

Case 413: CISG 1(1)(a), 7(2), 8(3), 9(1), 11, 19

United States: U.S. [Federal] District Court for the Southern District of New York; No. 96 Civ. 8052(HB)(THK)

6 April 1998

Calzaturificio Claudia S.n.c. v. Olivieri Footwear Ltd.

Published in English: 1998 WL 164824, 1998 U.S. Dist. LEXIS 4586,

<http://cisgw3.law.pace.edu/cases/980406u1.html>

An Italian manufacturer of shoes, plaintiff, alleged that a buyer located in the United States, defendant, had agreed to purchase shoes but had failed to pay the price for four lots duly delivered “ex work”. The plaintiff brought a court action for the price of these shoes and moved for summary judgment. The buyer responded that plaintiff was not entitled to summary judgment because there were material facts in dispute. The buyer denied that there was a contractual relationship, that it had agreed to delivery “ex works,” and that it had received the goods at issue. It also counterclaimed for damages on the ground that any goods it had received were either delivered late or nonconforming.

The issue before the Court was what evidence it could consider when acting on a motion for summary judgment.

Recognizing that the CISG differs from domestic U.S. law rules on the need for a writing and the evidentiary weight to be given written terms, the Court stated that it could consider evidence of statements made during negotiations, article 8(3) CISG, and that the parties are bound by any usage to which they agreed and any practices between themselves which they have established, article 9(1) CISG. The Court concluded that material facts were in dispute as to all matters denied by the defendant and the court therefore did not grant summary judgment for the plaintiff.