



# Supreme Court's JUDGMENT

delivered in Stockholm on 28 February 2025

Case no.  
T 5449-23

## **PARTIES**

### **Appellant**

1. Bonnierförlagen Aktieföretag, 556023-8445

Box 3159

103 63 Stockholm

2. MJ

Counsel for 1 and 2: Attorney EF

### **Respondent**

RE

## **THE MATTER**

Copyright infringement

## **RULING APPEALED**

Judgment of the Svea Court of Appeal, Patent and Market Court of Appeal, of 22 June 2023 in case PMT 15777-21.

## JUDGMENT

The Supreme Court sets aside the judgment of the Patent and Market Court of Appeal and dismisses RE's action.

The Supreme Court also modifies the judgment of the Patent and Market Court of Appeal in respect of litigation costs, relieving Bonnierförlagen Aktiebolag and MJ of the obligation to pay RE's costs for litigation in the Patent and Market Courts and ordering RE to pay Bonnierförlagen Aktiebolag's costs of litigation

- in the Patent and Market Court in the amount of SEK 601,920, which pertains to counsel fees, and interest in accordance with Section 6 of the Interest Act from 2 December 2021, and
- in the Patent and Market Court of Appeal in the amount of SEK 391,960, which pertains to counsel fees, and interest in accordance with Section 6 of the Interest Act from the date of 22 June 2023.

The Supreme Court orders RE to pay Bonnierförlagen Aktiebolag for its costs of litigation in the Supreme Court in the amount of SEK 105,180, which pertains to counsel fees, and interest in accordance with Section 6 of the Interest Act from the date of this judgment.

The Supreme Court affirms the secrecy orders of the Patent and Market Court of Appeal.

## CLAIMS IN THE SUPREME COURT

Bonnierförlagen Aktiebolag and MJ have requested that the Supreme Court modify the judgment of the Patent and Market Court of Appeal and dismiss RE's claim for reasonable compensation for the use of his copyright-protected texts in the book entitled *Det förlovade landet* as well as for

compensation for infringement of his right to be recognised as the author with regard to the same book.

Bonnierförlagen has also requested that the Supreme Court modify the judgment of the Patent and Market Court of Appeal and dismiss RE's action for a prohibition, under penalty of a fine, against reproducing or making available to the public by distributing the book *Det förlovade landet*.

Bonnierförlagen and MJ have also requested to be relieved of the obligation to pay RE for costs of litigation incurred in the Patent and Market Courts. Bonnierförlagen has requested that the Supreme Court instead order RE to pay the company for its costs of litigation in those instances.

RE has opposed modification of the judgment of the Patent and Market Court of Appeal.

The parties have requested payment of their costs of litigation incurred in the Supreme Court.

## **REASONS FOR THE JUDGMENT**

### **Background**

1. For a period until the end of 2015, RE and MJ collaborated as the authors of the *Gran Canaria* book series. In December 2013, they signed a publishing agreement with Albert Bonniers Förlag AB (now Bonnierförlagen) to publish the first two books in the series in Swedish. The first book was published in Sweden in 2014 with both RE and MJ as authors.

2. According to the publishing agreement, they were to deliver an approved synopsis of the second book to Bonnierförlagen in early 2015 and the manuscript in August of the same year.

3. In May 2015, they delivered an approved synopsis. In accordance with the publishing agreement, they each received an advance of SEK 325,000. An advance of the same sum was to be paid to each in connection with the submission of an approved manuscript. If the manuscript was not delivered on time, Bonnierförlagen had the right to immediately terminate the publishing agreement and recover any advances paid.

4. After MJ and RE had delivered the synopsis, they continued writing the manuscript. For the most part, they collaborated by each writing drafts of different chapters. Then they would exchange drafts with each other and comment on each other's texts. In this way, the manuscript gradually grew.

5. In August 2015, RE's and MJ's respective companies entered into an agreement called "Co-author agreement". The agreement stated, inter alia, that MJ and RE are the authors and copyright holders of the books in the *Gran Canaria* series.

6. During the period March through December of 2015, RE delivered certain texts to MJ. After that, their collaboration ended. By then, there was a draft manuscript for part of the second book (which was entitled *Det förlovade landet*), but the manuscript was not finished. They had therefore not finalised the manuscript within the time limit set out in the publishing agreement.

7. In May 2016, i.e., after the end of the authorship collaboration between the parties, RE and MJ concluded a new agreement, called an addendum to the agreement. The addendum to the agreement initially states the following.

