



SUPREME COURT OF NORWAY

J U D G M E N T

given on 5 December 2023 by a division of the Supreme Court composed of

Chief Justice Toril Marie Øie
Justice Kristin Normann
Justice Ragnhild Noer
Justice Ingvald Falch
Justice Erik Thyness

HR-2023-2282-A, (case no. 23-033460SIV-HRET)
Appeal against Borgarting Court of Appeal's judgment 4 January 2023

Mutual Intentions AS	(Counsel Ketil Reidar Sellæg Ramberg)
FONO (intervener)	
IFPI Norway (intervener)	(Counsel Steffen Asmundsson)
v.	
A	(Counsel Ole Edvard Tokvam)

(1) Justice **Thyness:**

Issue

- (2) The case concerns remuneration as a producer of sound recordings (phonograms) under section 2 of the Copyright Act. It involves a musician who has recorded self-composed single audio tracks with his own equipment. The audio tracks have subsequently been incorporated into three songs, which have been released by a record label with the musician's consent.

Background and proceedings

- (3) Since 2016, A has been a professional musician, composer, producer and audio technician. He uses the artist name Soul Supreme.
- (4) Mutual Intentions AS – hereafter mainly referred to as Mutual – is a small Norwegian record label primarily for music within the genres of electronica and hip-hop. The label releases music via streaming services as well as on traditional vinyl records.
- (5) The background to the case is A's contribution to three songs on the album *Jacuzzi Boyz*. B, who is a musician, composer and producer, had made the first audio sketch to the songs. C, who is a musician, composer, producer and audio technician, contributed in connection with the mixing and adaptation of the songs.
- (6) A's contribution consisted of single audio tracks – bass lines and melody lines played on a synthesizer and a simulated Rhodes piano. A single audio track is an element of a song that is recorded separately and then mixed into the final product.
- (7) The three songs concerned, *Show Me How*, *Bright Tomorrow* and *Mutual Love*, were released by Mutual in January 2019 on an album that also contained six other songs. The album was published on leading streaming services. The adding of *Show Me How* to Spotify's playlist *Deep House Relax* was economically essential, as the playlist reportedly has two–three million followers with correspondingly high streaming numbers.
- (8) In the spring of 2019, discussions arose regarding rights, royalties and credits for songs to which A had contributed.
- (9) The parties reached an agreement with regard to copyright, see section 2 of the Copyright Act, but disagreed on other issues. A filed a writ of summons brought an action against B, C and Mutual in February 2021, claiming, among other things, artist royalties and producer royalties for the three songs.
- (10) The defendants accepted A's claim for artist royalties with a deduction for already paid amounts, but contested the claim for producer royalties. In addition, they submitted a counter-claim for damages. The stated basis for A's claim was that A had unlawfully caused the songs and the album to be removed from the streaming services by filing takedown notices to Spotify and others that the streaming infringed his rights.

