Rico Statutes - Ill Man Perjury & Malice for "Whom?"

AmeriTrust Groupe

Date : 24th April 17

To : Offices of the President, Offices of the Vice President, U.S. Customs Service, U.S. Secret Service, Members of the U.S. Congress, Inter Pol, U.S. Supreme Court, et al

From : Amb. L.G. Wanta / Tohen Doctrine, Truman Doctrine, Executive Order No. 12333 ⇒

Message :

Enclosed is Case File / US. Customs Service as to:

Kurt-Paul Becker, Lothar Elsasser to procure Nuclear Memory Chips from F.B Ingram, SA32 NY - Lothar in person & taped

cc :

Everyone that is concerned for Our Great Nation America

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Tel: 703.649.4545 Fax: 703.552.3159

RICO Statutes / Exhibit I *

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50 72-609
(BLZ 500 100 60)

Dennis Ullman, Esq.
State of Wisconsin
Department of Revenue
265 W. Northland Ave.

Appleton, WI 54911

Nuclear Memory Chips "Investigation ..."
Authority: F.B. Ingram
SA 32 NV
US Customs Service

Frankfurt am Main
24 May 1994
486.0094.92.05.B-tep

S-31-IANO (Internal Affairs)

Hans Lang, your investigation in respect of Leo E. Wanta

Case Officer

E.O. 12333 & Totten Doctrine

Dear Mr. Ullman,

Thank you for your telecopy of April 13, 1994. Unfortunately, we have no information about the money transfers to Austria which you mentioned. (92 U.S. 105, 107)

Updating your information in respect of the civil law suit against Mr. Kurt-Paul Becker and his business associates, I enclose copy of the judgment of the Frankfurt Court of Appeal of May 5, 1994 which confirms the judgment of the first instance granting Mr. Lang's claim in the amount of US$ 500.000. The defendants have the right to appeal to the Federal Supreme Court.

For reasons of professional curiosity rather than for the immediate concerns of Mr. Lang, I should be pleased if you can keep me

(??) State Investigator "Lied" to High German Court that he was a Wisconsin Attorney!

PÜNDER GROUP

informed on the criminal procedures against Mr. Wanta, perhaps by sending me a paper clipping on occasion.

Yours sincerely

Arndt Stengel

Arndt Stengel

Encl.

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Higher District Court
21st Civil Court
6000 Frankfurt/Main
60544

25th of November 1991
485-4650-90-05G-ht

In the litigation of Hans-W. Lang against:

The accused:

(1) Eldeko-Vertrieb -- Becker & Partner
(2) Businesswoman Wilhelmina van Klink
(3) Businesswoman Doris Roesch-Becker
(4) Mr. Kurt Paul Becker

We (i.e., the legal firm of Punder, Volhard, Weber & Axster), lodge a suit in the name and on behalf of the plaintiff also against the accused (4).

At the time of the hearing we will formally move:

1. That the accused be sentenced to pay to the plaintiff $500,000 in compensation, at the choice of the accused, the corresponding amount in Deutoche Mark (DM) at the exchange rate current at the time of payment in addition to four percent interest on the amount per year since October 11, 1988.

2. That the plaintiff be allowed to ensue all securities via an unlimited, unconditional written directly enforceable guarantee from a major bank or public savings bank of the Federal Republic of Germany.

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PARAGRAPH 1

CLAIM

A. Preliminary remarks.

The plaintiff supported an "investment deal" (by providing seed money) in the amount of $500,000 in an alleged foreign currency exchange operation worth over a billion dollars, and he lost the amount he invested. He had been told that buyers from the U.S. and Europe wanted to buy Japanese Yen and then sell them at a profit. An alleged American law ("Carson Act") forbade them (he was told), to provide the total amount out of their own pockets. Thus, they needed a credit from a foreigner in the amount of $500,000 for a time period of four days. The plaintiff was assured that everything was as it should be and that no laws were violated.

Moreover, he received a verbal and written guarantee that he would recoup at least the initially invested amount.

