

Judgement T 3354-13 “OneTicketAway” from the Swedish Supreme Court

Facts of the case:

The consumer had contacted the travel agency OneTicketAway AB (OTA) early 2012 and booked a flight to Croatia with the airline Malév on 2 February 2012 through OTA. OTA issued six flight tickets on the same day as the booking was made, one for the consumer herself and five others for the persons who she planned to travel with. The consumer received the tickets and a invoice from OTA on 2 February 2012 by email. The invoice was payable at the latest 12 February 2012. On 3 February 2012, Malév stopped all flights and was declared bankrupt on 14 February 2012. The consumer never paid the invoice for the flight tickets.

To issue the tickets, OTA had to provide proof of payment to the airline Malév. The amount was deducted from OTA's account on 22 February 2012 through IATA Invoiceing and Settlement Plan (BSP).

OTA instigated court proceedings against the consumer, requesting that she should honour her commitment to pay the invoice for the flight tickets. The Swedish Consumer Ombudsman decided to intervene in the case on behalf of the consumer.

The issues raised before the Supreme Court:

OTA argued that they only have been acting as an intermediary between the consumer and the airline, and should not be considered as a contracting party. In accordance with the instructions given from the consumer, OTA ensured the advance payment of the flight tickets, but this is not to be considered as the equivalent to granting the consumer a credit.

The consumer argued that OTA had through its actions become party to the contract, and she consequently is under no obligation to pay for a service which has not been performed. OTA should at least be considered as contracting party to the credit agreement which came into being when OTA issued the invoice for the flight tickets. As a consumer, she may therefore, in accordance with the Swedish legislation on consumer credit (2010:1846) make the same objections against the creditor (OTA) as she could against the airline Malév. If OTA should only be considered as an intermediary, OTA has failed to ensure due professional diligence by not keeping itself informed (about Malév) and not acting in accordance with the consumer's interests.

The main issues may be summarised as follows:

- Was OTA acting as an intermediary or was it party to the contract when the flight tickets were booked?

- Did OTA act as a creditor towards the consumer? If answered in the positive, which objections is the consumer entitled to raise against the travel agency?

The findings of the Supreme Court:

In most cases a travel agency is to be considered as an intermediary. The intermediary is comparable to a retailer of package travels (article 3 package travel directive 90/314/ECC). However, a travel agency can become a contracting party through its own actions. If the travel agency acts in an independent manner in relation to the terms and conditions of the transporter (in this case an airline) by offering rebates or deductions, or by making own commitments, that would be considered as examples of circumstances which would make the travel agency become a contracting party. There were no such circumstances in the case at hand and OTA is to be considered as an intermediary.

OTA did however act as a creditor towards the consumer by sending her a invoice. It is irrelevant that the amount was not deducted from OTA's account through the IATA BSP until after payment was due, or that the amount had to be paid before the flight was planned to take place.

The type of credit at hand falls within the scope of the consumer credit legislation, however short term credits such as this (payable within 10 days), are exempt from many of the rules but not the rules on objections. The rules on objections in the consumer credit legislation are therefore applicable in this case.

According to Swedish legislation, a contracting party may suspend the performance of her obligations if, after the conclusion of the contract, it becomes apparent that the other party will not perform a substantial part of her obligations (see also [Article 71 CISG](#)). The consumer would had the right to suspend her the performance of her obligations to Malév in this case and in accordance with section 29 of the Swedish consumer credit legislation she may do the same towards her creditor (compare with [Article 15 of the EU Consumer Credit Directive](#) 2008/48/EC). The consumer should not pay for the flight tickets.

The judgement is available in Swedish [here](#).

For questions or additional information, please contact:

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