- (11) Oslo District Court found that A was not entitled to producer royalties, and that his notice of removal to the streaming services gave rise to liability. A was ordered to pay damages of in the total amount of NOK 74,400 for having caused the unjust removal of the songs and the album.
- (12) A appealed to the Court of Appeal, alleging an error of law and incorrect findings of fact. In the Court of Appeal, the parties agreed that A was entitled to artist royalties as author and performing artist according to agreed rates. However, they disagreed as to whether A was also entitled to producer royalties and whether Mutual, B and C were entitled to damages due to A's takedown notices to the streaming services.
- (13) The Court of Appeal unanimously upheld the District Court's judgment as concerned the damages for A's takedown notices to the streaming services. The Court of Appeal also found, a by a majority of 2–1, that A had rights as a producer under section 2 of the Copyright Act and was entitled to royalties for this, but that his rights had not been infringed since he had consented to the releases.
- (14) On 4 January 2023, Borgarting Court of Appeal ruled as follows:
- “1. A is entitled to a 40 percent artist royalty for ‘Show Me How’, a 40 percent artist royalty for ‘Bright Tomorrow’ and a 30 percent artist royalty for ‘Mutual Love’, from Mutual Intentions AS. Upon payment of A's artist royalties, a deduction of EUR 600 will be made for previous payment.
 2. Of the income from the releases, A is entitled to a 16.7 percent producer royalty for ‘Show Me How’, 16.7 percent for ‘Bright Tomorrow’ and 10 percent for ‘Mutual Love’, from Mutual Intentions AS.
 3. A is to be credited by Mutual Intentions AS as a composer and performing artist, more specifically as a ‘featured artist’, for the releases ‘Show Me How’ and ‘Bright Tomorrow’, and as composer and performing artist on ‘Mutual Love’.
 4. Mutual Intentions AS is to register A with a role code A for ‘Show Me How’ and ‘Bright Tomorrow’, and role code B for ‘Mutual Love’, with Gramo and other similar rights organisations.
 5. The appeal against points 2–5 of the conclusion of the District Court's judgment is dismissed.
 6. Costs are not awarded, neither in the District Court nor in the Court of Appeal.”
- (15) In the Court of Appeal, the parties agreed on points 1, 3 and 4 of the conclusion of the judgment.
- (16) Mutual Intentions has appealed to the Supreme Court against point 2 of the conclusion of the judgment, i.e. the assessment of whether A holds producer rights and is entitled to royalties for this.
- (17) The appeal challenges the application of the law and the findings of fact.

- (18) IFPI Norway and FONO intervene in favour of Mutual.

The parties' views

- (19) The appellant – *Mutual Intentions AS* – contends:
- (20) It is Mutual that holds the producer rights to the single audio tracks with which A has contributed.
- (21) A has contributed to the three songs as a composer and artist. For that, he is entitled to royalties as author of the compositions under section 2 of the Copyright Act and as a performing artist under section 16. He holds no additional rights under section 20 as a producer of the recording of the bass and melody lines. These rights are held by the record label – Mutual.
- (22) The term “sound recording” in section 2 of the Copyright Act must be interpreted in the light of the purpose of the provision, which is to protect the producer’s economic interests in the actual release, not all individual components of the sound recording.
- (23) According to sources of law, the producer of a sound recording is not the one technically making the recording, but the one initiating and paying for it. In the case at hand, it is Mutual that has initiated, coordinated and financed the total product.

Det faktum at A har spilt inn sine bidrag på egne instrumenter og med eget opptaksutstyr, medfører ikke at han får produsentrettigheter etter åndsverkloven § 20.

- (24) The fact that A has recorded his contributions using his own instruments and recording equipment does not mean that he is the “producer” of the recordings within the meaning of section 2 of the Copyright Act. The recording is a simple audio technician’s job. His contribution to the final product resulted from an existing draft presented to him, which he was invited to develop further.
- (25) Mutual Intentions AS asks the Supreme Court to rule as follows:
- “1. The Supreme Court finds in favour of Mutual Intentions AS.
 2. Mutual Intentions AS are awarded costs in District Court, Court of Appeal and in the Supreme Court.”
- (26) The interveners, FONO and IFPI Norway, support Mutual’s contentions and emphasise in particular that A’s claim is based on a confusion of different rights that undermine the rights of the real producers.
- (27) FONO and IFPI Norway ask the Supreme Court to rule as follows:

“IFPI Norway and FONO are awarded costs in the Supreme Court.”

- (28) The respondent – A – contends:
- (29) Record labels’ so-called master rights are mainly based on agreements with the parties involved. By use of rights-based materials, the record labels must have the rights transferred to them.
- (30) Section 20 of the Copyright Act protects “sound recordings”, among other things. “Sound recording” is a technologically neutral term. There are no quantitative or qualitative requirements, and no lower limit for the producer’s efforts. A’s recording is a “sound recording” within the meaning of the law.
- (31) The rights holder is the one overseeing and paying for the production of the sound recordings. In this case, A is the rights holder as concerns the audio tracks that he sent to Mutual. He has effected the actual fixation, without compensation. Mutual has not incurred any costs in connection with this recording. A has organised it, used his own equipment and made all decisions relating to the procedure. The recording was made for A’s own account and risk. He was under no obligation to deliver, and Mutual had no obligation to use what he made, or to compensate him in any way. The fact that A received audio sketches from Mutual is irrelevant. Anyone adding something new acquires the rights thereto, while the rights to the existing work remain unchanged.
- (32) A asks the Supreme Court to rule as follows:
- “1. The appeal is dismissed.
 2. Mutual Intentions AS, IFPI Norway and FONO are jointly and severally liable for the State’s costs in the Supreme Court and for A’s costs in the District Court and the Court of Appeal, estimated at NOK 200,000 in the District Court and NOK 100,000 in the Court of Appeal.”