The story that was served up to him was totally invented. Neither is there such an alleged law in the U.S., nor is it apparent that there existed the alleged buyers. Thus, the case is not about a failed speculation in a foreign currency exchange operation, but about a common contract fraud.

B. Concerning the facts of the case.

I. CONCERNING THE ACCUSED.

The accused (4) deals -- partially via intermediaries -- with the plaintiff, initiated the business deal, and directed it. He is an employe of the accused (1) in a company of limited partnerships

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16 U 323/92
2/21 O 208/91
LG Frankfurt am Main

Verkündet laut Protokoll
am 5. Mai 1994

Kaus,
Justizangestellte

als Urkundsbeamter
der Geschäftsstelle

OBERLANDESGERICHT FRANKFURT AM MAIN

IM NAMEN DES VOLKES

PÜNDER, VOLHARD, WEBER & AXSTER
FRANKFURT

19. Mai 1994

mitA	zdA	AMdt

URTEIL

In dem Rechtsstreit

1. Firma Eldeko-Vertrieb Becker & Partner KG, vertreten durch die Beklagten zu 2) und 3) als persönlich haftende Gesellschafter, Darmstädter Landstraße 264, Frankfurt am Main,
2. Wilhelmina van Klink, Darmstädter Landstraße 264, Frankfurt am Main,
3. Doris Roesch-Becker, Siesmayer Straße 54, Frankfurt am Main,
4. Wolfram Becker, Frankfurt am Main,
5. Kurt-Paul Becker, Heidestraße 152 a, Frankfurt am Main,

Beklagte und zu 1) - 3) und 5) Berufungskläger,

- Prozeßbevollmächtigter: Rechtsanwalt Treckmann, Frankfurt am Main -

g e g e n

Hans W. Lang, Promenade 63, 7270 Davos-Platz, Schweiz,

Kläger und Berufungsbeklagter,

- Prozeßbevollmächtigter: Rechtsanwalt Dr. Volhard, Frankfurt am Main -

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Landgericht
21. Zivilkammer

6000 Frankfurt am Main

25. November 1991
485.4650.90.05.G-ht

In dem Rechtsstreit

Hans-W. Lang

RAe Weber, Maaß, Schneider, Gasteyer, von Schlabrendorff, Karehnke, von Schenck, Stricker, Tischbirek, Weber-Rey, Oldenburg, Junius, Heil, Minuth, Schmitz, Nägele, Gach, Holthausen-Dux, Breidenstein, Richter, Bechtold, Sorgenfrei, Schlemminger, Hornung, Dietzel - 305 A 485 -

g e g e n

1) Eldeko-Vertrieb
Becker & Partner (KOTHAR ELSASSAR/GERMAN AGENT
2) Kauffrau
Wilhelmina van Klink
3) Kauffrau
Doris Roesch-Becker

- Beklagte 1. bis 3. -
RA Guido Amend

4) Herrn Kurt Paul Becker, Heidestraße 152 A, 6000 Frankfurt am Main

- Beklagter zu 4. -

- 2/21 O 208/91 -

erheben wir namens und im Auftrag des Klägers die Klage auch gegen den Beklagten zu 4.

[Kommanditgesellschaft]. The company is registered with the local court authority in Frankfurt/Main under HRA [commercial register] 23714.

The accused (2) and (3) are personally liable stockholders or partners of the accused (1). Besides these two partners, the spouse of the accused (3), Wolfgram Becker, is also a limited partner in the business of the accused (1).

II. CONCERNING THE FACTS OF THE CASE.

The accused (4) contacted first, i.e., on the 30th of March 1988, the Migros Bank in Basel and requested a credit in the amount of $500,000 for the duration of four days. He issued an "irrevocable confirmation of credit" for the return of the credit. The confirmation of payment had been written on stationery of the accused (1) and signed according to the practice of the firm. It concluded with the words: "The Eldeko-Vertrieb, Becker & Partner, Frankfort/Main, 'assumes the guarantee and the responsibility for the preceding.'" Documentary evidence: Exhibit of the irrevocable confirmation of payment as appendix P1.

