



REPUBLIC OF AUSTRIA
REGIONAL COURT ST.
PÖLTEN

24 Cg 88/10d - 167

(Please state in all entries)

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PROTOCOL

LEGAL MATTER:

Claimant(s):

Georg Wagner Eckertgasse
10/36, 1100 Vienna

represented by

Bernhard^WAGNER Attorney at Law
Riemerplatz 1, 3100 St. Pölten

Defendant(s):

Prof.Ing. Dr. Werner Sobotka
Austraße 18, 3200 Obergrafendorf

represented by

MAYBACH GÖRG LENNEIS GERED
ZACHERL
ATTORNEYS AT LAW GMBH
Museumstraße 5/14, 1070 Vienna

Because of:

Performance and
determination

Present: Reinhard Stöckler

Recorded on: 15.6.2015

Start: 9.30 am

Repetition of the previous results of the proceedings, which will be followed in accordance with Section 138 ZPO.

KV additionally submits as in the list of questions to the expert of 12.5.2014 ON 116.

BV submits as in the list of questions to the expert of 19.5.2014 ON 117.

The letter from Prof. DI Wolfgang Schachner, Graphische Versuchsanstalt ON 124, is read out and presented.

BV submits as in the application for extension of time limit

ON 126. KV submits additionally as in the notification ON

128.

Finally, KV submits as in the communication of 15.9.2014, ON 130.

KV makes the same comments as in the statement ON 133 and in the application for an order ON 134. The defendant's application to extend the deadline is set out in ON 136 and statement ON 138.

The written expert opinion of the expert witness Prof. Dr. Georg Nyman, who is also present today, is read out and presented according to ON 140 with the conclusions contained therein.

BV submits supplementary arguments as in the application for extension of time limit ON 146. KV also submits application for extension of time limit ON 148.

BV makes a supplementary submission as in the request for discussion ON 150.

KV as in the application to supplement or discuss the expert opinion ON 153.

The supplement to the findings and expert opinion ON 163 of 20.5.2015 by the expert witness Prof. Dr. Georg Nyman, who is present today, is read out and presented.

Defendant additional evidence:

With regard to the supplementary comparative documents V5 to V10, I would like to point out that I did not have these documents at my disposal when preparing my expert opinion.

The generally sworn court-certified expert Prof. Dr. Georg Nikolaus Nyman now discusses his written expert opinion and his written supplementary expert opinion orally as follows:

I have worked out and looked at prominent letters in my expert opinion. In particular the letter a in the will. This is because Lydia's signature already contains an a. I also looked at distinctive letters that contain crossing points, such as Ly. I noticed that the loop of the a was almost always drawn inwards in the direction of writing. This is the case in the undisputed documents. In the will and in a few other documents, on the other hand, I noticed that this a was absolutely not so clearly drawn inwards, the writing speed was relatively fluid in the undisputed sources. Especially in the postcards, always fluid and drawn inwards. Even if it was not exactly drawn inwards, it was at least implied to be drawn inwards. In any case, it was always fluid.

However, I did not notice this fluidity in the will. If you look at the Wagner signature, for example, you can see the a drawn inwards, but because of the

The different thickness of the ink seems to me to indicate a different speed at which the writing is guided. I refer here in particular to page 37 of my original expert report. From the writing speed and application density, one can draw conclusions about the fluidity of the written word. It is not for me personally to interpret the authenticity or inauthenticity. However, I can refer to the anomalies that I have just noticed. On page 34 of the original report, you can also see the same way with a different font thickness. This gives the impression that the lettering has been traced. In the supplementary report I was able to provide very striking evidence of the letter b. It is particularly conspicuous. From the undisputed documents, if you take out the letters "b" here, you can see that the lower end of the B always either goes into a loop or into the beginning of a loop and continues to the next letter. In the will, all b's have a paragraph and no loop. This is clearly a different line layout. The letter b was completely set off in the will. I have also listed similarities or dissimilarities with other letters, such as the letter K.

I therefore come to the technical conclusion in the written expert opinion and the written supplementary expert opinion that the lines were run at different speeds and with different dynamics and safety. This is undisputed in the settlement document on the one hand and the will on the other.

For me, the typeface in the comparative documents V7 to V10, which were available to me in the original, is very similar and identical to the undisputed comparative documents and the notarial deed, which is why I drew the same conclusions. I was able to work out letter b in particular better and more precisely on the basis of the comparison documents that I have now subsequently received, and I was able to point out the differences.

With regard to Ly, I would also like to say that the point of intersection is striking here. In the undisputed documents, you can see a greater dynamic in the lines than in the will.