My opinion

Facts

- (33) In December 2017, B posted on his Instagram account a melody sketch that was later developed into the song *Show Me How*.
- (34) A and B had followed each other on Instagram for several years, and A contacted B, who asked if A would like to do the bass line. A confirmed his interest and B handed the audio file over to him from shortly afterwards, A sent five different single audio tracks, each containing a proposed bass line and a proposed melody line. He used his own instruments and his own equipment for the sound recordings.
- (35) On 17 January 2018, B wrote to A that he was planning to release a “house record” and stating that “this project you’re featured on!” The day after, B wrote that they would use what they had received from A so far, that he would receive a bundle of free copies of the album, and that they would “figure it out over time”.
- (36) A received several sketches from B and returned several proposals in the form of single audio tracks. In this manner, he contributed to the songs *Show Me How*, *Bright Tomorrow* and *Mutual Love*.

- (37) Together with C, B mixed and adapted the contributions from A together with the other single contributions that had been mixed into the three final songs. On average, the mixing and adaptation work took about a week per song.
- (38) In late November 2018, A asked whether he would be credited on the album. B confirmed this. He sent a facsimile to A of the album on which it appeared that A had contributed to the three mentioned songs with specified keyboard instruments, but not that he had been the producer or mixer on any of the songs.
- (39) The album was released on 18 January 2019.
- (40) After this, the parties discussed issues related to rights and royalties without reaching an agreement.

The rules in the Copyright Act related to music fixations

- (41) Particularly three rights are economically significant in connection with recording of music:
- (42) Section 2 of the Copyright Act confers on the person creating a literary or artistic work – in the Act referred to as “author” – a copyright to the work. In subsection 2 of the provision, this is described as a “literary, scientific or artistic work of any kind, expressing an original and individually creative intellectual effort”. As examples of this “texts of all kinds, including both fictional and non-fictional literature” are listed in subsection 2 (a) and “musical works, with or without lyrics” are listed in subsection 2 (b).
- (43) According to section 3 subsection 1 (a) and (b), the copyright gives “an exclusive right to dispose of the work” by producing copies thereof and making it available to the public.
- (44) The copyright gives composers and writers of lyrics a basis for demanding compensation for any use of their work, either in the form of a lump-sum payment or royalty payments, i.e. a portion of the income generated by the final product, or a combination thereof.
- (45) According to section 16 subsection 1 first sentence of the Copyright Act, performing artists – such as musicians and singers – have an “exclusive right to dispose of their performance of a work... by
 - a. making a permanent or temporary recording of the performance;
 - b. producing a permanent or temporary copy of a recording of the performance; or
 - c. making the performance or the recording thereof available to the public...”.
- (46) It is the copyright and the performing artist’s exclusive right that form the basis for A’s claim for “artist royalty”, see point 1 of the conclusion of the Court of Appeal’s judgment.
- (47) The third right of particular economic value in connection with music fixations, is the producer’s exclusive right to transfer, in whole or in part, the actual fixation under section 2 of the Copyright Act and the right to remuneration for public performance and transmission to the public under section 21.

- (48) During the pre-trial phase in the Supreme Court, it was clarified that the parties agree that Mutual holds the producer rights to the final songs. The issue at dispute in the Supreme Court is whether A or Mutual is the “producer”, within the meaning of the law, of the *audio tracks that A recorded and that were part of* the final songs.
- (49) Before I elaborate on the issues at hand, I note that the Court of Appeal’s judgment has established that A consented to Mutual’s release of the songs. The remaining issue is the quantification of the compensation payable to A for his overall contribution to the final products. In the Supreme Court, the parties agree that if A is the producer of the audio tracks, he is entitled to compensation in the amount determined by the Court of Appeal. Thus, there is no reason for me to discuss the amount of the producer royalties, if any.

