronic documents are able to fulfil the relevant functions of a paper document, both the electronic version as well as the paper version should be considered legally equivalent to each other. More specifically, article 6:227a of the Dutch Civil Code provides for the following conditions to achieve full equivalence between electronic and paper contracts: electronic contracts must be reproducible for subsequent reference, to guarantee sufficient authenticity, to determine the moment of conclusion of the contract, as well as the identity of the parties with sufficient certainty. With the implementation of Directive 99/93/EC on electronic signatures (Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures, [2000] OJ L 13, 12), the functional equivalence test had already been established in the Dutch Civil Code for determining the legal status of electronic signatures, and thus has now been extended to electronic contracts.

Even though the notice, which may act to effect the contractual default, is not a contract, it may be assumed that with the introduction of the functional equivalence test for both electronic contracts and electronic signatures, the court will also judge other electronic writings in this way. In this case, however, the court did not, unfortunately, contemplate the e-mail notice in view of this test nor, for that matter, did it set particular conditions for such e-mail notices. It merely stated that an e-mail message complies with the requirements of a default notice set in out in article 6:82 of the Dutch Civil Code. The decision was simply that the e-mail message was sufficient to declare the other party in default.

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Dr. Simone van der Hof is a member of the Editorial Board

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[1] *LJN refers to the publication number at the Dutch official case-law publication website, http://www.rechtspraak.nl.*