

CASE TRANSLATION: DENMARK

Case citation:
U.2014.712Ø

Name and level of the court:
Østre Landsret (Eastern High Court)

Date of decision:
13 November 2013

Members of the Court:
**B.O. Jespersen, Lone Kern-Jespersen
and Bodil Damgaard Hammer**

Lawyer for the claimant:
Tim Henry Haarbo

Lawyer for the defendant:
litigant in person

Denmark; digital signature; enforcement

Copenhagen Bailiff's Court ruling 4 June 2013, FS M2-5137/2013.

The Claimant, 4finance ApS, represented by attorney Tim Henry Haarbo v / Flemming Ege by telephone

The debtor, S, in person.

Presented were:

Document of indebtedness

The amount due was calculated as follows:

The case stated in the sum of 5,854.14 DKK

Fee 600.00 DKK

VAT 150.00 DKK

Total: 6,604.14 DKK

The debtor, S, was charged this amount and confronted with his duty of disclosure and the potential for criminal liability.

The debtor, S, declared himself unable to pay. Subject to the debtor's right of selection and his right to identify which of his belongings that execution is to be levied against, providing the value is enough to cover the debt when sold at an auction, execution was levied against the following:

Deposit regarding lease. The landlord is --- .

Offered to pay DKK 750, on 6 June 2013 and thereafter DKK 750, per month, beginning on 1 July 2013.

Justice Kirsten Schmidt was called.

The judge gave the following

ORDER:

The applicant has requested execution against a Samsung Galaxy 2 mobile telephone. The defendant stated that he bought the telephone on credit 4 months ago, and that he paid for the telephone by repayment. According to the contract the purchase price was 5,000 DKK.

In view of the telephone's value at a forced sale, the enforcement court deems that the telephone is covered by the rule in the Administration of Justice Act § 509, paragraph 1, after which execution may not be levied against assets necessary to maintain a modest home and a modest standard of living. As a result, the appellant's request for the execution against the telephone is dismissed.

It is held that:

The applicant's request for execution against a Samsung Galaxy 2 telephone is dismissed.

Eastern High Court order.

A notice of appeal dated 12 September 2013 was presented, by which 4finance ApS with permission from the Appeal Board, has appealed the Copenhagen City Court Order of 4 June 2013 (---) according to which the request by 4finance ApS for execution against a Samsung Galaxy 2 telephone was not allowed, the enforcement court's covering letter dated 13 September 2013, a transcript of the court record containing the appealed decision and the Appeal Board's permission of 15 August 2013.

4finance ApS claims that the enforcement court's order of dismissing the execution ceases to apply and that the case is remitted to the enforcement court for reconsideration.

In support of the claim, 4finance ApS specifically argues that a smartphone such as the Samsung Galaxy

2 at a cost of 5,000 DKK is not covered by goods exempt from execution, cf. Administration of Justice Act § 509, and therefore not exempt from seizure. It is further stated that the Western High Court on 6 September 2013 reached an erroneous decision that the appellant's loan document cannot form the basis for enforcement, which has led to several court bailiffs dismissing cases where the loan document in question forms the foundation of the claim. The loan document is a document of indebtedness under the provision of the Administration of Justice Act § 478, paragraph 1, no. 5, which is not signed with 'pen and ink', but with a digital signature in the form of a NemId.¹ The loan document produced for the enforcement court is the document to be printed in connection with the loan being raised, and thus can be considered as the primary or original document. The signature appears from the PIN code. A signature with digital signature in the form of a NemId is a valid signature and just as binding as the 'pen and ink' signature, and a print of the loan document as sent to the enforcement court is to be compared with an original signed document with a 'pen and ink' signature. A loan document as applied in this case, stating that enforcement shall be available under the Administration of Justice Act § 478, and which is signed with a digital signature in the form of a NemId, should be enforceable.

The respondent has not commented on the appeal.

Forwarding the enforcement court's decision, the judge has stated that she relies on the decision taken as for the value of the mobile telephone.

Moreover the judge states that the enforcement court before the Western High Court Order of 6 September 2013 did not pre refuse cases where the basis for a request for seizure was a digital instrument of debt, but that the enforcement court after the Western High Court order of 6 September 2013 has changed its practices so that these cases are now dismissed.

The received exhibits were present.

Legal basis

It appears from the Administration of Justice Act § 478 inter alia:

"§ 478 Enforcement may be based on

¹ NemID (EasyID) is a product used by Danish internet banks, government web sites and other private companies. NemID is managed by Nets DanID A/S.