A member of the Migros Bank, director Keiser, then went with this document to the Dreiland-Finanz AG (corporation). On the 3rd of May, 1988, a conversation took place, in which, in addition to director Keiser, a representative of the accused (4), Helmut Gerspach, the plaintiff, as well as Mrs. Rolf Heidemeyer and Mr. Karl-Heinz Herzog of the Dreiland-Finanz AG participated.

That conversation concerned the credit business and especially the guarantee of payment of the accused (1). During the conversation the director of the Migros Bank and Helmut Gerspach confirmed the legality and the lack of risk of the credit.

Documentary Evidence:

Are witnesses:

(1) Rolf Heidemeyer, Urlau 22, D-797 Leutkirch
(2) Karl-Heinz Herzog, Richthofstr. 13, 7800 Freiburg/Br.

At this occasion, the plaintiff, who was impressed by the written guarantee of the accused (1) and the appearance and demeanor of a director of the renowned Swiss Genossen-Schaftsbank [co-operative banking association] (director of the Basel branch), pledged to provide the necessary amount. The Dreiland-Finanz AG he entrusted with the transaction of payment. The plaintiff then issued a check on the 6th of June, 1988, drawn on the Schweizerischen Bankverein Basel.

Evidence: As before.

On the 8th of May, 1988 (Sunday), Mr. Herzog of the Dreiland-Finanz AG telephoned on behalf of the plaintiff with the accused (4) in Frankfurt. During that conversation, the accused (4) confirmed once more that everything was legal and that invested capital was not at risk at all. When Mr. Herzog inquired why an amount of $500,000 was needed in order to get a transaction of a 1 billion dollars going, the accused (4) repeated the already mentioned explanation that a so-called "Carson Act" forbade a U.S.

citizen to finance a foreign currency exchange deal exclusively with his own means. If a foreign citizen were to provide an amount, the business deal could proceed.

When asked whether the accused (4) could guarantee the integrity of his partners in the U.S., the latter explained that the integrity of his partners was beyond all doubt. The money was to be received by the Americhina Global Management Group, Inc. The president of the corporation was, he was told, a former officer of the FBI.

The accused also offered to send an additional telefax with guarantees for the plaintiff.

Documentary Evidence: As before.

In fact, the following day, on the 9th of May, 1988, a telex from the firm of the accused (1) arrived with a guarantee that corresponded to that of the Migros Bank.

Documentary Evidence: Telex of the 9th of May, 1988, as appendix P2.

On the 11th of May, 1988, the Dreiland-Finanz AG opened a U.S. $ account for the plaintiff with the Schweizerischen Bankverein Basel, to which the check issued by the plaintiff in the amount of $500,000 was credited.

Evidence: Confirmation of the Opening of the account as appendix P3.

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From there the amount was transferred on the 10th of May, 1988, as instructed, to the Chemical Bank N.Y. in favor of or for the benefit of the Americhina Global Management Group, Inc.

After the amount had not been returned as agreed, i.e., after four days, the Dreiland-Finanz AG turned to the accused (1). She received a copy of a letter of the Americhina Global Management Group, Inc., in which she was told that the deal had not materialized. The receiver bank had returned the money.

Evidence: Letter of the 9th of June, 1988, as appendix P4.

The amount was again credited to the account of the plaintiff with the Schweizerischen Bankverein on the 16th of June, 1988.

Evidence: Credit note of the 16th of June, 1988, as appendix P5.

The accused (4) acting for the firm of the accused (1) turned to the plaintiff also on the 16th of June, 1988, and asked him to transfer the loan once more. As recipient he gave Lloyd's Bank PLC, London, which was to be told to pass on the payment to the Deposit Guaranty National Bank, USA.

Evidence: Telex of the 16th of June, 1988, as appendix P6.

