

## CHAPTER TWO SCOPE OF PROTECTION

### 2.4. PROTECTION OF ECONOMIC INTERESTS

#### 2.4.4. THE LAW OF THE NORDIC COUNTRIES

##### *Introductory Note*

As already stated in the General Introduction, the laws of Denmark, Finland and Sweden, like English and German law, take a cautious approach *vis-à-vis* the compensation of “pure economic loss” or *reiner Vermögensschaden*, i.e. economic losses which are not related with an injury to the person or property of the claimant. § 5:1 of the Finnish SKL is characteristic of the Nordic viewpoint (with the exception of Norway) that pure economic loss will only be recoverable in tort if it follows from a criminal offense, is caused by a public authority, or when another serious ground is present.<sup>1</sup> In Swedish and Danish law, a similar result has been reached through case-law, given that the corresponding Swedish provision, § 2:4 SKL, is less explicit than the Finnish one, whilst in Denmark there is no explicit legal provision at all in this respect.<sup>2</sup> Much like in England and Germany, there is a general tendency in those three Nordic countries as well to grant compensation for pure economic losses more readily in cases of professionals supplying incorrect or false information. The cases reproduced below illustrate that point.

*Vestre Landret, 4 September 1948*<sup>3</sup>  
*Pedersen v. Pedersen*

**2.DK.57.**

#### LIABILITY FOR INCORRECT INFORMATION

##### **House on marshlands**

*A real estate agent who, when he sold a house to the plaintiff, had not drawn the*

<sup>1</sup> Von Bar I at 270, para. 245.

<sup>2</sup> Ibid. at 270-4, para. 245-7.

<sup>3</sup> UfR 1948A, 1297, cited in von Bar I at 273, para. 247 with many other decisions. Translation by M. Ducoulombier and M. Tranälv.

## 2.DK.57.

## SCOPE OF PROTECTION

*attention of the plaintiff to the fact that the house was built on marshlands, is liable upon the house subsiding to compensate the expenses which are necessary to lay new foundations, as well as the depreciation in value.*

*Facts:* An authorized real estate agent, acting on behalf of the seller, showed a house, constructed upon marshlands, to the eventual buyer and took care of drawing up the sales documents. The real estate agent, who for a long time before the purchase had known that the house was warped and supposed that this could be a consequence of the fact that it had sunk. The buyer claimed compensation in the order of DEK 9,500 plus interest.

*Held:* The Vestre Landsret found that the agent was under a duty to inform the buyer about those matters and was obliged to compensate the buyer, jointly and severally with the purchaser, for the expenses involved in making the necessary repairs to the foundation and for the loss of value of the house.

*Judgment:* "...According to the facts presented, including in particular the expert appraisal, the court finds as a fact that the abovementioned house has sunk as described in the expert's report and that this circumstance which can be qualified as a serious defect existed at the time of the transaction in autumn 1946 without the plaintiff knowing so or without that he should have had any suspicions in this respect.

When special consideration is given to the witness declarations..., the court must conclude that the defendant knew that the house was warped and the ceilings were cracked and that she ought to have made the plaintiff aware of this condition. Consequently..., the defendant... is condemned to compensate the expenses incurred to repair the house and the loss caused by the loss of value of the house."

### *Note*

The above case appears to be representative of Danish case-law on tortious liability for incorrect statements.<sup>4</sup>

<sup>4</sup> See other decisions mentioned in von Bar I at 273, para. 247: Østre Landsret, 5 April 1945, UfR 1945A, 863; Østre Landsret, 10 October 1994, UfR 1995A, 84 (false information by unemployment insurer); Vestre Landsret, 14 December 1994, UfR 1995A, 274 (false information by municipality). In some cases, claims were rejected but not for reasons of principle: Højesteret, 21 January 1994, UfR 1994A, 280 and Højesteret, 19 August 1994, UfR 1994A, 818.

