CASE TRANSLATION: DENMARK

CASE CITATION:
U.2001.252Ø

NAME AND LEVEL OF COURT:
Østre Landsret (Eastern Division of the Danish High Court)

DATE OF DECISION: **31 October 2000**

MEMBERS OF THE COURT: **Judges Nicolaisen, Nils Erik Jensen and Mikael Sjøberg (acting)**

Request for dissolution; Bankruptcy Court; signature; sufficiency of electronic signature with name typed on document

Decision of the Eastern Division of the Danish High Court, 31 October 2000 in the appeal before the 4th division, no. B-2888-00

(Nicolaisen, Nils Erik Jensen, Mikael Sjøberg (acting)).

The Danish Commerce and Companies Agency represented by the Legal Adviser to the Danish Government as represented by Henrik Nedergaard Thomsen, Lawyer vs. Naturligvis A.M.B.A. in compulsory dissolution.

The Danish Commerce and Companies Agency had submitted a request to the Bankruptcy Court in Faaborg for compulsory dissolution of the enterprise Naturligvis A.M.B.A. In the court records of the Bankruptcy Court in Faaborg of 4 October 2000, it is stated that:

> A request for dissolution, including appendixes, was produced.
>
> Neither party appeared in court, and neither party had been summoned.
>
> The Bankruptcy Court noted that the request for compulsory dissolution had not been signed.

The Bankruptcy Court further noted that upon contact over the telephone to the Danish Commerce and Companies Agency it had been stated that the missing signature was not due to any clerical error, but is a deliberate procedure.

The Bankruptcy Court noted that it did not consider it expedient to return the request for the purpose of rectification.

Accordingly, the Bankruptcy Court made the following order:

> As the request submitted to the Bankruptcy Court has not been signed,
>
> it is ordered:
>
> THAT the request is dismissed.

The Danish Commerce and Companies Agency appealed against the order. In the court records of the Eastern Division of the Danish High Court, it is stated:

> In the case, the judge has relied on the decision made, and in the forwarding letter has stated:
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> The actual grounds for the signature requirement are in particular:
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> that official responsibility can be allocated;
>
> that it must be possible to ascertain whether the decision was made by a person who, according to the appellant's principles of delegation, is competent in the matter;
>
> that the signature is the only way for a recipient to distinguish between a draft and a decision;
>
> that a signature ensures that submission was not made erroneously, for instance where a draft is sent without being in its final form or without any final decision of the submission having been made; and
>
> that a signature entails some certainty that requests submitted are not forged. However, it should be noted that it cannot be ruled out that a third party by means

of modern technology may appropriate electronic copies of the appellant's texts or may prepare letters which in their appearance may be confused with a letter from the appellant.

The following appears from the notice of appeal:

The request submitted by the appellant was not signed, as it was issued automatically. In that connection, it should be noted that since September 1995 the appellant has not signed any requests for compulsory dissolution as a result of companies' failure to submit financial statements, because the administrative procedure is automatic for resource and practical reasons.

The consideration which must be allowed for in connection with the submission of a request for compulsory dissolution is that it is certain who submitted the request. With regard to the request of 2 October 2000 (Exhibit 1), there is no doubt that it was made and submitted by the appellant. This clearly appears from the stationery with the individualised letterhead, and it is further emphasised because the appellant is marked in typewriting as sender at the end of the request. Further, the case is separately identified by a file number.

The appellant has worked on the basis that through five years, the bankruptcy courts have accepted the appellant's organisation of the administrative work and thus have proceeded with a very large number of requests for compulsory dissolution printed automatically without a personal signature.

The case documents were present.

Following deliberations, the court made the following order:

THAT the court upholds the factual reasons stated by the bankruptcy court for signing of documents of legal importance. Against this, the resource reasons, as stated by the appellant, and the possibility of identifying the appellant as the sender of requests for compulsory dissolution of companies due to failure to submit financial statements do not provide grounds for submitting requests without signatures.

Nor may the fact that, according to the appellant, for a long period the bankruptcy courts have dealt with such requests even if they had not been signed, provide grounds for any departure from the signature requirement. Accordingly, and as on the basis of the information available the appellant has not taken special measures to solve the due process problems resulting from missing signatures on the requests, it is upheld that the bankruptcy court has rejected the request, for which reason it is ordered:

THAT the order appealed against is affirmed.