Before the plaintiff had the money transferred once more, Mr. Herzog of the Dreiland-Finanz AG met with the accused (4) in the latter's Frankfurt office. This meeting took place on a Saturday in June, 1988. During that meeting, the accused (4) assured that he would personally vouch for the repayment of the $500,000. He

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said that he had good personal contacts with the manager of the recipient of the money, the Americhina Global Management Group, Inc., a Mr. L.E. Wanta. A failure of the business deal was out of the question. A Mr. Eckhard Becksmann was also present at this meeting.

Evidence: Witnesses.

(1) Karl-Heinz Herzog, Richthofstr.13, 7800 Freiburg/Br.
(2) Eckhard Becksmann, Rodelheimer Landstr.170, 6000 Frankfurt 90

After this and other transfer attempts had failed, the accused (1), represented by the accused (4), pledged to return the loan of $500,000 to the plaintiff.

Evidence: Agreement of the 23rd of September, 1988, as appendix P7.

On the 30th of June, 1988, the plaintiff transferred the amount as instructed by the accused (1) to a trusteeship account which attorney Jack W. Ellis, of Agoura Hills, California, USA, had set up for the Americhina Global Management Group, Inc., with the Mitsui Bank in California, USA.

During the following months, the accused (4) continuously put off the plaintiff by showing him telex messages from the Americhina Global Management Group, Inc., in which he was told that efforts were made to return the amount.

Evidence: Letter of the time between the 11th of October, 1988, and the 17th of October, 1988, as appendix file P8.

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After the answers of the accused had become more and more unfriendly and non-committal, the plaintiff decided to investigate matters in the U.S. for himself. He turned to Attorney Ellis, who as trustee of the Americhina Global Management Group had received the loan in his account. Attorney Ellis sent a letter on the 15th of December, 1989, to the authorized representatives of the plaintiff, Flachsmann and Meyer, Basel and explained the amount had arrived on the 1st of July, 1988, in the trusteeship account which he had set up for Americhina Global Management Group, Inc. His patron, however, had not informed him about the origin of the money. Upon her direction, he had first transferred the amount to the Bank of China in Peking with instructions to exchange the amount to Yen and then to transfer the sum back to the trusteeship account.

However, this order was not executed, and the amount of $500,000 was returned to the trusteeship account at the end of August, 1988.

Evidence: Letter of the 15th of December, 1989, along with a German translation, as appendix P9.

Then the Americhina Global Management Group, Inc., instructed him to transfer part of the total, namely $385,000, to its branch corporation, the New Republic USA Financial Group, Ltd. Another portion, in the amount of $90,000, he sent according to instructions of his client to BCM Trust, also a branch corporation of his client. $4,582 he transferred to Mr. L.E. Wanta, the

business manager of his client. For himself he kept $20,148 to settle his fee claims.

Evidence: Appendix File P10.

1. Letter of the 15th of December, 1989 (appendix P9)
2. Transfer order in the amount of $385,000
3. Transfer order in the amount of $90,000
4. Transfer order in the amount of $4,852

In letters of the 21st of January, 1991, the accused were urged to pay the $500,000 to the plaintiff at the latest by the 11th of February, 1991, at the choice of the accused in Deutoche Mark (DM) or Swiss Francs (SFr) according to the exchange rate in force on the 11th of February, 1991.

II. CONCERNING LEGAL MATTERS.

1. About contractual claims.

a) About the liability of the accused (1).

aa) Acknowledgement of responsibility [or fault] of the 21st of June, 1988.

The accused (1) is on the basis of the explanation of the 21st of June, 1988, obliged to render payment. This explanation contains an acknowledgement of responsibility according to § 701 of the German Civil Code (BGB).

The provisions of the German Civil Code are applicable, for German law is operative in this case. Since the parties have not chosen a particular legal procedure, the law that applies is based on article 28, section 2 of the complementary law of the Civil Code (EGBGB) according to which a contract is subject to the law with

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which the contract shows the closest connections. Of considerable importance is the place where the characteristic service is to be performed. The accused were supposed to plan, execute and supervise the engagement of the plaintiff. These activities were supposed to be produced or manifested in Frankfurt/Main. Thus, the contract concerning the acknowledgement of responsibility shows the closest connections with the law of the Federal Republic of Germany. Moreover, when in doubt, the residence of the debtor counts as place of the contractually stipulated service. The debtor was the accused (1).

