

Case 85: CISG 1(1)(a); 74; 75; 77; 78

United States of America: U.S. District Court for the Northern District of New York
9 September 1994

Delchi Carrier, SpA v. Rotorex Corp.

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The defendant, a Maryland manufacturer of compressors for air conditioners, agreed to sell 10800 compressors to the plaintiff, an Italian manufacturer of air conditioners. The sales contract provided for delivery in three shipments. The defendant made the first shipment. While the second shipment was en route, the plaintiff discovered that the compressors contained in the first shipment were nonconforming with contract specifications. The plaintiff rejected the second shipment, stored it at the port of delivery and, after having tried unsuccessfully to cure the defects, sued demanding damages for breach of contract pursuant to article 74 CISG.

The court held that the defendant breached the contract and granted the plaintiff damages to cover: (1) the plaintiff's expenses incurred when attempting to remedy the nonconformity in the compressors; (2) the sums paid by the plaintiff to expedite shipment of compressors from a third party in order to mitigate losses from orders that the plaintiff could not meet as a result of the defendant's breach of contract (article 77 CISG; the shipment of substitute compressors was not found to be covered under article 75 CISG - purchase of replacement goods by the buyer - because the compressors had been ordered prior to the breach of contract and thus could not have replaced the nonconforming compressors); (3) the plaintiff's costs for handling and storing the nonconforming compressors; and (4) the plaintiff's lost profits resulting from a diminished volume of sales, in respect of which the plaintiff was able to provide, in conformity with common law and the law of New York, "sufficient evidence [for the court] to estimate the amount of damages with reasonable certainty". The court rejected the plaintiff's claim for damages to cover expenses relating to the anticipated cost of production of air conditioners, holding that those costs were accounted for in the claim for lost profits. Pursuant to article 78 CISG, the court held that the plaintiff was entitled to prejudgment interest; as the CISG does not specify an interest rate, the court applied the rate applicable for U.S. treasury bills.