

Case 79: CISG 49(1); 78; 81(1)

Germany: Oberlandesgericht Frankfurt a.M.; 5 U 15/93

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The defendant, a German trading company, refused to pay the purchase price of shoes bought from the plaintiff, an Italian shoe manufacturer, on the grounds that the shoes were not delivered within the time limits prescribed in the contract and did not conform with the specifications of the contract.

The court held that the defendant was not entitled to declare the contract avoided and to refuse to pay the purchase price because it had not set a time limit within which the seller had to deliver and had failed to establish that a fundamental breach of contract was involved (articles 49(1) and 81 (1) CISG). The court noted that the defendant did not specify whether the shoes were just below standards (in which case the defendant could, e.g., reduce the price or claim damages), or totally unfit for resale (in which case the defendant could declare the contract avoided).

As a result, the court ordered the defendant to pay the purchase price and interest at the rate of 10%, which was the rate under Italian law, the law applicable under German private international law.