“The authors now agree that MJ is the sole author of Book 2 and the continuation of the *Gran Canaria* series and that the full copyright, the moral as well as the economic rights to Book 2 of the series, belongs to MJ and will continue to belong to MJ.”

8. The addendum to the agreement also states that for future payments relating to the second book and future books in the series, (i) SEK 200,000 shall be paid to RE in connection with the signing of the agreement, (ii) future advances, royalties etc. in respect of the second book, as well as other future books in the series written by MJ, shall be due to MJ and (iii) payment upon submission of the manuscript of the second book, as well as for future books written by MJ in the series, shall be due to her.

9. Furthermore, one clause in the agreement states that in all future editions of the series, it must be clearly stated that the main characters in the series are created by RE and MJ and that this must be stated on a dedicated double-page spread with no other text.

10. MJ finished the book *Det förlovade landet*. It was published by Bonnierförlagen in May 2017, and MJ was listed as the sole author. On one double-page spread, previous books by MJ were listed, as well as the title of the first book in the series, under the heading “by MJ and RE”. Then, set apart, centred and in the same size font, came the following text: “The main characters of the *Gran Canaria* series were created together with RE.”

#### **Actions by the parties, etc.**

11. RE brought an action against MJ and Bonnierförlagen. He claimed damages and a prohibition under penalty of a fine, as well as certain further claims, in respect of the publication of the book *Det förlovade landet*.

12. As the grounds for his action in the Patent and Market Court, RE argued, in summary, that he had copyright protection for the texts he had written for the book, that his texts constituted approximately 50 per cent of the book's content and that MJ and Bonnierförlagen had used his texts without his permission. He was therefore entitled to reasonable compensation for the use of the texts. He also was entitled to compensation for the infringement of his

moral rights, including his right to be recognised as the author. The addendum to the agreement only granted MJ the right to continue using the concept of the *Gran Canaria* series, i.e., the characters, the book idea and the settings they created together, but not the texts he had written. In any event, the addendum to the agreement was unreasonable and should be disregarded, or at least adjusted, since the remuneration he had received was clearly disproportionate to the revenues generated by the book.

13. MJ and Bonnierförlagen opposed RE's claims. They argued that the book did not contain any texts for which he had copyright protection. The texts he had provided had been heavily reworked by MJ and, moreover, constituted only a very small portion of the book. Under the addendum to the agreement, RE had in any event transferred all economic rights and agreed to waive the moral rights to the book.

14. The Patent and Market Court dismissed RE's action. The Court found it not proven that MJ or Bonnierförlagen had infringed any of his copyright-protected texts when publishing the book. The Court also interpreted the addendum to the agreement and found that it was clear in its wording and that it meant that RE had in any event transferred his share of the economic rights and waived his share of the moral rights to the book. MJ and Bonnierförlagen had therefore not any committed copyright infringement.

15. However, the Patent and Market Court of Appeal granted, in part, RE's action. The Court concluded that his copyright-protected texts had been used to some extent in the book. Furthermore, the Court held that it could not be concluded, either from the wording of the addendum to the agreement or from other circumstances, that the rights to RE's texts had been transferred to MJ.

16. In interpreting the agreement, the Court has referred to the fact that certain specific principles apply to the interpretation of contracts in the field of copyright. The Court found that MJ and Bonnierförlagen were guilty of copyright infringement, but that it only concerned a very limited amount of text. The Court prohibited Bonnierförlagen, under penalty of a fine, from reproducing the book or making it available to the public by distributing it, and ordered the company and MJ jointly and severally to pay to RE SEK 75,000 as reasonable compensation for the use of his work and SEK 25,000 in damages for infringement of his moral right to be recognised as the author.

17. In the Supreme Court, Bonnierförlagen and MJ have limited their action to the sole claim that, by means of the addendum to the agreement, RE transferred his economic rights and waived his moral rights to them. They have thus accepted the Patent and Market Court of Appeal's assessment that they have used RE's copyright-protected texts in the book to the extent found by the Patent and Market Court of Appeal.

### **Questions of precedent**

18. The case concerns contractual interpretation in the field of copyright and raises two questions of precedent. The first question is whether any specific principles of contractual interpretation apply in this area, or whether copyright considerations are to be taken into account in other ways. The second question is how any such principles or considerations should relate to what applies to contractual interpretation in general.

### **Transfer of copyright, etc.**

19. The rights of an author to his or her work are partly economic and partly moral. Economic rights include, subject to certain limitations, the exclusive right of the author to produce copies of the work and make it

available to the public. The moral rights include the right of the author to be identified by name, to the extent and in the manner required by normal custom, when copies of the work are made or the work is made available to the public. (See Section 2 and Section 3, first paragraph, of the Act on Copyright in Literary and Artistic Works, 1960:729.)

