

DECISION of the
SWEDISH SUPREME COURT

given in Stockholm on 5 April 2012

Case No.
Ö 5553-09

APPELLANT

Concorp Scandinavia AB, Reg. No. 556588-6990

Counsel: Advokat SB

COUNTERPARTY

Karelkamen Confectionary AB (formerly Xcaret Confectionery Sales AB),
Reg. No. 556293-5972

Counsel: Advokat CH and Advokat LP

MATTER

Dismissal because of arbitration clause

APPEALED DECISION

Svea Court of Appeal, decision of 4 November 2009 in Case No. Ö 1634-09

DECISION OF THE SUPREME COURT

The Supreme Court annuls the decision of the Court of Appeal on the issue of dismissal, and affirms the decision of the District Court in the appealed part.

The Supreme Court annuls the decision of the Court of Appeal on the issue of litigation costs and discharges Concorp Scandinavia AB from the liability to compensate Karelkamen Confectionary AB its litigation costs before the District Court and the Court of Appeal, and orders Karelkamen Confectionary AB to compensate Concorp Scandinavia AB its litigation costs before the Court of Appeal in the amount of SEK 48,500, all comprising of costs for legal counsel, plus interest under Section 6 of the Swedish Interest Act from 4 November 2009 until the date of payment.

The Supreme Court orders Karelkamen Confectionary AB to compensate Concorp Scandinavia AB its litigation costs before the Supreme Court in the amount of SEK 171,000, comprising of costs for legal counsel in the amount of SEK 96,000 and SEK 75,000 for expenses, plus interest thereon under Section 6 of the Swedish Interest Act from the date of the decision of the Supreme Court until the date of payment.

MOTIONS BEFORE THE SUPREME COURT

Concorp Scandinavia AB has moved that the Supreme Court shall dismiss the procedural impediment objection of Karelkamen Confectionary AB and shall affirm the decision of the District Court.

Concorp Scandinavia AB has further moved that the Supreme Court shall grant Concorp Scandinavia AB compensation for its litigation costs before the Court of Appeal and shall discharge Concorp Scandinavia AB from the liability to compensate Karelkamen Confectionary AB the amounts decided by the Court of Appeal.

Karelkamen Confectionary AB has disputed any amendments to the decision of the Court of Appeal.

The parties have claimed compensation for their litigation costs before the Supreme Court.

GROUNDS

1. Concorp submitted an application for a summons to the District Court and moved that Karelkamen should be ordered to pay SEK 12 million to Concorp. As grounds for the claim, Concorp stated that the company had granted Karelkamen a loan in the amount of SEK 16 million. The loan amount was later decreased by SEK 4 million by way of an agreement, after which SEK 12 million remained outstanding.
2. In its response, Karelkamen moved that the application for a summons should be dismissed. As grounds for the motion, Karelkamen referenced the following. The relevant claim falls within the scope of a cooperation agreement, including an addendum, through which Xcaret Confectionery Holding AB in 2004 acquired Karelkamen from Concorp. The agreement is binding on all three companies. Both the cooperation agreement and the addendum provide that all disputes arising out of or in connection with the agreement shall be submitted for resolution by arbitration under the Swedish Arbitration Act (SFS 1999:116). Thus, the District Court does not have jurisdiction to try the case.
3. On the merits, Karelkamen objected to Concorp's claim by stating that the company was not liable to repay the loan, because of certain circumstances related to the cooperation agreement, amongst other things, that the claim for loan repayment had lapsed after setting off a counterclaim based on the cooperation agreement.

4. Concorp objected to the dismissal claim, and counterclaimed that its claim was not based on the cooperation agreement, that Karelkamen was not a party thereto and that Karelkamen could base no rights against Concorp on the cooperation agreement.
5. The District Court held that Karelkamen was neither a party to the agreement nor had become bound thereto as a third party and denied Karelkamen's claim for dismissal. Karelkamen's set-off counterclaim was dismissed by the District Court, however, because of the arbitration clause.
6. Karelkamen appealed the decision of the District Court to not dismiss Concorp's claim. The Court of Appeal has, by way of the appealed decision, annulled the decision of the District Court in the appealed part and dismissed Concorp's claim.
7. The issue before the Supreme Court is to determine whether the District Court, against the background of what the parties have referenced in support of their respective claims, has jurisdiction to try the claimed loan liability.
8. The provisions on the jurisdiction of the court, in Section 17a of Chapter 10 of the Swedish Code of Judicial Procedure, provide that there are separate provisions on procedural impediments in the Swedish Arbitration Act. Section 4 of that act provides that a court shall not, against the objections of one party, try a case, which according to an arbitration agreement, shall be tried by arbitrators.
9. Disputes for which the parties may reach out of court settlements may, by way of agreement, be submitted for arbitration. With respect to future disputes, this applies to legal relations that are specified in that agreement. (See the first paragraph of Section 1 of the Swedish Arbitration Act.)

10. The arbitration clauses that are relevant in the present case do not specify any legal relationship except the agreement that is regulated by the respective contractual document. Thus, the arbitration clauses govern only the rights and obligations that arise under these agreements.
11. Concorp has based its claim neither on the cooperation agreement nor on the addendum. Instead, Concorp has claimed that it is based on a repayment of a loan granted already prior to the entry into of these agreements.
12. The decision on jurisdiction shall be made based on what Concorp claims with respect to its rights. (See, on the so-called doctrine of assertion, amongst others, case law NJA 1973 p. 1, NJA 1984 p. 705, NJA 2005 p. 586 and NJA 2008 p. 406, and from jurisprudence Lars Welamson in Svensk Juristtidning 1964, p. 278 ff., Lars Heuman and Peter Westberg, Argumentationsformer inom processrätten, 2nd ed., 1996, p. 27 ff., Stefan Lindskog, Skiljeförfarande, upcoming 2nd ed. 2012, Section I:0-6.1.2 and Lars Heuman, Skiljemannarätt, 1999, p. 75 ff.) Since Concorp maintains that the claim is a result of another legal relationship than the agreements that fall within the scope of the arbitration clauses, the clauses do not entail that public courts lack jurisdiction to try the claim based on the referenced ground.
13. The fact that Karelkamen, referring to the agreements – particularly with respect to the cooperation agreement – objects to the monetary claim, does not entail that the courts lack jurisdiction to review this issue based on the referenced ground. This applies even though the objections fall within the scope of the arbitration clause on which Karelkamen bases its objection (cf. NJA 1973 p. 480 and NJA 1982 p. 738).
14. In view of the aforementioned, by annulling the decision of the Court of Appeal, the decision of the District Court shall be affirmed with respect to the appealed issue.

The decision has been made by: Supreme Court Justices S. L., L. T., E. N., G.
L. and S. O. J. (Reporting Justice)
Reporting clerk: S.Ö.