
December 2014

New Swedish case law regarding powers of attorney

For those of you who enter into many agreements in your business activities, it might be a good idea to consider not only the content of the agreement, but also who is holding the pen when signing or who is shaking hands when an oral agreement is reached. In a judgement from October this year, the Swedish Supreme Court has concluded that a middle manager did not have the authority to bind his principal in a settlement agreement.¹

The case concerned a Skanska company which, as part of its operations, purchased water locks from Alvesta VVS Material AB (the Alvesta Company). One of these water locks caused considerable water damage. Skanska contacted the Alvesta Company and a number of meetings were held between Alvesta Company's managing director LH and Skanska. In September 2008, the parties concluded an oral settlement agreement.

Earlier, in April 2008, the Alvesta Company merged with Solar Sverige Aktiebolag (Solar). The Alvesta Company then became a special division within Solar and LH became head of this division. Thus when the settlement agreement was made, LH was acting as the head of the Alvesta division within Solar.

A dispute emerged concerning whether LH had the authority to enter into the settlement agreement on behalf of Solar. The issue regarding whether LH had the authority to bind Solar was tried by the Supreme Court. The Supreme Court declared that LH did not have authority to enter into the settlement agreement with a binding effect on Solar.

It may very well be worth reading through this judgement as the Supreme Court considers and highlights this interesting topic of powers of attorney in very plain terms. You can find the judgement [here](#). We also summarise the judgement below.

Summary of the judgement:

Skanska claimed that Solar had been bound by the settlement agreement because LH held a managerial position or because Skanska, given different circumstances, obtained a *legitimate trust* that LH had the authority to make the agreement in question on behalf of Solar. Skanska also claimed that Solar had contributed to this legitimate trust by among other things its failure to act.

¹ Supreme Court judgement dated 10 October 2014 in case number T 1310-12.

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Solar claimed that LH did not hold a position of authority as there was no customary practice that a person in an equivalent position had the authority to enter into settlement agreements of this kind. Solar also claimed that Skanska had not been bound by any legitimate trust that LH was authorised to enter into agreements like the present one.

What the Supreme Court had to establish was whether LH was authorised to enter into a settlement agreement on behalf of Solar, either based on authorisation through his position or based on Skanska's legitimate trust.

Did LH hold an authority by virtue of his position?

In accordance with Section 10 (2) of the Contract Act, authorisation by virtue of a position is based on whether someone has been given a position through a contract, often an employment contract, which under law or customary practice gives that person the authority to act on behalf of someone else. In the present case, the Supreme Court established that the existence of a customary practice indicating that LH, through his managerial position, had the authority to enter into the settlement agreement had not been demonstrated. Thus it was held that there was no authorisation by virtue of his position pursuant to Section 10(2) of the Contract Act.

Did LH have an authorisation based on trust?

Under certain circumstances, an authorisation may be considered as based on the trust of the third party, in this case Skanska.

However, this trust must be *legitimate*. When determining whether this *trust* can be considered legitimate, the following issues should be considered:

- What type of agreement does it concern?
- Within what type of activities has the agreement been concluded?
- How frequently does this type of agreement occur?
- What obligations are included in the agreement?

Other circumstances may also be considered on a case-by-case basis. For example, it could be considered whether the intermediary regularly performs certain legal acts and if the third party, due to other circumstances, has been given reason to believe that the principal will accept the agreement made by the intermediary.

However, it is not sufficient that the trust is legitimate. The legitimate trust must also *derive* from the principal. This means that even if it is found that the third party has a legitimate trust, it is necessary to link the circumstances upon which this trust is based to *the principal* in a relevant manner in order for the party to be bound by the agreement.

The principal must also have been *aware* that these circumstances could mean that a third party had a legitimate trust that the intermediary was authorised. If the principal had not realised that such circumstances existed, he can still negligently have caused a third party to erroneously assume that the intermediary was authorised. However, this is not normally sufficient for the principal to be bound on the grounds of legitimate

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trust of the third party. Here, is it more likely that the principal becomes liable for damages because of the third party's legitimate trust, rather than becoming bound by the agreement.

Authorisation based on trust if the intermediary has a managerial position

The Supreme Courts applies the following reasoning in cases where the intermediary has a managerial position, which LH had.

A third party should be able to assume that a manager is authorised to make legal decisions under the following circumstances. It has to be a clearly defined and independent core business activity and the managerial position must have been clarified externally. Furthermore, it must involve legal decisions that are normally taken during and for the continuation of the daily operations of the business division.

In a similar way, a company appointing a person as a manager for a clearly defined core business division normally clarifies this externally and realises that a third party has reason to assume that the intermediary is authorised to make such legal decisions.

This means that, in terms of the authority of a divisional head, when there is no existing customary practice, there might still be authority based on the third party's legitimate trust.

In the current case, LH was head of a division in a large company. Furthermore, in the not so distant past, this division had been a separate company, which following a merger was now part of the company without any major changes being made to the business activities. Thus, the division was clearly demarcated. Furthermore, LH's position as a manager had been clarified externally.

Therefore, according to the Supreme Court, there was reason for Skanska to believe that LH had the authority to make an agreement within the framework of daily commercial operations (similar to those of a managing director in a limited company) and that Solar, which had appointed LH as divisional manager, should have realised this. Thus, the Supreme Court found that there was trust. But was this legitimate?

The Supreme Court noted that the agreement in the case at hand was a settlement agreement concerning a relatively large amount and that a settlement of this kind typically involves considerations which are not of a daily nature. Thus, the Supreme Court did not find that the settlement agreement could be considered such part of the daily commercial operations of the company, which naturally should have been managed by a divisional manager alone.

Indeed, the Supreme Court found that even if Skanska had assumed that LH, due to his senior position, had the authority to enter into settlement agreements, this trust was *not legitimate*.

Finally, the Supreme Court considered the other circumstances of the case, inter alia that, according to the Supreme Court, Skanska had reason to consider the extent of LH's

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authorisation. Outside LH's own actions, nothing had occurred that had given Skanska any other reason to believe that LH had the necessary authority. Despite this and despite the fact that this was a significant agreement, Skanska never took any measures to verify LH's authority.

In summary, the Supreme Court did not hold that Skanska could be considered legitimate in believing that LH had the authority to enter into the agreement in question on behalf of Solar. It is irrelevant whether the opinion that Skanska may have held regarding the authority of the middle manager derived from Solar or not.

The conclusion of the Supreme Court was thus that LH did not have the authority to enter into the settlement agreement with a binding effect on Solar.

Our comments:

An important conclusion when negotiating large agreements with a middle manager on the side of the counterparty is thus to check the authority of that middle manager. This applies particularly to agreements that cannot be considered as part of the daily commercial operations. Settlement agreements are not normally considered part of the daily commercial operations and during such negotiations it is important to carefully establish the authority.

If your own divisional manager is involved, it is important carefully to define the framework for the conduct of this person. If a divisional manager or other manager is to be able to bind the company in large agreement negotiations including settlements, this should be clarified at an early stage. If it is concluded that signals may have been given to the counterparty suggesting authority where there is none, it is important to correct this situation without delay as soon as it is realised, in order to avoid situations like the Skanska case above.



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