Supreme Court's JUDGMENT

delivered in Stockholm on 28 November 2024

Case no.
T 5880-23

PARTIES

Appellant

Familjeakademin AB, 556731-8166

Vikbergsvägen 261

152 95 Södertälje

Counsel: Attorney MB

Respondent

The Office of the Chancellor of Justice (202100-6545), on behalf of the State

Box 2308

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Counsel: Head of Division AS and rapporteur VB

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THE MATTER

Determination of payment obligation

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RULING APPEALED

Judgment of the Svea Court of Appeal of 17 July 2023 in case B 15473-22.

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JUDGMENT

The Supreme Court modifies the operative part of the judgment of the Court of Appeal and determines that the State is obliged to pay Familjeakademin AB the settlement amount of SEK 250,000 in accordance with the judgment of the Stockholm District Court of 31 October 2018 in case T 9396-17.

The Supreme Court also modifies the Court of Appeal's judgment in respect of litigation costs, and relieves Familjeakademin AB from the obligation to pay the State’s costs for litigation in the District Court and the Court of Appeal and orders the State to pay the costs of litigation of Familjeakademin AB

- in the District Court in the amount of SEK 45,803, of which SEK 42,500 pertains to counsel fees, and interest in accordance with Section 6 of the Interest Act from the date of 25 November 2022, and
- in the Court of Appeal in the amount of SEK 22,500 for counsel's fees and interest in accordance with Section 6 of the Interest Act from the date of 17 July 2023.

The Supreme Court orders the State to pay Familjeakademin AB for its costs of litigation in the Supreme Court in the amount of SEK 37,500, which pertains to counsel fees, and interest in accordance with Section 6 of the Interest Act from the date of this judgment.

CLAIMS IN THE SUPREME COURT

Familjeakademin AB has requested that the Supreme Court declare that the State is liable to pay the company the settlement amount of SEK 250,000 in accordance with the Stockholm District Court's judgment of 31 October 2018 in case T 9396-17. The company has also requested that the Supreme Court relieve the company from the obligation to pay the State's litigation costs in the District Court and the Court of Appeal, and order the State to pay the company for litigation costs in those instances.

The State has opposed modification of the judgment of the Court of Appeal.

The parties have requested payment of their costs of litigation incurred in the Supreme Court.

REASONS FOR THE JUDGMENT

Background

1. In 2017, Familjeakademin brought an action against the Office of the Chancellor of Justice, on behalf of the State. In October 2018, the parties reached a settlement whereby the State would pay SEK 250,000 to the company. The District Court confirmed the settlement on 31 October 2018.

2. The company was represented in the case by an attorney. He had submitted an authorisation to the District Court, which had been issued in 2013 by the company's then representative. Under the authorisation, the attorney was authorised, inter alia, to institute and conduct proceedings before courts and public authorities, to accept or reject settlements and to receive and acknowledge funds, documents and other property. The Office of the Chancellor of Justice received the content of the authorisation in October 2018.

3. Before signing the settlement agreement, the Office of the Chancellor of Justice requested that the attorney submit a new authorisation signed by an authorised company signatory. At that time, the company had new representatives. One of these issued a new authorisation. The authorisation was similar to the previous document, except that it did not authorise the attorney to receive and acknowledge funds, documents and other property. The attorney submitted the authorisation to the Office of the Chancellor of Justice and requested that the settlement sum be deposited in the law firm’s trust account.

4. On 6 December 2018, the Government issued an order for the Legal, Financial and Administrative Services Agency (Kammarkollegiet) to pay the settlement amount to the law firm's trust account. Payment was made on 13 December.

5. The company has argued that the 2013 authorisation was not valid at the time of the payment because, on the one hand, it was not issued by a currently authorised representative and, on the other, it had been revoked by the company. In any event, the State had failed to understand that the company intended to replace the first authorisation with the second and that payment would therefore be made directly to the company. The payment to the attorney has therefore not brought about a full discharge of liability and nor has the attorney paid the amount to the company.

6. The Office of the Chancellor of Justice has argued that the payment constitutes a full discharge of liability, that both authorisations were valid at the time of payment, that the company had not informed the attorney that he was not authorised to collect the payment and that, therefore, he was authorised to do so. In any event, the State was in good faith that the attorney was authorised to receive the payment.

7. The District Court upheld the company's action on the ground that the State should have understood that the company intended to replace the earlier authorisation with the later one.

8. The Court of Appeal reversed the District Court's judgment and dismissed the company's action. As the reason for its judgment, the Court of Appeal stated that Familjeakademin had not shown that the company had made its intention known to the attorney in a sufficiently clear manner, namely that the authorisation first issued would no longer be valid.

At issue in the case

9. The case concerns the question of what is required for a third party to be unable to invoke an authorisation against the principal.

2013 authorisation

10. The 2013 authorisation was invoked before the Stockholm District Court in the case that was initiated by the company against the State in 2017 and which was concluded in October 2018 when the District Court confirmed the parties' settlement in a judgment. The attorney thus acted as trial counsel under the authorisation, but the authorisation conferred broader powers than that (cf. Chapter 12, Section 14 of the Code of Judicial Procedure).

Power of attorney, etc.

