

CISG CASES

TITLE: *Franklins Pty Ltd v Metcash Trading Ltd* [2009] NSWCA 407

CASE LINK: [Franklins Pty Ltd v Metcash Trading Ltd \[2009\] NSWCA 407](#)

Editorial Remarks by Theresa Morgante

Facts:

Franklins and Metcash entered into a written agreement by which Metcash would supply products to Franklins. The dispute arose from the price Metcash was charging Franklins for products supplied, specifically, the definition of 'Wholesale Price.'

Franklins argues Metcash “*was required to pass on to Franklins all allowances and discounts whatsoever in calculating the Wholesale Price, and that it was entitled to exercise certain rights of inspection against Metcash.*”

However, Metcash claimed they were only to deduct specified allowances and discounts. Furthermore Metcash sought to seek rectification of the contract stating “*Franklins was estopped from asserting the construction it was intended for.*”

In relation to the construction of the agreement, the trial judge found in favour of Franklins, however the contract should be rectified to deduct only published allowances and discounts.

Held:

Allsop P referred to *UNIDROIT Principles of International Commercial Contracts* (3rd Ed) when deciding upon the construction and interpretation of written contracts, primarily Articles 4.1, 4.2, 4.3.

Art 8 of the CISG (similarly Article 4.2 of the UNIDROIT Principles) in which it was stated “*it is unnecessary to discuss the effect, if any, which the adoption of the CISG into the law of all States and Territories will have in the primacy of the subjective theory.*”

Furthermore, under the UNIDROIT Principles and CISG, reflects civil law principles in construction and interpretation of contracts

Editorial:

Bruno Zeller

This is a domestic case where the UNIDROIT principles and the CISG article 8 were mentioned. The court debated the interpretive approach in relation to later conduct and the construction of written contracts.

The court was of the opinion that “to a significant degree the approach to the construction and interpretation of contracts in the UNIDROIT Principles and the CISG reflects civil law principles.”

This may be the case but they also reflect current interpretative principles in relation to international contracts.