

SVEA COURT OF APPEAL  
Department 02  
Division 020103

**JUDGMENT**  
28 April 2015  
Stockholm

Case No.  
T 7796-14

**CLAIMANT**

Mr. O in bankruptcy  
[*INFORMATION OMITTED*]

Counsel: Mr. S  
[*INFORMATION OMITTED*]

**RESPONDENT**

Mr. A  
[*INFORMATION OMITTED*]

Counsel: Advokat Dan-Michael Sagell  
Biblioteksgatan 3  
111 46 Stockholm

**MATTER**

Challenge of arbitral award given in Stockholm on 25 January 2013

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**JUDGMENT OF THE COURT OF APPEAL**

1. The Court of Appeal rejects the motions of the claimant.
  2. Mr. O is ordered to compensate Mr. A for his litigation costs in the amount of SEK 59,000, out of which SEK 52,000 comprises costs for legal counsel, plus interest on the amount SEK 59,000 pursuant to Section 6 of the Swedish Interest Act from the day of the Court of Appeal's judgment until the day of payment.
  3. The Court of Appeal orders Mr. S to jointly and severally with Mr. O compensate Mr. A for his litigation costs to the amount of SEK 20,000 plus interest pursuant to Section 6 of the Swedish Interest Act from the day of the Court of Appeal's judgment until the day of payment.
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## **BACKGROUND**

An arbitral award was rendered on 25 January 2013. Mr. O has challenged the arbitral award and moved that the arbitral award shall be declared invalid.

The Court of Appeal dismissed the challenge in a decision rendered 21 April 2015. Thus, the Court of Appeal still has to review the motion for invalidity on the merits.

## **MOTIONS ETC.**

Mr. O has moved that the Court of Appeal shall declare the arbitral award invalid.

Mr. A has disputed the motion.

The parties have claimed compensation for litigation costs.

Mr. A has moved that the Court of Appeal shall declare Mr. S [Mr. O's counsel] to be held jointly and severally liable with Mr. O for Mr. A's litigation costs.

Mr. S has disputed the motion.

In a decision of 21 April 2015, the Court of Appeal dismissed certain submitted evidence.

## **GROUND OF THE PARTIES**

### **Mr. O**

The arbitration was carried out without a binding arbitration agreement between the parties. Thus, the arbitral award breaches item 1 of the first paragraph of Section 33 of the Swedish Arbitration Act.

### **Mr. A**

The lack of an arbitration agreement does not render the arbitral award invalid, but rather means that the award can be challenged pursuant to item 1 of the first paragraph of Section 24 of the Swedish Arbitration Act.

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## **GROUNDS OF THE COURT OF APPEAL**

The case has been decided following a main hearing.

The Court of Appeal notes that even if there is no arbitration agreement, this does not mean that the arbitral award includes a review of a matter not eligible for arbitration under Swedish law. Therefore, Mr. O's motion shall be rejected.

Upon this outcome, Mr. A is entitled to compensation for his litigation costs. The claimed amount is reasonable.

Hereafter, the Court of Appeal will consider the motion for holding Mr. S jointly and severally liable with Mr. O under Section 7 of Chapter 18 of the Swedish Code of Judicial Procedure. The Court of Appeal notes that the mere fact that a claimant's case is poorly constructed cannot entail that the counterparty's counsel is held liable for costs incurred by the other party.

The Court of Appeal finds that Mr. S has negligently presented an argument, which he ought to have realized had no grounds, namely the argument – pivotal to the claimant's case – that an arbitral award is invalid in the absence of an arbitration agreement. The manner in which he has dealt with other aspects of the case has also been so unskilled that it must be assumed to have caused the respondent additional costs. Therefore, the Court of Appeal concludes that it is reasonable to hold Mr. S jointly and severally liable with Mr. O for SEK 20,000 of Mr. A's litigation costs.

There are no grounds to grant leave to appeal the judgment of the Court of Appeal (second paragraph of Section 43 of the Swedish Arbitration Act). **The decision of the Court of Appeal may not be appealed.**

The decision has been made by: Judges of Appeal CS and PS (dissenting), reporting Judge of Appeal, and Deputy Associate Judge CB.

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**Dissenting opinion**

Judge of Appeal PS dissents as follows.

In my opinion, the paragraph on page 3 commencing with “The Court of Appeal finds” shall, after the words “be assumed to have caused the respondent additional costs”, have the following wording.

by, amongst other things, having conducted a case that has been remarkably imprecise and therefore difficult to dispute. Mr. S has also, against his better knowledge, persisted in maintaining his motion on the lack of an arbitration agreement, also after Mr. A had referenced documentary evidence establishing that Mr. O had not only defended his case on the merits and appointed an arbitrator, but had even presented a counterclaim – all the while never objecting to the lack of an arbitration agreement. Therefore, Mr. S shall be ordered to compensate the full amount of Mr. A’s litigation costs jointly and severally with Mr. O.

[ILLEGIBLE SIGNATURE]