

Case 86: CISG 29(2)

United States of America: U.S. District Court for the Southern District of New York

22 September 1994

Graves Import Co. Ltd. and Italian Trading Company v. Chilewich Int'l Corp.

Published in English: 1994 U.S. Dist. LEXIS 13393; and in 1994 WESTLAW 519996

The plaintiffs were the agents of the defendant, a New York import-export company, in its dealings with an Italian manufacturer of footwear that were intended to be sold in Russia. The defendant refused to pay the plaintiffs' agency fees arguing that: the plaintiffs had breached their agency duties; and delivery of the shoes was a condition precedent to the payment of the agency fees. The defendant refused to accept delivery of a shipment of shoes sent from the Italian manufacturer arguing that the sales contract was orally modified to the effect that further deliveries would be subject to the Russian buyers paying for shoes previously delivered to them. The plaintiffs argued that their agency duties were limited to performing quality controls and that they had performed those duties. In addition, the plaintiffs rejected the existence of any condition precedent. Both the plaintiffs and the defendant applied for a summary judgement.

The court noted that in contract actions summary judgement was appropriate "when the contract terms are clear and not conducive to more than one reasonable interpretation" and rejected both applications for a summary judgement finding that the content of the agency agreement between the defendant and the plaintiffs was disputed. In the course of discussion, the court noted that the contract between the defendant and the Italian manufacturer incorporated a provision making modifications invalid unless they were in the form of a writing signed by both parties. Citing article 29(2) CISG, the court found that the defendant was precluded from asserting that there had been an oral modification of that contract making further deliveries of shoes by the Italian manufacturer to the defendant subject to payment by the Russian end-buyers of the price of shoes previously delivered.