

Case 23: CISG 8(3); 18(1); 19(1)-(3)

United States: U.S. District Court for the Southern District of New York, 91 Civ. 3253 (CLB)
14 April 1992; appeal dismissed 19 January 1993

Filanto, S.p.A. v. Chilewich International Corp.

Published in English: 789 Federal Supplement 1229 (1992); 984 Federal Reports, 2d 58 (1993)

Commented on by Brand & Flechtner, 12 The Journal of Law & Commerce, 239 (1993)

A New York enterprise agreed to sell shoes to a Russian enterprise pursuant to a master agreement that required disputes to be arbitrated in Moscow. To fulfill the agreement, the New York enterprise entered into multiple contracts with an Italian manufacturer. Pursuant to one purported contract the Italian manufacturer supplied shoes but the New York buyer made only partial payment. The Italian manufacturer sued in a New York court to recover the price. Alleging that the contract incorporated the Russian master agreement by reference, the New York buyer sought a stay of proceedings to permit arbitration.

The court construes article II(1) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards to determine whether the parties had agreed in writing to arbitrate. Concluding this is a federal law question, the court refers to contract principles embodied in CISG. It holds that the New York buyer's offer, which incorporated the Russian master agreement by reference, had been accepted by the Italian manufacturer's failure to respond promptly. Although under article 18(1) CISG silence is not usually acceptance, the court finds that under article 8(3) CISG the course of dealing between the parties created a duty on the part of the manufacturer to object promptly and that its delay in objecting constituted acceptance of the New York enterprise's offer.