11. As a general rule, a power of attorney authorises the representative to, among other things, conclude a settlement on behalf of the party and to receive compensation for litigation costs awarded to the party, but it does not authorise the representative to receive what the party has been awarded in other respects (see Chapter 12, Sections 14 and 15). If the party wishes to give the representative broader powers, the authorisation may be supplemented accordingly. However, to the extent that the authorisation

grants the power to take property-related actions against third parties, such as the opposing party, in addition to the court proceedings, the effects must be assessed on the basis of the Contracts Act.

12. A power of attorney can be revoked at any time, but the opposing party must have been informed of the revocation in order for it to be valid in relation to him or her (see Chapter 12, Section 18 of the Code of Judicial Procedure). If the opposing party is informed of the revocation of an authorisation, this also means that the authority to act outside the court proceedings lapses in relation to the opposing party (see Section 12, second paragraph of the Contracts Act). The same revocation can therefore have effects under both regulatory frameworks.

Authorisations in property law

13. Chapter 2 of the Contracts Act contains provisions on authorisations in property law. An authorisation is generally valid until it has been revoked. Section 12, second paragraph of the Contracts Act states that a principal who wishes an authorisation to cease to be valid must take certain steps in order for a revocation to be deemed to have occurred. Sections 13 through 19 state how revocation is to be made of the most typical types of authorisations. However, an authorisation may be revoked in relation to a specific third party by the latter receiving a notification from the principal that the authorisation is no longer valid (see Section 12, second paragraph).

14. One characteristic feature of these instances of revocation is that they require the principal to take action to neutralise the circumstances that give the recipient reason to believe that an authorisation still pertains.

15. The fact that the principal issues a new authorisation does not automatically mean that a previously issued authorisation ceases to be valid (cf. "The Authorisation and the Notice of Appeal" NJA 1925 p. 360).

Several authorisations from the same principal may be valid in parallel and may each constitute grounds for authorisation. However, when a new written authorisation states that it is to replace the previous authorisation - or when this is otherwise notified - the first authorisation is revoked under Section 12, second paragraph in relation to the person to whom notification is made.

16. Section 20 deals with the situation where the principal has not revoked an authorisation under Sections 12 through 19 of the Contracts Act, but has "instructed the agent not to make use of the authorisation or has otherwise expressed his wish that the authorisation should cease to have effect". In such cases, a legal act performed by the agent shall not be effective against the principal if the third party had or should have had knowledge of the circumstance.

17. The regulation in Section 20 means that if the principal has indicated that he or she has decided that the authorisation is no longer valid and the third party knew or should have known this, then the principal is not bound by a legal act that the agent nevertheless takes. The principal can state this to the agent expressly, or in some other way. It is therefore not a prerequisite that the principal first expresses himself in relation to the agent. Assessment of the bad faith of a third party should be based on what a person in the position of a third party should reasonably have understood from what the principal expressed, seen in context. As a rule, the principal bears the main risk for any ambiguities regarding the existence of the authorisation and limitations thereof, but if a third party has contributed to an ambiguity, this should be taken into account in the assessment.

The assessment in this case

18. The authorisation issued by Familjeakademin in 2013 formed the basis of the attorney's power to represent the company in the District Court

in the dispute with the State. An authorisation may be revoked in relation to the opposing party, for example, with written notice to the opposing party.

19. The fact that the individual who signed the 2013 authorisation later resigned as authorised representative of the company did not mean that the authorisation lost its effect (see "The Authorisation and the Liquidation" NJA 2012 p. 328 para. 8).

20. The authorisation issued by the company and submitted to the Office of the Chancellor of Justice in 2018 does not state any intent that the previous authorisation should thereby cease to apply. Nor has the company informed the Office of the Chancellor of Justice of this in any other way (see para. 15). The company has therefore not revoked the 2013 authorisation in the prescribed manner.

21. It appears from the oral testimony that, when the new authorisation was issued, the company deliberately removed the text authorising the attorney to receive payment and that the reason for this was that the company's representatives anticipated a possible dispute with the attorney regarding the amount of the fee.

22. Thus, the company has issued a new authorisation document that lacked the previous text granting the power to receive the settlement payment. Through the new authorisation, which was submitted to the Office of the Chancellor of Justice, the company may be considered to have expressed that the attorney's power under the 2013 authorisation to receive payment would no longer apply (cf. para. 17).

23. The question then becomes whether the Office of the Chancellor of Justice thereby knew or should have known that the company, through the new authorisation, intended to limit the powers that the attorney had under the 2013 authorisation. In assessing this question, it must be borne in mind

that it was the Office of the Chancellor of Justice who specifically requested a new authorisation in advance of the parties' settlement agreement. When the company, in accordance with the Office of the Chancellor of Justice's request, issued a new authorisation with more limited powers, the Office of the Chancellor of Justice should have understood that the company intended that it was the new - and not the previous - authorisation that would regulate the attorney's powers.

24. The Office of the Chancellor of Justice cannot invoke the more expansive powers under the 2013 authorisation, and the payment has therefore not been made with the effect of discharging full liability.

25. It must therefore be held that the State is liable to pay the settlement amount of SEK 250,000 to Familjeakademin AB. In light of this outcome, the judgment of the Court of Appeal must be modified and the conclusion reached by the District Court affirmed.

26. The State must compensate the company for its costs of litigation. The costs the company has claimed in the District Court and the Supreme Court are reasonable. The costs claimed in the Court of Appeal are substantiated.

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Justices of the Supreme Court Gudmund Toijer, Eric M. Runesson, Jonas Malmberg, Christine Lager and Anders Perklev (reporting Justice) participated in the ruling.
Judge referee: Caroline Smith.