When questioned by the BV:

Of course, as we get older, there are certain changes in the way we write, but the characteristics of a letter remain basically the same, because the whole thing has usually become second nature. Here, the letter b seems more characteristic to me. If I have been writing the letter b all my life in such a way that I can connect it with the next

If I connect the letters and make a loop, then this is retained to some extent, even if I write more slowly or even more shakily. I was particularly concerned and struck by the sometimes very different thickness of the ink applied to the individual letters in the will. You can see clearly recognizable boundaries within a line where the line is thicker. This gives the impression that I stalled when writing or that I thought carefully about how to do it. If I maintain approximately the same speed when applying the ink, even when writing with a fountain pen, the thickness of the ink is also approximately the same. This is independent of whether I write slowly and fluidly or quickly and fluidly. In itself it remains the same, only in the curves and corners would there be a slight change, but not in the curve or swing itself. My comparative writings, which I have assessed with regard to the late Lydia Wagner, relate in part to writings that were written a few months or a few years before her death, but some go back tens of years.

Nevertheless, I have found the synchronicity of the movements indisputable. This was the case with the comparative writings.

When questioned by the CT:

In the case of Lydia Wagner's signature, it is particularly noticeable in the will compared to the comparative documents that the stroke of the capital W in the will is completely different from that in the comparative documents. Of course, the plaintiff's conclusion is correct, according to which a personal practice is all the more likely in the case of a signature, so that a continuous stroke is usually to be expected here.

Upon further questioning by the BV:

For me, the conclusions of the defendant here as an expert witness in the Korneuburg proceedings are comprehensible from a scientific point of view. Of course, the defendant did not have the microscopes available at the time that I have today as state-of-the-art and of particularly good quality.

In my view, the defendant's conclusions were completely correct and appropriate at the time. I found nothing in the preparation of my written expert opinion and my supplementary expert opinion that would indicate that the defendant did not proceed *lege artis* in the previous proceedings. Of course, this is only from a technical point of view. I myself am a scientist and not an expert in writing.

When questioned by the NIV:

The writing or typeface in the will only appears beautiful if it is not under

a microscope. If you look at whole thing under a microscope, you come to the conclusion that there are a lot of dense denominations. That seems unusual to me at least. By denomination I mean different color densities, different speeds, additions of densities within the letters, even additions that look as if a letter had just been started but something else had been added. In my view, this cannot be explained solely by the fact that ink was used. At least she would not have hesitated to formulate the familiar names, but would certainly have written them fluently. Even if we assume that an old lady would have written the will in shaky handwriting.

It is noted that the deceased Lydia Wagner was 61 years old at the time of the alleged execution of the will.

When questioned by the BV:

Back then, right after the will was taken out of a drawer, a DNA analysis would have been useful at best. Today I can no longer recommend this if the whole thing happened years ago and many people have had the will in their hands. A spectral analysis of the ink would not make sense either, because you would need the comparison ink of Mrs. Wagner and a comparison ink of the person who, in my opinion, wrote the will.

However, I was able to rule out the possibility that the age of the paper did not match the time period. This error did not happen here. I was able to check this by looking at the watermark.

In summary, I can only state once again that the approach, the preparation and the conclusions of the expert opinion of Prof. Ing. Mag. Dr. Werner Sobotka in the proceedings in Korneuburg were correct and expedient. I was unable to find anything in my investigations that would suggest otherwise.

On further questioning by the defendant as to whether there were also non-macrotypographical anomalies in the will, the expert discusses this:

If you look at pages 66 and 67 of my original written report, you will find a difference between a letter dated September 2, 1988 and the will, whereby it is striking that the will has the same line spacing at the front and back, whereby it must be assumed that a line mirror was used here. I have also photographed this here and mentioned it on the last page of my expert opinion. There are also no slopes, the line spacing is the same. In a free-written letter or other document, this regularity and this equal spacing would be the same here.

not given.

The difference between my expert opinion assignment and that of the defendant in Korneuburg at the time was that I had to prepare a technical expert opinion to the effect that I not only had to carry out a reflected light procedure, but also a transmitted light procedure. I even carried out a fluorescence examination. But that didn't help.

No further questions are put to the expert.

The judge announces that a final assessment by an expert witness is still pending. Whether the scientific results are also confirmed from the point of view of the handwriting expert, this with overwhelming probability, in order to be able to conclusively review the process in question with regard to the lege artis approach or not of the defendant.

In this regard, the expert appointed here, Prof. Dr. Nyman, proposes that he would travel to the Forensic Institute in Zurich, Switzerland, with the expert opinion and data material he has prepared, so that the final expert opinion can be prepared there. The expert would also be prepared to take the court file and the necessary settlement documents with him.

The SV announces that he only needs the court file in question, as well as the original will and the settlement documents subsequently sent to him.

The expert asks the judge to obtain a cost estimate and a time horizon estimate ex officio or ex officio.

All parties and PV as well as intervener representatives agree with this procedure.

The expert witness Prof. Dr. Nyman records the following lump sum for preparatory activities, travel to the hearing, effort management for the expert opinion discussion and travel home

€ 360,-- incl. sales tax.

PV are in agreement with the provision as proposed.

The judge announces that the expert's costs for the supplement to the expert opinion will be paid in writing from official funds; the auditor has already raised no objections in this regard.

The fees claimed today will be paid from the advance on costs received. A separate resolution will be passed in this regard.

The hearing is therefore postponed for the time being for final clarification of the written expert opinion.

indefinite time

extends.

End: 10.45 am

Duration: 3/2 hours.

written by: Helene Pimpel on

6/17/2015