20. An author can transfer all or part of the economic rights to his or her work. The moral rights cannot be transferred, but can be waived in certain ways. (See Section 27, first paragraph,<sup>1</sup> and Section 3, third paragraph.)

### **Some starting points of contractual interpretation**

21. In a dispute over the interpretation of an agreement, the Court must begin by seeking to clarify what the parties jointly intended to achieve with the agreement. However, establishing a shared intention of the parties is not always possible. Where such an intention cannot be established, interpretation may instead be based on objective grounds, taking the wording of the agreement as a starting point. When the wording leaves room for different interpretations, or when the wording does not provide any indication, guidance must be sought from other factors. (See, e.g., “The Odometer” NJA 2021 p. 597 para. 11.)

22. Such other factors may include the structure of the agreement, the background to the agreement (its purpose), the nature of the subject matter and, sometimes, the balance of power between the parties. A contractual term may also need to be interpreted in the light of optional law. In general, it is natural to assume that an agreement serves a reasonable purpose and

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<sup>1</sup> Section 27 has been amended by a legislative amendment entering into force on 1 January 2023. According to the transitional regulations, older provisions apply to measures taken or rights acquired before the entry into force. However, the amendments to the first paragraph are only of a linguistic nature, and the other amendments are not relevant to this case. (See SFS 2022:1712.)

provides a reasonable regulation of the parties' interests. The decisive factor or factors for interpretation must be determined on the basis of an overall assessment in the individual case. (See, e.g., “The Odometer” para. 12 and “Epidemic Business Interruption Insurance” NJA 2023 p. 630 para. 9).

23. Only in cases where a review relying on these factors fails to yield any result, may there ultimately be reason to resort to more general principles of interpretation, such as the doctrine of *contra proferentem*. (See, e.g., “The Odometer” para. 13 and “Epidemic Business Interruption Insurance”, para. 11).

### **Contractual interpretation in the field of copyright**

24. The existence of certain specific principles of contractual interpretation in the field of copyright has long been discussed. The content of the principles has been specified in different ways. Often, this content has been said to entail that no authorial right can be deemed to have been transferred to the transferee beyond what is expressly stated in the agreement, and that broad and ambiguous or tacit agreements are to be interpreted restrictively in favour of the author. This has sometimes been seen as implying a presumption against transfers in whole, or at least unnecessarily broad or extensive acquisitions. It has been emphasised that these principles are based on the idea that copyright transfers should be clearly specified.

25. Various names for the principles have been used, including the specificity principle, specificity in terms and contract specificity. Some have argued that there is one single principle of interpretation, while others have argued that several different principles exist. The discussion has also focused on how the existence of specific principles of copyright interpretation should relate to what generally applies to contractual interpretation. (See, inter alia, SOU 2010:24, pp. 93 et seq. and 102 et seq., Jan Rosén, *Upphovsrättens*

*avtal*, 3rd edition. 2006, p. 151 et seq., Marianne Levin and Åsa Hellstadius, *Lärobok i immaterialrätt*, 13th edition, 2023, p. 579 et seq., Anders Olin, *Upphovsrättslagen*, Lexino 01/01/2024, commentary to Section 27(3.1) and Per Jonas Nordell, ‘Tolkningsprinciper i upphovsrättsavtal’, in *NIR* 2008 p. 313 et seq. and 325 et seq.)

26. The discussion regarding whether special principles are needed for the interpretation of copyright contracts can be linked to ideas regarding the particularly valued role of authors, due to the importance of stimulating literary and artistic creation. It has also been highlighted that authors often have a weaker position than others who seek to exploit their work. The valued role of the author is linked to the societal importance of literary and artistic abundance, and therefore the importance of stimulating creation, which has long been reflected in conventions, national legislation and, in recent decades, in the extensive harmonisation of EU copyright law as well. For that reason, under the regulatory framework for copyright, authors have been granted a number of distinct rights of an economic and moral nature, so that they can control and benefit financially from the works they create. Of relevance to the discussion of specific principles of interpretation is the fact that the subject matter of copyright is of a special nature, and that copyright agreements often relate to a limited use of the work, such as a particular disposal or form of expression.