...

5) Documents of indebtedness which are not covered by no. 4, when it is specifically provided in the document that it can serve as a basis for enforcement.

6) Mortgages and, in the case of mortgages registered to the mortgagor and letters of indemnity only when the size of the debt and the due date for payments is admitted by the defendant or appears clearly from the circumstances.

...

Paragraph 4. In cases covered by paragraph 1, no. 4-7, execution may be levied against anyone who by his signature on the document has committed himself as debtor, surety or mortgagor. In cases covered by paragraph 1, no. 6, enforcement may furthermore be levied against anyone who has committed himself as debtor, surety or mortgagor by a digital mortgage that is or has been registered or recorded in the ship register or in Danish International Register of Shipping."

The Administration of Justice Act § 488, paragraph 2, 2 and section 3 also states "... In making the request, in accordance with one of the documents mentioned in § 478, paragraph 1, no. 4-7, the original document must be produced, unless the enforcement court considers it unnecessary. With digital mortgages that are or have been registered or recorded in the ships register or in Danish International Register of Shipping, the request must instead give a detailed reference to the document in the land register, the motor vehicles securities register, cooperative register, register of chattel mortgages, ship register or Danish International Register of Shipping."

The provisions of the Administration of Justice Act § 478, paragraph 4, section 2, and § 488, paragraph 2, section 3 was inserted by Act No. 539 of 8 June 2006 amending the registration of property act and various other Acts (Digital registration). Report No. 1471/2006 on digital registration that led to the bill, says inter alia on page 218 f.:

"6.8.2. Enforcement on the basis of mortgages under the Administration of Justice Act.

...

Enforcement may be levied against any person that by his signature on the mortgage has bound himself as a debtor, surety or mortgagor, see Administration of Justice Act § 478, paragraph 4.

Thus, it is a requirement under current law that the person against whom enforcement is levied against on the basis of a mortgage has to put his signature on the mortgage. The proposed digital mortgage will not contain such signature.

It also follows from the Administration of Justice Act § 488, paragraph 2 that when applying for enforcement on the basis of a mortgage the original mortgage must be submitted.

Against this background, the Committee find cause to propose changes to the Administration of Justice Act §§ 478 and 488, thus ensuring that even digital mortgages can serve as a basis for enforcement.

The Committee proposes that enforcement must be able to be based on a digital mortgage that is or has been registered as digital mortgages can only be registered if the person commits himself, by giving his digital signature.

..."

The explanatory notes, see Folketingstidende² 2005/2006, Appendix A, pages 6973 and 7005, also shows:

"...

It is also proposed that the Administration of Justice Act's rules on enforcement are amended to ensure that enforcement is possible on the basis of digital mortgages that are or have been registered in the digital registration system.

..."

4.12.1.2 The content of the bill

The Committee notes that the introduction of a digital registration system will no longer allow the filing of an original mortgage, bearing a signature to the enforcement court.

The Committee therefore considers that the Administration of Justice Act's sections on enforcement should be changed in order to allow also digital mortgages to serve as basis for enforcement. The Committee suggests that enforcement must be able to be based on digital mortgages that are or have been registered since digital mortgages can only be registered if persons committing themselves, have given their digital signature or have given power of

attorney to be bound by someone else's digital signature.

According to The Committee enforcement on the basis of a registered paper-based mortgage should continue to follow the existing rules. In this case, the original mortgage so should be provided.

Referring to the report page 218 f.

The Ministry of Justice agrees with the views expressed, and the bill is designed accordingly.

..."

After deliberations the court made the following

Order:

The basis for the request for enforcement is a loan document created using NemId as a digital signature.

Given the wording of the Administration of Justice Act § 478, paragraph 4, section 1, in connection with the provisions of the Administration of Justice Act § 478, paragraph 4, section 2, and § 488, paragraph 2, 2 and section 3, the High Court finds that the loan document in question created using NemId as a digital signature does not meet the signature requirement on the document in the Administration of Justice Act § 478, paragraph 4, section 1. The loan document therefore cannot serve as the basis for enforcement.

The High Court dismisses the case from the enforcement court.

It is held that

The case is dismissed from the enforcement court.

Neither party shall pay legal costs to the other party.

With thanks to **Lars Bo Langsted** for helping with this translation.

² The official Report of Danish Parliamentary Proceedings.