> [Published legal documentation of the foregoing assertion] BGHZ 109,36; Stuttgart NJW-RR 1990, 1081, 1082 (Heft 17); Heldrich in: Palandt § 28 EGBGB Rz. 3.

The provisions of § 781 of the German Civil Code have been fulfilled, for the accused (1) -- represented by the accused (4) -- recognized that she is obliged to repay the loan in case the Americhinia Global Management Group, Inc., has not returned the money by the 14th of October, 1988. The writing according to § 781 section 2 of the Civil Code together with § 11 Abs. 2 of the EGBGB was observed. The condition precedent of the payment (§ 158 of the BGB) has come to pass, for the American corporation did not repay the amount by the 14th of October 1988 -- not in the meantime either.

The accused (1) was at least according to the principles of the appearance of proxy effectively represented. The accused (4) signed basically for the firm of the accused (1) and used its stationery, its address, and its telex machine. It doesn't matter

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whether the accused (4) had at his disposal an effective legal power of attorney. The fact that the accused (1) at least approved or allowed the actions of the accused (4) by tolerating them, is demonstrated by the letter of the 27th of September, 1989, in which she confirms that she received the inquiry of the plaintiff and asks for some patience for the reply of the accused (4) (appendix file P8).

The question whether contractual relations between the plaintiff and the recipient of the money in the USA have arisen, is not relevant. The accused (1) authorized the acknowledgement of responsibility without reservation. The acknowledgement of responsibility cannot be countered or opposed by possible objections arising out of the relationship between the plaintiff and the recipient of the money. An objection of disagreement according to §§ 762, 704 of the Civil Code is impossible. A journal of the Federal Court NJW, p. 10864, elaborates on this subject:

> For even if one assumes that the business dealings between the parties concerned non-binding gambling deals or tradings in futures--insofar as they relate to shares or stocks they would have been forbidden dealings according to § 63 of the law regulating stock exchanges--the acknowledgement of responsibility would not be subject to gambling or future business objections. § 702 Abs. 2 of the civil Code only comes into play if the losing party enters into a binding liability, especially in the form of the acknowledgment of responsibility, towards the winning party in order to fulfill a gambling or betting debt. § 59 of the law relating to stock exchanges (BorsenG), which is modeled on § 762 Abs. 2 of the BGB, says nothing else. The acknowledgment of responsibility was not given by the losing party. Here it was the accused. It is indisputable between the parties that for the plaintiff the business connection involved in the end effect a loss. Accordingly, the

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> court of appeal stated that the subject of the acknowledgment of responsibility were sums which the accused within the framework of the business connection of the parties had paid to the plaintiff. Thus the case is not about the fulfillment of non-binding business dealings, but about the payback of a part of the payments made by the accused towards the imputedly non-binding transactions.

(The underlining has been added for emphasis.) Also: BGHZ101,296, 302.

This is the case here too. The plaintiff had lost his money long ago at the time when the accused (1) granted the acknowledgment of responsibility.

One should add that the money of the plaintiff was not lost by speculation but was simply embezzled by the recipient, not that this would be in any way decisive in view of the clear judicial pronouncements of the federal court of Germany (BGH). Thus, we are not dealing with a futures business transaction. It does not matter that the plaintiff could have lost the invested money in a regular speculation. In that case, he would have had at least a chance to strike a deal without a loss or even with a gain.

> BGH ZIP 1990, 365, 367, ZIP 1988, 830; EWIR § 826 BGB 8/89, 765 (Wach).

Moreover, the plaintiff had been told during the first conversation and also during the telephone call of the witness Herzog that the money was to be regarded as a loan. Thus, the plaintiff did not participate according to the agreement of the parties in a speculation, but merely procured the necessary means for third persons.

bb) Liability as a result of false advice or counsel.