27. There are certain specific rules on contractual interpretation in the field of copyright in Danish and Norwegian law. The Danish copyright act includes a provision stating that if the author has transferred a right to use the work in a specific manner or by a specific means, the transfer does not confer a right to exploit the work in another manner or by other means (see Section 53, third paragraph). The Norwegian copyright act states that in the case of transfer of copyright, the author shall not be deemed to have

transferred any right that exceeds the scope of what is clearly expressed in the agreement (see Section 67, second paragraph).

28. The previous Swedish Copyright Act included a provision stating that the transfer of author's rights to a publisher did not include the right to broadcast the work via film or radio, etc. The explanatory memorandum to the current Copyright Act stated that there was no need for such provisions either for publishing agreements or more generally. Even without specific legal rules, it was clear that a transfer of the right to exploit a work in a particular manner did not confer on the transferee the right to exploit the work in any other way. (See NJA II 1961 pp. 213 and 238.)

29. In the case “The Album Cover”, the Supreme Court made certain statements regarding contractual interpretation in the field of copyright. It was stated that, when interpreting or supplementing an agreement for the transfer of rights to a work, particular account must be taken of the specific nature of the work, the nature of the subject matter of the agreement (such as the nature of the work and the moral rights involved), the reproducibility of an intellectual property right and the fact that the author may have been in a weak contractual position. The purpose and practical workings of the agreement must also be taken into account. (See “The Album Cover” NJA 2010 pp. 559 para. 9.)

30. The case shows that, when interpreting agreements in the field of copyright, particular account may need to be taken of the objectives and nature of copyright (cf. para. 26).

31. Such specific considerations should interact with what applies more generally to contractual interpretation. Therefore, if it is impossible to establish a common intention of the parties in the event of a dispute over a copyright agreement, then interpretation is to be based on objective grounds, taking the wording of the contract as the starting point. If the

wording leaves room for different interpretations or provides no indication of the intention, guidance may be sought in such other factors as mentioned above, such as the structure of the agreement, the background to the agreement (its purpose), the nature of the subject matter, etc. (cf. paras 21 and 22). In such cases, the objectives and nature of copyright may require specific copyright considerations to be taken into account.

32. This may be the case, for example, where the agreement relates to a moral right which is particularly valuable, the design of copyright as a set of distinct exclusive rights, the various possible forms of expression for the work, or the fact that an author is particularly valuable (cf. para. 26). As in contractual interpretation in general, such considerations may therefore be taken into account as supplementary and clarifying factors in the interpretation of the contract, depending on the circumstances of the case under assessment. Which of the factor or factors is decisive for interpretation must be determined by an overall assessment of the individual case, just as with contractual interpretation in general.

33. If a result cannot be reached in a review according to the specified criteria, there may be reason to resort to more general principles of interpretation, such as *contra proferentem* (cf. p. 23). On the other hand, there is no reason why the particular nature of copyright should justify the application of any interpretative principles specific to copyright.

34. In summary, the considerations specific to copyright that may need to be taken into account in contractual interpretation in the field of copyright should therefore interact with those applicable to contractual interpretation in general. This means that such specific considerations may be taken into account in order to specify or supplement the circumstances when assessing and balancing the various interpretative factors related to

the particular agreement, but not in the form of recognising any particular interpretative principles.

**The assessment in this case**

35. In its review, the Supreme Court assumes that MJ and Bonnierförlagen have used RE's copyright-protected texts in the publication of the book *Det förlovade landet* to the limited extent found by the Patent and Market Court of Appeal (see para. 17).

36. The question is whether this use infringes RE's economic rights or his moral right to be recognised as the author. The interpretation of the addendum to the agreement between MJ and RE is crucial for this assessment.

37. MJ and Bonnierförlagen have argued that, through the addendum to the agreement, RE transferred his economic rights and waived his moral rights to MJ for the publication of the book *Det förlovade landet*. RE, for his part, argued that the addendum to the agreement only authorised MJ to use the concept – i.e. the characters, the book idea and the settings they created together – but not the copyright-protected texts he authored.

38. As the Patent and Market Courts have found, no common intention of the parties at the time when the addendum to the agreement was concluded can be established. Interpretation must rather be based on objective grounds.

39. The addendum to the agreement states that the authors now agree that the full copyright, the moral as well as the economic rights to Book 2 of the *Gran Canaria* series, belongs to MJ.

40. Firstly, as regards RE's economic rights to its texts, the wording leaves room for both interpretations claimed by the parties,

although the statement that the authors now agree that MJ holds the full copyright suggests that the agreement covers more than just the limited parts claimed by RE. Interpretation must therefore also be guided by other factors (cf. para. 30).