*HD, 14 October 1987<sup>5</sup>***2.SW.58.**PROFESSIONAL LIABILITY FOR INCORRECT STATEMENT IN CERTIFICATE OF  
VALUATION**Inaccurate valuation**

*Incorrect information as to town planning that is contained in a certificate of valuation drawn up by a professional gives rise to compensation towards a plaintiff that consented a mortgage loan on the basis of that incorrect statement, even if the statement was made at the bequest of the recipient of the loan.*

*Facts:* In January 1982 Kone Invest Ltd (hereinafter "Kone") lent SEK 1,000,000 to the real estate agency owned by Bernt H As security for the loan, Kone received mortgage deeds for an amount of SEK 800,000 on a piece of land owned by Bernt H. Kone's decision to accept the mortgage as security was based upon a certificate of valuation drawn up by Arne B., the local manager of the defendant, Jacobsson & Widmarks Ltd (hereinafter "J&W"). That certificate was erroneous, and when Bernt H defaulted on the loan, Kone could not draw a sufficient amount from the security to cover its claim. Kone thereafter initiated legal proceedings against J&W, claiming that J&W ought to be ordered to pay SEK 990,000, with interest to Kone.

*Held:* The HD confirmed the judgment of the court of appeal, which had allowed Kone's claim.

*Judgment:* "Arne B stated in the certificate of valuation that a town plan, which provides for 35 villas, has been drawn up for [the piece of land owned by Bernt H]. Arne B assessed the value of the estate from the point of view that it could be built upon according to that plan. The certificate also gave the impression that there was no impediment to exploitation of the estate. However, this was false, since the local authority had on the contrary decided against such exploitation. The certificate was thus based upon an erroneous assumption and the value stated by Arne B is therefore out of touch with reality.

As to whether this fault is to be imputed to Arne B as negligence, the following must be considered. In the valuation of an estate, it is very hard to pin down a value to which all competent valuers would agree. Valuation of real property is namely to a large extent depending upon the estate in question. A considerable room must therefore be allowed between the valuer's own judgment and what later on turns out to be the real value of the estate, without finding that the valuer has acted negligently. This case, however does not involve a mistake in the course of valuation itself, but rather an erroneous and misleading statement on a factual state of affairs, namely the possibility of exploitation for the building of houses. For a valuer, it is hardly a difficult task to verify whether there is a right to build houses on an estate. The right to build houses is crucial for the value of an estate that can be exploited. Arne B has not fulfilled his duty to investigate this state of affairs. Arne B was thus negligent in the performance of his assignment, as the

<sup>5</sup> NJA 1987:117 (cited in von Bar I at 271, para. 245). Translation by M. Tranälv.

## 2.SW.58.

## SCOPE OF PROTECTION

[lower] courts have found...

The question that then arises in this case is whether J&W can be held liable in damages for the loss that Kone suffered... because Arne B acted negligently in issuing the certificate at the bequest of the owner of the estate and not of Kone itself.

The harm that Kone suffered is a so-called *förmögenhetsskada* [Swedish equivalent to *Vermögensschaden*]. The main rule in Swedish law is, according to § 2:4 SKL, that *förmögenhetsskada* is only recoverable if it has been caused by a crime. In other cases — except for contractual relationships — an express statutory provision is required if that loss is to be compensated. Such statutory provisions can be found inter alia in intellectual property law and in some more recent enactments in the area of protection of personal integrity. The preparatory commentaries on the SKL make clear that the purpose of the Act is not to impede developments in the case-law towards a wider liability for *förmögenhetsskada* [reference omitted]. Moreover, before the SKL was drawn up, case law in certain areas had laid down the principle of liability for *förmögenhetsskada* caused by negligence outside of pure contractual situations. Case law has for a long time accepted liability for erroneous certificates of authenticity, affidavits and information on solvency.

The question of a valuer's liability for negligent affirmations, however, has not been tried by the HD before. Valuations can concern different kinds of property and can be done for many purposes and in many different ways. It is hardly possible to give a general statement about the limits of a valuer's liability. The following reflections only concern certificates of valuation... bearing on real property that are issued by someone who undertakes professionally to assess such property. The purpose of such a certificate is most often to serve as the basis for a decision in connection with legal matters concerning real property, mainly purchases and mortgages. The one who requests the valuation can be the owner of the property, a creditor or a prospective buyer. [Yet] it must be obvious for the valuer that the certificate can be used for different purposes and by several persons. It is inevitable that other persons than the one who requested the valuation in the first place would also rely upon the certificate of valuation. A system whereby the issuer of the certificate is responsible only towards his client would lead to several valuations being conducted in parallel without any real advantages for the property or credit market. There are peremptory reasons for holding that someone who, with good reason, relied upon a certificate of valuation, should be responsible for the consequences that ultimately are caused by the issuer's negligent actions. The liability in tort of someone who professionally undertakes the valuation of real property should thus as a rule not be limited to the harm the client has suffered, but it should also include the harm suffered by a third party, unless there is an exoneration clause for such liability in the certificate.

