

# SUPREME COURT'S DECISION

delivered in Stockholm on 18 March 2026

Case no.  
Ö 326-25

## **PARTIES**

### **Appellant**

Oskar Berger Holding AB, company registration no. 559019-8270  
Box 2  
178 21 Ekerö

Counsel: Attorney T.W.

### **Respondent**

Poler-Grand Grazyna Iwanska  
Ul.Stalowa 2  
77-300 Wierzchowo-Dworzec  
Poland

Counsel: Lawyer J.K.

## **THE MATTER**

Jurisdiction

**RULING APPEALED**

Decision of the Göta Court of Appeal of 2024-12-13 in case  
Ö 3971-24

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**RULING OF THE SUPREME COURT**

The Supreme Court overturns the decision of the court of appeal to dismiss.

In connection with the resumption of the case, it shall be incumbent upon the district court to examine the issue of costs of litigation incurred in the court of appeal and in the Supreme Court.

**CLAIMS IN THE SUPREME COURT**

Oskar Berger Holding AB has claimed that the Supreme Court shall vacate the decision of the court of appeal and reject Poler-Grand Grazyna Iwanska's motion to dismiss.

Poler-Grand Grazyna Iwanka has opposed modification of the decision of the court of appeal.

**REASONS FOR THE DECISION****Background**

1. The Swedish company, Oskar Berger Holding AB ("OBH") purchased a scaffolding from Poler-Grand Grazyna Iwanska ("Poler-Grand") which is domiciled in Poland. The scaffolding was transported from Poland to Örebro by an independent carrier. According to OBH, the

scaffolding is marred by defects, and the company accordingly brought an action against Poler-Grand in the Örebro District Court.

2. Poler-Grand claimed that the action was to be dismissed since Örebro District Court did not have jurisdiction. The company was of the position that the dispute should instead be tried in Poland where Poler-Grand has its registered office. The district court rejected Poler-Grand's claim for dismissal. The decision was appealed to the court of appeal which has modified the decision of the district court and dismissed OBH's action.

3. The Supreme Court has granted leave to appeal on the basis that it is the assessment of the court of appeal that it is not possible to determine the place of delivery based on the agreement between the parties.

#### **Legislation, etc.**

4. The jurisdiction of the courts to adjudicate a dispute when the defendant is domiciled in another Member State within the EU is governed by the Brussels I Regulation (Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters).

5. The main rule according to Article 4 is that the court where the defendant is domiciled shall have jurisdiction.

6. According to Article 7(1)(a), an action relating to a contract may also be brought in the courts for the place of performance of the obligation in question. In conjunction with agreements for the sale of goods, the place of performance according to Article 7(1)(b) first indent is the place in a Member State where, under the contract, the goods were delivered or should have been delivered – i.e. the place of delivery.

7. The place of delivery is determined primarily by what the parties agreed upon contractually. The manner in which the place of delivery is to be determined when it is not stated in the agreement has been examined by the European Court of Justice. According to the court, the place of delivery is established autonomously. Accordingly, the national court shall not refer to the substantive law applicable to the agreement. (See the judgements of the European Court of Justice in *Car Trim*, C-381/08, EU:C:2010:90, paras. 49, 50, 53–57 and *Electrosteel*, C 87/10, EU:C:2011:375 para. 26.)

8. According to the European Court of Justice, the place of delivery is the place where the goods were physically transferred or should have been physically transferred as a result of which the purchaser obtained, or should have obtained, actual power of disposal over those goods at the final destination of the sales transaction. Thus, when the goods are transferred to a carrier for forwarding to the purchaser is not determinative. This regime is deemed to be most consistent with the origins, objectives and scheme of the Brussels I Regulation. (*Cf. Car Trim*, paras. 58–62.)

#### **The assessment in this case**

9. The parties differ in their positions regarding the place which constitutes the ultimate place of delivery for the scaffolding and where OBH was to thereby acquire an actual power of disposal over it. Pöler-Grand stated that it is decided by where the seller leaves the good with an independent carrier, which took place in Poland. OBH is of the position that the company obtained actual power of disposal over the scaffolding when it was delivered to Örebro.

10. The physical transfer of the scaffolding to OBH took place in Örebro. Accordingly, Örebro is the final place of delivery and thus the place of performance in accordance with Article 7(1) of the Brussels I

Regulation. This renders Örebro District Court competent to try the dispute between the parties.

11. The decision of the court of appeal to dismiss shall therefore be overturned and the case resumed in the district court. The question regarding the costs of litigation incurred in the court of appeal and Supreme Court shall be examined in conjunction with the case following its resumption.

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Justices of the Supreme Court Dag Mattsson, Stefan Reimer, Johan Danelius (supplemental opinion), Margareta Brattström (reporting Justice) and Katrin Hollunger Wågnert participated in the ruling.  
Judge referee: Olivia Ekeberg.

**SUPPLEMENTAL OPINION**

Justice Johan Danelius adds the following for his own part.

In accordance with the manner in which the leave to appeal has been formulated, the case in the Supreme Court has been examined with the starting point that, based on the agreement between the parties, it is not possible to establish the place of delivery. It follows from this starting point that, in a manner described in greater detail in the reasons, the place of performance of the agreement shall, according to the case law of the European Court of Justice, be deemed to be Örebro and that Örebro District Court is thereby the competent court in accordance with Article 7(1) of the Brussels I Regulation.

It is worth pointing out that what is prescribed in Article 7(1)(b) regarding what is meant by the place of performance applies only “unless otherwise agreed”. And, where no such divergent contractual provision can be identified, the place of performance in accordance with the same indent of the same article is the place at which the goods “under the contract” have been or should be delivered.

Thus, what is decisive to the jurisdictional question is primarily what the parties agreed in respect of the place of performance or the place of delivery. In order to determine the purport of the agreement in these respects, an in-depth analysis of the contractual terms and conditions and circumstances relating to the creation of the agreement may be necessary. The European Court of Justice has stated that the national courts, in order to establish the purport of the agreement in question regarding the place of delivery, must take into account “all the relevant terms and clauses in the

agreement, including, as the case may be, the terms and clauses generally recognised and applied in international commercial usage – such as Incoterms – in so far as they enable that place to be clearly identified” (see *Electrosteel*, para. 22).

The manner in which such contractual interpretation is to be specifically conducted, e.g. as regards the significance one is to ascribe, where applicable, to party practice and trade practice, is not entirely clear (*cf.* Björn Sandvik, *Incoterms och jurisdiktion vid köp – några noteringar om Bryssel I bis-förordningen*, from Essays in Honour of Svante O. Johansson) 2025, p. 665 ff.). Additional guiding rulings from the European Court of Justice and the Supreme Court would contribute to clarifying the legal situation. Given the framework of the proceedings in the Supreme Court, however, there is no cause or room in this case to delve more deeply into these issues.

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