41. The facts in the case show that the addendum to the agreement was concluded after the parties had pursued a collaboration in which they exchanged texts with each other, that RE had delivered texts to MJ during the period March through December of 2015, and that they had worked in such a way that a manuscript gradually developed, but that their collaboration had ended and was not ongoing when the addendum to the agreement was concluded.

42. Thus, when the addendum to the agreement was concluded, RE must have been aware that there was a draft manuscript for which he had provided texts, but which was not completed. Both parties also knew that work on the manuscript was delayed and that the advance received by each of them would have to be repaid if the book remained unfinished. Both parties also knew that the draft manuscript was based on the synopsis approved by Bonnierförlagen. Therefore, the purpose of the agreement was clearly to enable MJ to finish the book herself, using the currently incomplete manuscript. In this way, the agreement also served a useful purpose, since the parties would otherwise have to repay the advances made, under the publishing agreement.

43. The background to the addendum to the agreement thus provides strong support for the view that the copyright transferred to MJ by the agreement covered the economic rights to the texts created by the parties during the cooperation, i.e., including the texts contributed by RE.

44. If the addendum to the agreement were to be interpreted in the limited way claimed by RE, it would mean that MJ – despite the existence

of an incomplete draft manuscript, the already-delayed delivery of the manuscript and the advance that was subject to a repayment claim— would have been essentially required to start over with a new manuscript, to ensure that nothing in the final draft would be too similar to RE's texts. An agreement to such an effect would not, in the situation that has arisen, serve a reasonable purpose and would not constitute a reasonable regulation of the parties' interests.

45. In addition, the agreement was concluded between two authors who had worked together to write a book. It cannot be presumed that RE's position at the time of the conclusion of the addendum to the agreement was more valuable than MJ's, or that the circumstances are otherwise such that any other considerations specific to copyright should be taken into account when interpreting the addendum to the agreement.

46. Taken together, the above leads to the conclusion that the addendum to the agreement must be interpreted as meaning that RE transferred the economic rights to the texts that he had delivered to MJ in order for her to complete the second book in the series, i.e., *Det förlovade landet*, for publication. This means that neither MJ nor Bonnierförlagen (whose right to publish the book derives from MJ's rights to it) infringed RE's economic rights in publishing the book.

47. Thus, as regards the question whether RE also waived his moral right to be recognised as the author through the addendum to the agreement, the agreement states that MJ is the sole author of the second book and that the moral right to the book also belongs to her. However, the agreement also contains a specific clause stipulating that, in all future editions of the series, it must be clearly stated that the main characters in the series are created by RE and MJ, and that this must be stated alone on a dedicated double-page spread with no other text. It is clear from the wording of the clause that RE has not

fully waived his right to be recognised as the author. The question then becomes whether this more limited right to be recognised as the author has been respected, or whether there has been an infringement giving rise to liability to pay damages.

48. At the top of an introductory two-page spread of the book in question, there is a list of numerous titles published by MJ. After that comes the first title in the *Gran Canaria* series, under the heading 'by MJ and RE'. Then, centred and in the same size font, the following text is clearly shown: “The main characters of the *Gran Canaria* series were created together with RE.”

49. Compared to the specific contractual term, this text thus does not appear on a dedicated double-page spread. However, it has been separated from the rest of the text on the page, and the text is clearly visible. Even if the contractual term was not followed to the letter, the deviation is so insignificant that it cannot be considered an infringement of RE's right to be recognised as the author. MJ and Bonnierförlagen are therefore not liable for any infringement of RE's right to be recognised as the author.

50. In conclusion, MJ and Bonnierförlagen have not infringed on RE's copyright, as regards neither his economic rights to sections of text nor his right to be recognised as the author, to the texts by him that were used in the publication of the book *Det förlovade landet*.

51. Given the starting point for the Supreme Court's review (cf. para. 35), there is no reason to consider the agreement invalid or to adjust it.

52. The judgment of the Patents and Market Court of Appeal must therefore be modified and RE's action must be dismissed.

### **Litigation costs**

53. In light of this outcome, Bonnierförlagen and MJ shall be relieved of the obligation to pay RE for his costs of litigation in the Patent and Market Courts. He shall instead pay Bonnierförlagen for its costs in these instances, as well as in the Supreme Court. The costs in the Patent and Market Court of Appeal are stipulated. The amounts claimed in the Patent and Market Court and the Supreme Court are reasonable.

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Justices of the Supreme Court Stefan Johansson, Petter Asp, Eric M. Runesson, Christine Lager (reporting Justice) and Katrin Hollunger Wågner participated in the ruling.  
Judge referee: Anton Dahllöf.