The accused (4) violated contractual obligations by counseling the plaintiff to send money to the Americhina Global Management Group, Inc. As a result of the sustained and continued advice, a consulting contract between the plaintiff and the accused (1) was established.

With their demand to transfer the amount to the USA, the accused provided the decisive cause for the loss of the money. Since the accused (4) stood up for the reliability of the recipient in telephone conversations and in written messages and strengthened his support with guarantees, he, in the name of the accused (1), prompted the plaintiff to transfer the amount.

The accused (1) thus violated her duty to conscientiously counsel her client. This violation was also culpable since the required care necessary in such cases was disregarded (§ 276BGB). The accused had no knowledge whatsoever about the person of the managing director of the recipient and his personal reliability. She also was not in a position to control the administration of the money.

According to § 278 of the BGB, the accused (1) is responsible for the conduct of the accused (4) who represented her as her agent.

The accused (1) has the duty to inform and advise the plaintiff in an orderly and conscientious manner. If that had been the case, he would not have transferred the amount and not lost it. The accused, therefore, owes the plaintiff compensation for the

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loss of the $500,000. The loss can be settled according to § 249 of the Civil Code via restitution in kind, i.e., in U.S. dollars or in another currency mentioned in the suit.

b) Concerning the liability of the accused (2) and (3).

The liability of the accused (2) and (3) as partners of the accused (1) follows from the claim grounds mentioned in (1) in connection with § 128, 161 Abs. 1 of the HGB Commercial Law Code.

2. Regarding the indictable claims.

a) Concerning the liability of the accused (4).

aa) Liability follows from §§ 823 Abs. 2 BGB, 263 StGB.

The §§ 823 Abs. 2 of the BGB, 263 (Criminal Code) StGB are applicable as indictment law of the place of a crime. The place is Frankfurt/Main, for the false information came from there.

vgl. BGH ZIP 90, 365 f.; BGHZ 57, 265, 267; BGHZ 87, 95, 97

The offense of a fraud has been established according to § 263 StGB [penal or criminal code]. The accused (4) deceived the plaintiff by misrepresenting the truth about existing legal determinations in the U.S., namely, the so-called "Carson Act," about the existence of investors and their interest in an alleged foreign currency exchange deal, about the possibility of an astronomical gain (1 billion of U.S. dollars), and about the reliability of the managing director of the Americhina Global Management Group, Inc., a certain L.E. Wanta.

As a result of these deceptions, mistaken notions about the mentioned items were implanted in the plaintiff's mind, for he believed the assertions of the accused (4). These errors caused the plaintiff to order a property disposal by telling the Dreiland-Finanz AG to transfer the amount of $500,000.

And so it happened that the plaintiff incurred an enormous loss, for the total amount disappeared. Yet, even before the final loss of the money, serious damage was done. In view of the actual circumstances, the rather obvious, here almost certain, possibility of the loss of money constitutes already by itself a loss of property.

BGHZ 23, 300; ZIP 90, 365, 366, Lenckner JZ 1971, 320; Cramer in: Schonke/Schroder, § 263 StGB Rz. 143.

The subjective elements of an offense have thus also been fulfilled. The accused (4) wanted to enrich himself, the accused (1) to (3), and the recipient of the money illegally. There is no need to prove that the accused (4) knew that the sum of money would be lost; positive knowledge is not required in such a case. It suffices that the accused (4) wanted to procure for himself the property advantage which lay in the fact that he had the $500,000 at his disposal for a time, even though he figured that the money would be lost. At least this illegal attempt at enriching himself was intended by the accused (4).

vgl. BGH ZIP 1990, 365, 367, OLG Hamburg NJW 1980, 2593; Rochus NJW 1980, 737; Koch JZ 1980, 704f.; Cramer in: Schonke/Schroder § 263 StGB Rz. 167.

This attempted illegal enrichment (appropriation of funds) by risking moneys, is equivalent to loss of property/assets which

existed already before the final loss of the money in that it was exposed to the danger of loss.

BGH 23, 300; Lenckner JZ 1971, 320; Cramer in: Schonke/ Schroder § 263 StGB Rz. 143.

