

Validity of Electronic Signatures

On June 4, 2024, the Svea Court of Appeal issued a judgment regarding the validity of signing with a qualified electronic signature (Svea Court of Appeal judgment on June 4, 2024, case no. T 11652-23). In the decision, the plaintiff, a leasing company, claimed that they had entered into an agreement with the defendant, a private individual, and that the agreement had been signed with a qualified electronic signature (BankID). The defendant, on the other hand, claimed that no agreement had been entered into between the parties.

In the decision, the Court of Appeal notes that the Supreme Court has previously established it is the lender's responsibility to show that an alleged advanced electronic signature has been used (NJA 2017 p. 1105). If a lender can show that the technical solution used to enter into a loan agreement corresponds to the creation of an advanced electronic signature, and if there is nothing to suggest that there were technical problems with the system at the time, the burden of proof on the lender is generally considered to be met. According to the Court of Appeal, these principles must also be considered applicable in the present case.

The leasing company had, amongst other evidence, presented a certificate from the e-signing company Scrive, according to which the defendant had signed the agreement with BankID. The certificate showed an error message, indicating that the document's seal had been broken. The Court of Appeal notes, however, that this error message does not necessarily mean that the content of the document has been manipulated. Nevertheless, the Court of Appeal considered that the error message raises such questions about the signing that the plaintiff cannot be considered to have met its burden of proof. The leasing company has thus not shown that an agreement had been reached between the parties, and their claim was dismissed. The Court of Appeal thereby upheld the district court's judgment.

From the decision, it can be concluded that the handling of e-signed documents must be done with caution given the risk that the document's seal may be broken. It is the party claiming that an e-signature has been made to enter into an agreement that must show that the technical solution corresponds to an advanced electronic signature and that no technical problems have emerged during the signing that question its validity.