

Case 222: CISG 8(1); 8(3)

United States: U.S. Court of Appeals for the Eleventh Circuit

29 June 1998

MCC-Marble Ceramic Center, Inc. v. Ceramica Nuova D'Agostino, S.p.A.

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The issue before the court was whether the parol evidence rule of domestic law applies to the interpretation of a contract governed by CISG. The rule excludes evidence of an oral agreement which contradicts or varies the terms of a subsequent or contemporaneous written contract.

A U.S. retailer, the buyer, agreed orally with the seller, an Italian manufacturer of ceramic tiles, on the basic terms for the purchase of tiles. The parties then recorded these terms in the seller's standard, pre-printed order form and the president of the buyer's company signed the form on behalf of the company. The form was printed in the Italian language and contained terms on both the front and back. Immediately below the signature line on the front of the form was language, in Italian, stating that the buyer was aware of the terms on the back of the form and agreed to them. Four months later the parties entered into a requirements contract and pursuant to that contract the buyer ordered tiles on numerous occasions using the seller's order form.

The buyer brought a breach of contract action in the U.S. District Court for the Southern District of Florida against the seller for failure to deliver the tiles ordered. In defense, the seller relied on a standard term on its order form which authorized it to suspend deliveries if the buyer failed to pay and the seller brought a counterclaim for nonpayment. To buyer's response that the tiles were nonconforming, the seller stated that the buyer had not given written notice of defects within ten days of receipt as required by a term on the order form. The buyer presented affidavits from its president and two employees of the seller stating that the parties did not intend to be bound by the standard terms on the order form. The court excluded this evidence on the basis of the domestic parol evidence rule, gave effect to the standard terms and granted summary judgment to the seller.

The U.S. Court of Appeals for the Eleventh Circuit reversed the district court's grant of summary judgment. The court held that article 8(3) CISG precludes the application of the parol evidence rule. The court expressly rejected a statement to the contrary in *Beijing Metals & Minerals Import/Export Corp. v. American Business Center* [CLOUT case no. 24]. The court also rejected the seller's argument that the parol evidence rule was a procedural rule outside the scope of CISG. Consequently, the appellate court found that the affidavits of the subjective intent of both parties raised sufficient factual question as to the terms of the parties' contract under article 8(1) CISG that summary judgment was inappropriate.

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*Addendum*

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

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Commented on in French: Papandréou-Deterville, [1999] Recueil Dalloz, No. 41, 367