

Case 379: CISG 57

Italy: Corte di Cassazione, sez.un.

Date: 14 December 1999

*Imperial Bathroom Company v. Sanitari Pozzi s.p.a.*

Original in Italian

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A company having its place of business in Italy and a company having its place of business in Great Britain entered into an agreement providing for the sale and the distribution of goods. The Italian company sued the British company claiming termination of the agreement due to the latter's failure to fulfill its obligations thereunder (i.e., to buy and distribute the goods on the British market and to pay the price), as well as damages.

The Supreme Court retained jurisdiction of the Italian Courts pursuant to article 5(1) of the Brussels Convention and to article 4 of the Rome Convention: the first states that jurisdiction belongs to the country where the obligation was or has to be fulfilled, the second leads to the application of Italian law, Italy being the place in which the characteristic obligations of the agreement had to be fulfilled.

However, the Supreme Court also supported its view by way of mentioning article 57(1)(a) of the CISG, according to which the price must be paid at the seller's place of business and highlighted that this article sets forth a general rule the application of which can only be avoided on the basis of a provision, either legal or contractual, providing for a place of payment other than the seller's place of business. Accordingly, the decision relied on the assumption that the CISG is applicable not only to sales, but also to distribution agreements, provided that these can be construed as accessory clauses to a sale agreement.