

**Case 867: CISG 1; 25; 30; 35 (2) (a); 38, 39 (1); 53; 84**

Italy: Tribunale di Forlì

Mitias v. Solidea S.r.L

9 December 2008, n.2280

Original in Italian

Full text available in [www.CISG-online.ch](http://www.CISG-online.ch)

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The case concerned a contract between a Slovenian buyer and an Italian seller for the sale of different shoe models. After signing the contract and obtaining delivery of the goods, the buyer paid the agreed price. Upon inspection, however, it discovered defects in the great majority of the purchased items that made them non-saleable. It sent notice of the alleged non-conformity to the seller and required substitution of the non-conforming items. The seller admitted non-conformity and offered to replace the defective goods with other items it produced. However, a full replacement of the non-conforming goods with others suitable for sale in the Slovenian market was impossible. Therefore the buyer requested the partial restitution of the amount paid, but the seller rejected the request and declared itself only available to replacement of goods.

The buyer sued the seller before the district Court of Forlì (Tribunale di Forlì). The Court declared its jurisdiction pursuant to the European Regulation No. 44/2001 on Jurisdiction and Recognition and Enforcement of Judgments in Civil and Commercial Matters. Furthermore, though the claimant had not referred to the CISG, the Court affirmed that the contractual relation had an international character according to article 1 of the Convention, because the parties had different places of business in contracting states. Therefore, the contract was governed by the CISG, which is *lex specialis* against the general domestic rules on conflict of laws.

The Court held that the buyer had the right to obtain restitution of the price of the damaged shoes which could not be replaced. Under article 35 CISG the seller is obliged to deliver goods that are of the quantity, quality and description required by the contract. In the case at hand, there was a lack of conformity of the goods. The buyer gave notice to the seller of this alleged non-conformity and specified the nature of the defects within a “reasonable time”, after it had discovered them, according to article 39 CISG.

The Court thus affirmed that the seller had breached the contract. It then discussed whether this was a fundamental breach and if the buyer’s request of partial termination of the contract was legitimate. According to the Court, article 25 CISG was applicable since only one tenth of the ordered goods were satisfactorily delivered by the seller. This could be considered a fundamental breach; the buyer was thus entitled to avoid the contract and obtain restitution of the amount paid, as well as interests under article 84 of CISG.