

Case 219: CISG 33 (a); 35 (3); 36; 39; 78

Switzerland: Tribunal Cantonal Valais, CI 97 167

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Abstract published in German in 1 Schweizerische Zeitschrift für Internationales und Europäisches Recht 77 [1998]

An Italian plaintiff sold a bulldozer to a Swiss defendant, who did not pay two remaining instalments because of an alleged late delivery and a lack of conformity. The court granted the plaintiff's claim for payment of the two instalments.

The court found the delivery, made within not more than two weeks after the seller had received the first instalment by handing over the machine to the carrier, to be in time as no date had been fixed by the parties (article 33 (a) CISG). In addition, the court found the buyer's claim of non conformity not to be legitimate. The buyer had tested the bulldozer and the court deduced from article 36 CISG and the principle of good faith, the presumption that a person who buys goods in spite of obvious defects intended to accept the seller's offer. Furthermore, the buyer had not given notice of the alleged lack of conformity (article 39 CISG). The interest rate was determined in application of the forum's rules of private international law, which led to Italian law (article 1024 Codice Civile).

*Addendum*

(Arabic, Chinese, English, French, Spanish and Russian texts)

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