The producer’s right to sound recordings

- (50) Section 20 subsection 1 of the Copyright Act reads:
- “A producer of sound recordings and film has an exclusive right to dispose of the recordings by making permanent or temporary copies thereof and by making the recording available to the public.”
- (51) The parties agree that there exists a “sound recording” within the meaning of the law. The issue in dispute is who is the “producer” of the sound recordings made by A.
- (52) The wording in itself says little about who is to be considered “producer”. The wording can be interpreted to mean either that the producer is the one physically making the recordings, or that the producer is the one ensuring at a more overall level that the recordings are made. In my opinion, the most natural interpretation is the latter, as “producer” in everyday speech is normally an undertaking that produces something, not individuals who carry out practical production work, such as an audio technician’s tasks.
- (53) The corresponding term in the 1961 Intellectual Property Act was “manufacturer” [*tilvirker*]. In Proposition to the Storting 104 L (2016–2017), it is set out on page 82 that the Ministry perceived this term as dated, and that “producer” was “in line with the terminology currently used in copyright contexts”. The Ministry stressed that the altered wording was not intended to imply any substantive changes. In my opinion, this gives no interpretive guidance beyond what I have already said.
- (54) On the other hand, one of the purposes of the Act, according to section 1 (a), is to “confer rights on any one creating, performing or investing in artistic or literary works or closely related achievements and works, and thus also give an incentive to cultural production”. The producer role is defined as such a “closely related achievement”. Since the producer’s right is the only right producers hold under the Copyright Act, while they at the same time often make significant financial investments, this strongly suggests that the term “producer” must be interpreted in the more general sense, as I have already noted. As for the practical and technical work efforts required for the sound recording, the remuneration is more naturally stipulated on the basis of ordinary contract and employment law principles. This does not prevent the person who technically makes the recording, under the individual circumstances, from being a producer within the meaning of the law. This could, for example, be someone who upon his own initiative records a video of a current event with his mobile phone.

- (55) Norwegian legal literature points in this direction. In Rognstad and Stuevold Lassen, *Copyright*, 2. 2019 edition, pages 416–417, the concept “producer“ is described as follows:
- “The ‘producer’ in this context means the person who is in charge of the production of the sound recording, not the manufacturer or producer of physical copies. The practical implication thereof is often that the record and film companies are the rightholders. Technological developments have resulted in an increase in the number of artists who produce and release recordings themselves, for posting on websites such as Myspace, YouTube etc. Then, they acquire rights under section 20. The point is that, in any event, it is the person or persons in charge of the recordings, in the sense of facilitating and paying for them, who are the holders of the rights under section 20. This means that legal persons – in contrast to what is set out in section 2 – may have, and often have, original rights under section 20.”
- (56) The statement here that “it is the person or persons in charge of the recordings, in the sense of facilitating and paying for them, who are the holders of the rights under section 20”, corresponds with what I have derived from the wording, the preparatory works and the purpose of the Act.
- (57) Copyright law is largely based on international conventions. Most important among them is the 1886 Berne Convention for the Protection of Literary and Artistic Works, which Norway acceded in the same year. For related rights – including producers’ exclusive rights – the 1961 Rome Convention for the Protection of Performing Artists, Phonogram Producers and Broadcasters is central. Norway acceded this Convention in 1978. There are also a number of related EU directives that have been incorporated into the EEA Agreement, and consequently apply as Norwegian law.. Most central is the Copyright Directive 2001/29/EC. International sources are thus essential to the application of Norwegian law in this area.
- (58) In the Rome Convention, “producer of phonograms” is defined as “the person who, or the legal entity which, first fixes the sounds of a performance or other sounds”. Read in isolation, this wording points in the direction of the person that physically makes the sound recording.
- (59) In 1981, the World Intellectual Property Organization (WIPO) published the “Guide to the Rome Convention and to the Phonograms Convention”. The following is stated in Article 3.9 on page 23 of this publication:
- “This definition is clear and needs no explanation. Note that it is the first fixation and the accent is on an industrial and not a personal activity. On the latter point, it was noted in the Report that when an employee of a legal entity fixes the sounds in the course of his employment, the employer legal entity, rather than the employee, is to be considered the producer.”
- (60) Here, the approach clearly seems to be that the producer is the person who, at a more overall level – as an “industrial and not a personal activity” – makes the sound recordings.
- (61) Similarly, “producer of a phonogram” is defined as follows in Article 2 (d) of the WIPO Performances and Phonograms Treaty:
- “the person, or the legal entity, who or which takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representations of sounds”.