After the danger of the loss was realized, the compensatory damage of the plaintiff amounts to $500,000 according to § 249 of the BGB.

Irrespective of this fact, there is every likelihood to believe that the accused knew from the very beginning that the money would ultimately remain with the American partner. It is, therefore, the duty of the accused to prove the opposite.

bb) Liability because of immoral harm (contra bonos mones) according to § 826 of the BGB.

The accused (4) is also obligated to compensate for damages according to § 826 of the BGB. He harmed the plaintiff in a manner offensive to moral customs.

It is an offense against good manners whenever someone consciously provides false information on the basis of which the damaged party undertakes the harmful action himself. The only condition that matters is the fact that the damaged party obtained the information. If the plaintiff had been informed properly, he would not have transferred the amount. The accused bear the burden of proof for the contrary or opposite.

BGH WM 1984, 221; NJW 1979, 1599, 1983, 1850; Betrieb 1986, 2020; ZIP 1983, 421.

This claim also addresses the compensation of the lost $500,000, according to § 249 of the BGB.

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b) Concerning the liability of the accused (1).

The accused (1) as principal of her executor, the accused (4), has to render compensation for the illegally caused damage by the latter, according to § 831 Abs. 1 of the BGB.

c) The liability of the accused (2) and (3).

The liability of the accused (2) and (3) as partners of the accused (1) is based §§ 831 of the BGB, 128, 161 Abs. 1 HGB.

3. Concerning the interest claim.

The interest claim is based on §§ 849, 246 of the BGB and §§ 284 Abs. 1, 286 Abs. 1, 288 Abs. 2 of the BGB. The beginning of the default is at the latest the date of the letter of the accused (1), namely the 11th of October, 1988 (appendix file P9). Solely, to give the accused one last change to settle out of court, they were once more urged in letters of the 21st of January 1991, to come up with the payment. The accused were already in default before. The indictable claims do not depend on the default. This is also valid for the withdrawal of money.

OLG Dusseldorf ZIp 1990, 1014.

In addition, we refer to the comments in our brief of the 18th of October 1991, under II.

Section 2

A. Concerning the agreement of the 21st of June, 1988.

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Even if as in the case of the claim for repayment of the $500,000, an agreement about the international jurisdiction had been entered into, the district court of Frankfurt/Main would still retain international jurisdiction. According to § 39 Satz 1 ZPO the jurisdiction in an appearance without objection to the charge is substantiated. This is also true for the international jurisdiction.

BGH MDR 1969, 479; NJW 1976, 1581, 1583; Leipold in: Stein/Jonas, § 39 ZPO Rz. 2.

The accused, as the protocol of the hearing of the 28th of October, 1991, clearly shows, only objected to the local jurisdiction. This objection was only registered/entered in the protocol after the presiding judge expressly had inquired whether or not the accused wanted to object to the local or international jurisdiction. Whereupon, the authorized attorney for the accused declared that his party objected to the local jurisdiction.

IV. CONCERNING THE INDICTABLE CLAIMS.

The claims of the plaintiff (which are based on §§ 823 Abs. 2 of the BGB, 263 of the StGB and § 826 of the BGB) are also not covered by No. 7 of the agreement, for these claims are not the subject matter of the contract.

Moreover, from the immoral and criminally relevant behavior of the accused (at any rate of the accused (4), who signed the agreement), it follows that the accused cannot refer to the agreement of legal domicile. The accused really did not want to fulfill the agreements they had entered into with the plaintiff

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guilt or responsibility to cover a gambling or betting debt. Article 514 of the OR only deals with the obligation of the gambling and betting debtor.

It is thus proper, analogous to the cited BGH-judgment, to draw the same conclusion also according to Swiss law. With regard to the so-called speculation objection we refer to no. 27 to no. 31 of art. 513 of the OR.

d) Liability as a result of false counsel.