In the present case, there is no reason for deviating from this rule on the valuer's liability for erroneous statements towards others than his client. J&W is, thus, liable in damages towards Kone..."

### Note

This judgment is referred to and put in perspective by von Bar.<sup>6</sup>

<sup>6</sup> Von Bar I at 271, para. 245.

*KKO, 18 April 1989<sup>7</sup>***2.FIN.59.**LIABILITY FOR INCORRECT INFORMATION SUPPLIED BY IMMIGRATION CIVIL  
SERVANTS**Immigration to Canada**

*The Finnish State is liable for wrong information given by a civil servant to Canadian citizens of Finnish origin, who on the basis of that information emigrated to Finland but eventually returned to Canada when being confronted with all kinds of problems. Liability extends to the reimbursement of moving expenses from Canada to Finland and the compensation of some loss of income.*

*Facts:* The plaintiffs, the Hartikainen spouses, planned to move back to Finland from Canada. While planning their return, they sent a letter to the Finnish Ministry of Labour asking for information on work opportunities and conditions, work permits, education and housing. It was mentioned in the letter that they and their two children were Canadian citizens. In his letter of reply, a labour councillor in the employment authority incorrectly stated that they would not require work permits if they had Finnish citizenship before. He annexed to his letter a guide valid for those people moving back from Sweden. When the Hartikainen family arrived back in Finland both spouses had difficulties especially in finding work. They got their work permit one month after their arrival. Due to this they could not take the jobs offered to them during the first month. The Hartikainen family left Finland four months after their arrival.

*Held:* The KKO upheld the outcome of the judgment of the court of appeal confirming the judgment of the court of first instance which held the Finnish state liable to compensate the removal expenses from Canada to Finland and the earnings which the plaintiffs could not get during the month in which they had no work permit.

*Judgment:* "...The KKO considers that the labour counsellor used public authority when he gave information to the Hartikainen spouses.

The KKO considers further that it was the task of the labour counsellor to ensure that the Hartikainen spouses could base their decision on the removal back to Finland on correct information, especially as regards such official regulations which could make the return and installation more difficult. The length of the voyage back to Finland would have required special attention of the labour counsellor to the validity of the information. In spite of this, the labour counsellor gave incorrect information with regard to the work permit and the validity of the guide book for the case of the Hartikainen spouses. The KKO considers that the requirements which can be reasonably imposed for the information function of the labour counsellor, taking account its nature and purpose, have not been met.

<sup>7</sup> NDS 1990, 205, cited in von Bar I at 272, para. 246. Translation by H. Kanninen and Y.P. Salmon.

## 2.FIN.59.

## SCOPE OF PROTECTION

...The Hartikainen spouses have said that they would not have moved back to Finland if they had received correct information on the need to have a work permit and on the point that they would be in a less favourable situation than Finnish citizens or those who move from Sweden, as regards unemployment benefits, child benefits and the possibility to obtain Finnish citizenship and a driving licence. The KKO considers that this statement by the Hartikainen spouses is credible. Consequently, they have suffered damage in the form of removal expenses, as established by the court of first instance in its judgment.

...Due to the incorrect information of the labour counsellor stating that a work permit was unnecessary, the Hartikainen spouses did not apply for a work permit at the diplomatic, trade or consular representation of Finland in Canada before leaving Canada. Therefore a work permit could not have been granted to them before their arrival to Finland. This meant, by virtue of § 14(1) of the Law on Foreigners (400/83), that the spouses Hartikainen were not able to accept, respectively between 14 May and 10 June 1984 and 14 May and 13 June 1984, the jobs offered to them. Therefore the spouses Hartikainen have suffered damage in respect of lost earnings due to the incorrect information the labour councillor gave about the work permit.”

### *Note*

The above case illustrates how Finnish tort law deals with liability for misleading or incorrect information. It also concerns the liability of the State, which is dealt with in § 1:5 of the Finnish SKL and § 3:2 of the Swedish SKL.