- (62) Norway is not a party to this treaty, but it is still relevant in a Norwegian legal context because it creates the basis for the Copyright Directive, by which Norway is bound.
- (63) The definition of “producer of a phonogram” is commented on as follows in Reinbothe and von Lewinsky, *The WIPO Treaties on Copyright*, 2015 on page 265 paragraph d:
- “The definition of ‘producer of a phonogram’ in Article 2(d) Basic Proposal II 1996 essentially corresponded to that of Article 3(c) Rome Convention, supplemented by the reference to ‘representations of sounds’. The criterion ‘who or which first fixes the sounds’ had already been understood, under Article 3(c) Rome Convention, as describing the person who takes the responsibility and initiative for the first fixation rather than the person who actually effects the first fixation. Re-mastering of existing fixations of sounds was explicitly considered not to be a ‘first fixation’.”
- (64) Against his background, my conclusion is that a “producer of sound recordings” is the one overseeing, in the sense of facilitating and paying for, the production of the recordings – the “fixations”. It is not the manufacturer or producer of physical copies, without this preventing one and the same person from assuming both roles.

The individual application of the law

- (65) It is clear that the tracks that A recorded, and that are part of the subsequently released songs, are fixations of sound within the meaning of the law. The question is whether it is A or Mutual that is the “producer” of these sound recordings in the sense of how this term is used in the Copyright Act.
- (66) A takes the wording of the Act as his starting point, which in his opinion aims at the one physically making the sound recording. He emphasises that he worked for his own risk and account. He was not subject to any instructions from Mutual, and no contractual obligations existed between them when he made the recordings. Therefore, he could, for instance, immediately afterwards have offered the tracks to other interested parties, or he could have used them himself in a continued creative process. The fact that he later consented to the incorporation of the audio tracks into the three final songs did not mean that he waived the producer rights that he already held.
- (67) A further stresses that Mutual did not contribute with anything during the recording of the single audio tracks, be it in the form of money, equipment, workforce or otherwise. The fact that the sound sketches forming the basis for the songs came from B is insignificant. It was only a question of possible cooperation, not a relationship based on employment or contract.
- (68) *Mutual* has a different perspective on the situation and emphasises that the process was initiated by the company with B’s audio sketch, and that the audio tracks otherwise would never have come into being. It was clear the whole time that this was a Mutual project. A’s audio tracks were also not suited for separate release.
- (69) Moreover, Mutual was responsible for the release of the album and the songs and carried the economic risk. Thus, the record label performed all ordinary record company tasks. A contributed as a composer and a musician. When it comes to the sound recordings, he only had a simple audio technician’s job. If A had incurred any costs, Mutual would have refunded them upon request.