According to Swiss contractual law, the debtor is generally liable for every damage or negligent act (art. 99 Abs. 1 of the OR). The violations of obligation of the accused (1) as described on page 13 of the legal suit, represent also according to Swiss law a culpable violation of duty. The debtor can only be blamed for the disregard of care, necessary according to an objective standard, insofar as he is capable on the basis of his mental and physical abilities to recognize and perform what is demanded of him.

As a principle, liability has to be assumed for every carelessness.

Proof: 1. Expert evidence,

2. Pepli/Casanova; OR Allgemeiner und bes. Teil, Rechtsprechung des Bundesgerichtes, Schulthess Zurich 1983 (appendix P 12).

e) Liability for assisting agents.

According to art. 101 of the OR, which in content agrees with § 278 of the BGB, the contractual debtor is also liable for the

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actions of his assisting agents who fulfill and carry out his obligation, and to be sure without the possibility of proof of exoneration.

Proof: 1. Expert evidence,

2. Pepli/Casanova; OR Allgemeiner und bes. Teil, Rechtsprechung des Bundesgerichtes, Schulthess Zurich 1983 (appendix P 12).

II. CONCERNING THE INDICTABLE CLAIMS.

2) Concerning the liability of the accused (4).

a) Liability as based on §§ 823 Abs. 2 of the BGB, 263 StGB.

The indictable liability provisions are determined in art. 41 of the OR which agrees in content with § 823 of the BGB.

The liability to pay damages has, according to art. 41 Abs. 1 OR, as its precondition a damage which has been illegally and culpably (with intention or carelessness) done to another.

The illegality can consist in an offense against a legal form as well as in a violation of a foreign mental law.

Proof: 1. Expert evidence,

2. Pepli/Casanova; OR Allgemeiner und bes. Teil, Rechtsprechung des Bundesgerichtes, Schulthess Zurich 1983 (appendix P 12).

b) Concerning the facts of the amount.

Offenses of fraud are dealt with in art. 148 of the StGB.

The stated elements of an offense correspond to the Swiss understanding of offenses of a fraud as well. Thus, the subsumption according to German law stands.

The principle of the identity of the material, i.e., the intentional enrichment or gain of the culprit must stem from the property of the damaged party, is consistently affirmed in Swiss legal theory thought. The jurisdiction of the Federal Court is not firm on this subject.

According to art. 43 Abs. 1 of the OR (§ 249 of the BGB), the judge determines nature kind and size of the compensation. As a rule, compensation means payment of money.

Proof: 1. Expert evidence,

2. Pepli/Casanova; OR Allgemeiner und bes. Teil, Rechtsprechung des Bundesgerichtes, Schulthess Zurich 1983 (appendix P 12).

c) Concerning liability of immoral harm/damage according to § 826 of the BGB.

Article 41 Abs. 2 of the OR agrees with § B2G of the BGB. An act of illegality if equated in art. 41 Abs. 2 of the OR with a violation against good manners. The law of compensation is complemented in cases in which neither a mental law nor a legal rule has been violated, and yet nevertheless the sense of justice demands a liability to pay damages (onus of recompense).

The giving (even unsolicited) of false advice falls under this regulation.

Proof: 1. Expert evidence,

2. Hauser/Rehberg; Schweizerisches Strafgesetzbuch, Zurich 1986 (appendix P 13).

d) Concerning the interest claim.

The claim of interest is based on art. 104 of the OR. Precondition for the default interest is the delay of payment of a contractual money debt.

In the case of compensation of damages not mentioned in the contract, the obligation to pay interest begins with the day on which the damage occurred. The legal default interest is 5% (art. 104 of the OR).

Proof: 1. Expert evidence,

2. Pepli/Casanova; OR Allgemeiner und bes. Teil, Rechtsprechung des Bundesgerichtes, Schulthess Zurich 1983 (appendix P 12).

The postal delivery fee (of DM 6) of mail to the accused (4) we took care of via postmark of the court. In addition, we added for the accused (4) a certified copy of our brief of the 18th of October, 1991.

Certified and regular copies included.

(Dr. Hermann Schmitt)
Lawyer/attorney

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