SVEA COURT OF APPEAL	**Judgment**	Case No.
Department 16	28 August 2009	T 1648-08
Division 1603	Stockholm	

CLAIMANT
RL
[Address omitted]

RESPONDENT
Rynninge IK, 875001-2307
Ringtorpsvägen 20
703 69 Örebro

MATTER
Invalidity of arbitral award etc.

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JUDGMENT OF THE COURT OF APPEAL

1. The Court of Appeal does not grant the application for an order of disclosure.
2. The Court of Appeal does not grant the motion for a main hearing.
3. The Court of Appeal dismisses the motion that the Court of Appeal shall grant a new review of the arbitral award.
4. The Court of Appeal does not grant the motion that the Court of Appeal shall declare the arbitral award invalid.

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BACKGROUND

RL is a football player acquired during the spring of 2000 by Rynninge IK. In February 2004, he requested arbitration and moved that Rynninge IK should be ordered to compensate him in accordance with the agreement he had made with the club. The arbitral tribunal, comprising the Judge of Appeal OH as sole arbitrator, did not grant RL's motion in its arbitral award rendered on 17 October 2004.

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RL challenged the arbitral award in the Court of Appeal's case No. T 503-05, referencing among other things that there was no valid arbitration clause, that the arbitral award had not been rendered within the permitted time frame, that the arbitral tribunal had exceeded its jurisdiction and that procedural errors had been committed. The Court of Appeal did not grant the claim on the merits, and dismissed RL's case with respect to his motions for compensation for damages and costs.

MOTIONS ETC.

RL has now moved that the Court of Appeal shall declare the arbitral award rendered in Stockholm on 17 October 2004 between the parties invalid, and in the alternative, that the Court of Appeal shall grant a retrial with respect to the same arbitral award. RL has further moved that Rynninge IK shall submit its original of the parties' agreement dated 28 July 2000, so that the Court of Appeal can review its authenticity and that the Court of Appeal shall hold a main hearing in the case.

Relying on the second sentence of the first paragraph of Section 5 of Chapter 42 compared to Section 1 of Chapter 53 of the Swedish Code of Judicial Procedure, the Court of Appeal has decided the case without granting the application for a summons.

GROUNDS OF THE COURT OF APPEAL

In support of his first motion, RL has referenced the following. There is no valid arbitration clause between the parties, because SH, who signed the agreement on behalf of Rynninge IK, did not have the authority to sign on behalf of the club. The arbitral award is obviously in breach of basic principles of Swedish law (so-called ordre public) since it is founded on forged evidence and false witness statements. The written statement referenced by Rynninge IK in the arbitration proceedings was not drafted by SH, but merely signed by him. The board of Rynninge IK has knowingly

provided incorrect information, which has affected the outcome of the case. It is clear from a letter from Rynninge IK's counsel dated 2 December 2002, as well as from a newspaper article of 23 January 2003, that the club has acknowledged all three agreements between the parties, which was however denied in the arbitration proceedings. The arbitral tribunal has further decided the dispute without considering mandatory rules of law for the protection of the interests of third parties and public interests, namely tax law. The arbitral tribunal has not taken into consideration the fact that Rynninge IK has withheld tax payments from the state by not accounting for the compensation paid to RL. Through the agreement reviewed by the arbitral tribunal, RL was ordered to carry out so-called moonlighting. The arbitral award has further had the characteristic of a punishment, since the Swedish Social Insurance Agency decided that RL was liable to repay the excess amounts he had been granted during his sick leave. The arbitral tribunal has further committed a procedural error by not trying his motion on compensation for litigation costs related to the fee for legal aid. Finally, the arbitral award is invalid because it has been rendered Rynninge IK's affiliate, the Swedish Football Association.

In support of his alternative motion, RL has referenced that a retrial should be granted based on the principles of legal force (factum superveniens), since it has been established, amongst other things, that Rynninge IK does not hesitate to provide false statements and that the person who signed the relevant agreements lacked the authority to do so.

The opinion of the Court of Appeal

An arbitral award is invalid if it includes a review of an issue that is non-arbitrable under Swedish law, if the arbitral award itself or the way it was rendered is in obvious breach of basic principles of Swedish law (in breach of ordre public) or if the arbitral award does not comply with the requirement that it has been issued in writing and has been signed (first paragraph of Section 33 of the Swedish Arbitration Act (SFS 1999:116), the LSF).

The list of the three aforementioned invalidity grounds is exhaustive. This means, amongst other things, that an arbitral award cannot be declared invalid, if there was no valid arbitration clause (see Government Bill 1998/99:35 p. 142 f.).

What has been referenced by RL concerning that SH had not himself drafted the written statement and that the board of Rynninge IK had acknowledged the agreements between the parties does not entail that the arbitral award is in breach of ordre public.

If, through an arbitral award, a claim based on gambling or criminal acts has been tried, it may be incompatible with basic principles of Swedish law. Further, the ordre public concept comprises arbitral awards that order someone to carry out actions that are prohibited by law. An arbitral award may also include an order of a punishment nature, which would make it unacceptable. An arbitral award may also be in breach of ordre public because the arbitrators have settled a dispute without due consideration of mandatory law protecting a third party or a public interest (above referenced Government Bill, p. 141 f.). The relevant arbitral award has not ordered RL to carry out a criminal act or an act that would be prohibited by law, and it does not have the characteristic of a punishment. The review to be undertaken by the arbitral tribunal was not of such nature that would require it to consider mandatory rules of law protecting third parties or public interests.

Procedural errors may be relied on in challenge proceedings to motion for the invalidity of an arbitral award. RL did not, however, reference this ground within the three month challenge period, and as a result it may no longer be relied upon (item 6 of the first paragraph as well as the third paragraph of Section 34 of the LSF). The procedural error referenced by RL is not – irrespective of whether his claim is true or not – of such nature that the arbitral award would be in breach of ordre public.

RL has further claimed that the arbitral award is invalid because Rynninge IK has settled the dispute with him through an affiliate – the Swedish Football Association. The arbitral tribunal comprised the arbitrator OH. Since he is not an affiliate of Rynninge IK, what has been claimed by RL in this respect cannot render the arbitral award invalid.

Based on the foregoing, the Court of Appeal finds that what has been referenced by RL does not comprise a circumstance that should lead to the arbitral award being declared invalid based on Section 33 of the LSF. Thus, RL's first motion shall be dismissed.

If, after an arbitral award has been rendered, new events transpire that were not considered in the arbitral award, a so-called factum superveniens, those new events could be relied on in new arbitration proceedings (see Lindskog, Skiljeförfarande, 2005, p. 887 f.). However, there is no possibility to have this tried by public courts. Thus, the Court of Appeal cannot within the scope of the present case try RL's alternative motion. It shall therefore be dismissed.

Upon this outcome, the document relevant for the application for an order of disclosure cannot be deemed to be relevant as evidence in the case. Thus, the application for an order of disclosure is not granted.

The Court of Appeal, which finds that the application for a summons is obviously lacks legal grounds, renders its judgment without issuing the summons. Upon reaching this conclusion, there is no procedural impediment to the Court's deciding the case without a main hearing.

The judgment of the Court of Appeal may, under the second paragraph of Section 43 of the LSF, not be appealed.

[ILLEGIBLE SIGNATURES]

The decision has been made by: Judges of Appeal C.R. (Reporting Judge of Appeal), K.Å. and A.K. Unanimous.