- (70) I will base my assessment of my account of the interpretation of the law, where I have concluded that the “producer of sound recordings” is the one overseeing, in the sense of facilitating and paying for, the production of the recordings. The assessment must be based on the circumstances at the time of the sound fixation, as the producer’s right occurs only when the recording is made, see section 20 subsection 2. However, this does not prevent subsequent circumstances from shedding light of the parties’ perception of their roles at the time of the recording.
- (71) To me, a central factor is that the project was initiated by Mutual, a record label, and that the audio sketch forming the basis and framework for the project came from B, who was associated with Mutual. It was never suggested that the producer should be someone different from Mutual, and it has not been contended in the Supreme Court that A, at any point, had plans of using the recordings for other ends than the cooperation with Mutual.
- (72) The premise that Mutual was the producer is supported by the subsequent development. The record label has organised and paid for agreements with other artists that contributed on the songs, mixing of the final songs, cover design, production of vinyl records, distribution and PR. Consequently, it is Mutual that has carried out the tasks and investments that are typical for a producer.
- (73) Furthermore, it is my view that A’s contribution has mainly been of a creative nature as the composer of the bass lines and a performing musician. The risk he has taken in this regard has given him rights as an author and a performer, rights for which he has been remunerated.
- (74) According to information provided, A’s role in connection with the recordings has consisted in recording his own playing of the bass lines and melodies on a simulated Rhodes piano and various synthesizers. He has made the recordings with his own equipment. In the Supreme Court, nothing has been stated to indicate that this was more than a simple audio technician’s job, which many musicians nowadays do themselves, and which do not entail any significant costs.
- (75) The sound recordings were made as an integrated part of A’s role as a composer and an artist in a Mutual project, and the recordings were an entirely subordinate and rather self-evident consequence of this artistic work. Nothing suggests that any of the parties may have thought that the recordings would be used for any other purpose.
- (76) A has referenced two foreign cases that in his view support that he is the true holder of an exclusive producer’s right to the audio tracks.
- (77) The first of these cases is the so-called *Garrix* case, see the Dutch Supreme Court’s judgments 20/01155 and 20/01158. The case concerned the famous DJ Martin Garrix, who was regarded as a producer of self-recorded tracks. It is set out in the Advocate General’s Opinion in the case that Garrix fixed and edited the music himself, while both composing own tracks and using third party music. He tested the fixations on third parties and made adjustments based on input. He did the final “mastering” himself, or had this done by a third party at his expense, after which he created an mp3 file that he sent to the record label. If the record label approved a song, the DJ would make a final version, including a remix for radio.

- (78) In my opinion, Garrix's position was significantly different from A's with regard to initiative, level of independence, tasks as well as incurred costs, which means that the case is not analogous to that at hand.
- (79) The other case A has referenced, is from the European Court of Justice, judgment 29 July 2019 in Case C-476/17, and concerned the song *Nur mir*, released by Pelham and Haas in 1997. A rhythm sequence of about two seconds taken from the group Kraftwerk's song *Metall auf Metall* was used in a continuous loop in the song. One of the questions posed to the ECJ in this case, was whether a producer was allowed to prevent another person from using a very short sound sample from another phonogram, see paragraph 26 of the judgment. The ECJ answered yes to that in paragraph 39, but specified that this would not apply if the reproduction were in a modified form unrecognisable to the ear. As I read the judgment, it confirms that the use of a very small sample of a sound recording in principle is an infringement of the producer's exclusive right to reproduction and publication. However, I cannot see that the judgment gives any guidance on how to determine who, at the outset, is the producer of a sound recording.
- (80) Against this background, my view is that the sound recordings were made by A as an integrated part of his role as a composer and an artist in a project initiated, facilitated and paid for by Mutual, with the result that Mutual holds the producer rights under section 2 of the Copyright Act.

Conclusion and costs

- (81) I have concluded that A does not hold producer rights to the sound recordings that he has made, and that have been used in the three songs concerned in the case at hand.
- (82) Against this background, the Supreme Court finds in favour of Mutual and Mutual has won the case. According to the main rule in section 20-2 subsection 1 of the Dispute Act, the record label is then entitled to full compensation for its costs in the Supreme Court. I cannot see any basis for making an exception from the main rule in accordance with section 20-2 subsection 3.
- (83) In the Supreme Court, Mutual has claimed costs of NOK 500,800 for 118 hours of work, at an average hourly rate of NOK 4,244. An appeal fee of NOK 29,832 accrues in addition to this. No VAT is added to the legal fees. The total claim is NOK 530 632.
- (84) In comparison, A's counsel has claimed costs of NOK 339,250 for 287.5 hours of work, at an hourly rate of NOK 1,180. A has had legal aid in the Supreme Court, which I assume implies the use of a lower hourly rate than what would otherwise have been the case.
- (85) Mutual's claim must, despite the complexity of the case, be considered high for one day's hearing in the Supreme Court. I have concluded that legal fees should be awarded in the amount of NOK 400,000, which gives total costs awarded in the Supreme Court of NOK 429,832, including the appeal fee.
- (86) The interveners have also claimed costs in the Supreme Court, to which they are generally entitled under section 20-2 subsection 1, see section 20-1 subsection 3 of the Dispute Act. However, there is reason to make an exception under section 20-2 subsection 3, as the issue

that the Supreme Court has now considered is of general interest to the organisations, while it would be particularly burdensome for A as a private party to pay the extra costs due to the intervention.

