

Case 1550: CISG 39; 49(1)(a)

Spain: Tudela (Navarra) Court of First Instance No. 3

Ceramica Tudelana, S.A. versus Wassmer Gruppe Spezialmaschinen GmbH

25 July 2014

Original in Spanish

Complete text <http://www.cisgspanish.com>

Abstract prepared by María del Pilar Perales Viscasillas, National Correspondent.

The case was heard by the Tudela Court of First Instance and Instruction No. 3 on 29 March 2005, and by the Navarra Provincial High Court on 27 December 2007, and the extraordinary appeal on grounds of procedural violation was heard by the Supreme Court, which delivered its judgement on 20 July 2011. The Supreme Court granted the extraordinary appeal on grounds of procedural violation lodged by the

German seller as a result of the violation of the procedural guarantee of the right to evidence in terms of objectivity and impartiality, as a result of which the part of the proceedings from the time at which experts were appointed in the court of first instance was declared invalid and resumption of the proceedings from that procedural stage was required.

The Tudela Court of First Instance No. 3 delivered its judgement on 25 July 2014, finding that, in the first place, pursuant to article 39 of the Convention, the complaint had been made within a reasonable time since the buyer had made multiple communications and claims immediately after delivery of the machine. Secondly, by analysing newly gathered expert evidence, or based on the evidence initially presented, the Court noted the defective functioning of the machine that the German seller had manufactured and sold to the Spanish buyer. The defective functioning, which caused bricks passing through the machine to exhibit a breakage level of between 75 and 84 per cent depending on the speed applied, and which the Court considered a total breach of contract, or *aliud pro alio* (the delivery of something different from that which was agreed upon) by application of articles 1,101 and 1,124 of the Civil Code and article 49(1)(a) of the Convention, resulted in the termination of the contract with the obligation of the seller to proceed to remove at its own expense the machinery that had been installed at the buyer's place of business.