

Case 577: CISG 1 (1) (a); 38; 39

United States: U.S. [Federal] District Court, Northern District of Illinois; No. 01 CV 4447

28 May 2003

Chicago Prime Packers, Inc. v. Northam Food Trading Co.

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9122, 2003 Westlaw 21254261, <http://cisgw3.law.pace.edu/cases/030529u1.html>]

Abstract prepared by Peter Winship, National Correspondent

The issue before the court was whether judgment on the seller's claim for the price should be rendered without trial or the claim dismissed for failure to state a claim for which relief can be granted.

The seller, a Delaware corporation with its place of business in Illinois, agreed to sell 40,500 pounds of pork ribs to the buyer, a company with its place of business in Quebec, Canada. At the time of the sale the pork ribs were stored in a cold storage plant. Two and one-half weeks after the sale, a carrier hired by the buyer picked up the ribs and delivered them to a processor. The carrier issued a non-negotiable bill of lading with the notation "property above in apparent good order," while the processor noted in its receiving log that the condition of the ribs was "good with the exception of 21 boxes that had holes gouged in them and the meat inside shows signs of freezer burn." U.S. Department of Agriculture inspectors subsequently inspected the ribs and ordered their destruction because of spoilage. The buyer notified the seller refused to pay the purchase price. The seller sued the buyer to recover the price. Both parties filed motions for summary judgment.

The court ruled that the contract was governed by the Convention (art. 1(1)(a) CISG) and that when it did so the Convention pre-empted domestic U.S. law. However, the court stated that case law interpreting analogous provisions in domestic sales law might be consulted when the language of the Convention tracked that of those provisions.

The court found that there were genuine issues of material fact as to whether the buyer had examined the ribs "within as short a period as practicable under the circumstances." The court therefore refused to render summary judgment for either party.