- (87) The Supreme Court will base its determination of claims for costs in the lower instances on its own ruling in the case, see section 20-9 subsection 2 of the Dispute Act. As I will return to shortly, the hearing in the lower instance also covered a claim that was finally determined there.
- (88) I will first determine the costs in the *Court of Appeal*. The Court of Appeal's original costs ruling was, as concerned B and C, set aside by the Supreme Court's Appeals Selection Committee by order of 15 May 2023, as the Court of Appeal had failed to consider the costs separately for each party. The Court of Appeal handed down a new costs ruling on 7 July 2023, awarding both B and C NOK 118,572 in the District Court and NOK 100,000 in the Court of Appeal. The amount was based on the assumption that half of it would be attributed to Mutual, while the other half would be split equally between B and C. This judgment, too, was appealed, but the appeal was denied a hearing by the Supreme Court's Appeals Selection Committee's decision of 2 November 2023, see section 30-5 of the Dispute Act. The costs ruling is thus final for B and C.
- (89) The Supreme Court is now to decide the issue of costs in the Court of Appeal in the matter between A and Mutual. In the original costs ruling, the Court of Appeal's minority assumed – based on the minority's result, which is the same as the result after the hearing in the Supreme Court – that Mutual, C and B had succeeded “in the main”, and that there were no weighty reasons for making an exception from the main rule in section 20-2 subsection 1 of the Dispute Act. In accordance with this, the minority voted in favour of awarding costs. I agree with this assessment. I also find that 50 percent of the total costs in the Court of Appeal should be awarded to Mutual, as the Court of Appeal found in the final costs ruling for C and B.
- (90) In the statement of costs, Mutual's half of the costs in the Court of Appeal is set at NOK 323,747. However, parts of the amount include VAT, which is to be deducted for the parties subject to VAT. The correct amount is therefore NOK 299,228.
- (91) I will now turn to the costs in the *District Court*, which found that there were weighty reasons for awarding Mutual, B and C full costs, see section 20-3 first sentence of the Dispute Act. Therefore, it did not find it necessary to determine whether they had succeeded “in the main”, see section 20-2 subsections 1 and 2 of the Dispute Act. The result in the District Court was essentially the same as that in the Supreme Court, and I endorse the District Court's reasoning for awarding costs. The District Court measured the costs to Mutual, B and C jointly at NOK 474,287. However, the correct total amount with VAT deducted is NOK 422,850. Here, too, I find it correct to assign 50 percent of Mutual's, B's and C's total costs to Mutual. Mutual are thus awarded costs of NOK 211,425 in the District Court.
- (92) Against this background, A is to compensate Mutual's costs in the District Court, the Court of Appeal and the Supreme Court, in total NOK 940,485.

(93) I vote for this

J U D G M E N T :

1. The Supreme Court finds in favour of Mutual Intentions AS.
2. A is liable for costs in the District Court, the Court of Appeal and the Supreme Court A will towards Mutual Intentions AS in the amount of NOK 940,485, payable within two weeks of the service of this judgment.
3. IFPI Norway and FONO are not awarded costs.

(94) Justice **Falch:** I agree with Justice Thyness in all material respects and with his conclusion.

(95) Justice **Normann:** Likewise.

(96) Justice **Noer:** Likewise.

(97) Chief Justice **Øie:** Likewise.

(98) Following the voting, the Supreme Court this

J U D G M E N T :

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2. A is liable for costs in the District Court, the Court of Appeal and the Supreme Court A will towards Mutual Intentions AS in the amount of NOK 940,485, payable within two weeks of the service of this judgment.
3. IFPI Norway and FONO are not awarded costs.