



REGIONAL COURT OF
SALZBURG

13 Cg 10/15y - 46

(Please state in all entries)

P.O. Box 522
5010 Salzburg

Phone: +43 57 60121-0
Fax: +43 57 60121 31188

PUBLIC HEARING

Judge: Mag. Heidi Premstaller-Grundner

Secretary: Digital tape recording Date

and time of commencement: July 7, 2016, 10:15 a.m.

LEGAL MATTER:

Plaintiff Georg
Wagner c/o Ursula
Nehring
Ruckergasse 53/15
1120 Vienna

represented by:
Dr. Wolfgang LANG Lawyer Alter
Markt 1
5020 Salzburg

Defendant party
Brigitte Wagner
Carretera Sta. Coloma 4, Bustia 44
E-17421 Riudarenas-Girona

represented by:
Dr. Margrit SWOZIL Attorney at
Law Hubert-Sattler-Gasse 10
5020 Salzburg

Because Resumption (EUR 171,956.41)
e of:

PARTIES AND REPRESENTATIVES PRESENT:

1. For the plaintiff, attorney Dr. Lang as appointed procedural assistant. This/r ☒ refers to the power of attorney granted.

☐ submits a power of attorney dated.....This is taken as an act.

☐ provides proof of authorization to represent (Section 31 (2/3)

ZPO). ☐ requests admission (Section 38 ZPO).

Resolution: is admitted as a representative and has the power of attorney or the authorization of the party/parties.....to be provided.

2. For the defendant party RAA Mag. Stefanie Schemel for Dr. Swozil. This/r ☒ refers to the authorization granted. LU: 6. 12. 2011

☐ submits a power of attorney dated.....This is taken as an act.

☐ provides proof of authorization to represent (Section 31 (2/3)

ZPO). ☐ requests admission (Section 38 ZPO).

Resolution: is admitted as a representative and has the power of attorney or the authorization of the party/parties.....to be provided.

The previous procedural results will be followed up.

The plaintiff makes supplementary submissions as in ON 29, ON 30, ON 32, ON 40.

Defendant disputes and submits as in ON 44.

Plaintiff submits:

documents as described in more detail and designated in ON 30 and ON 32, which were read out and presented as enclosures ./E to ./H be taken as an act.

Defendant declares in this regard:

Genuine, please refer to the company's own submission for details.

The expert opinion of the expert witness Dr. Walter Gotschy ON 33 is **read out unanimously**.

The following parts of the file from the file 20 Cg 4/10i, Landesgericht Wiener Neustadt, are **read out in agreement**, whereby copies of these parts of the file are available:

ON 19, ON 40 and ON 41, ON 49, ON 57, ON 78, ON 86, ON 98, ON 122.

The parties have not requested any further parts of the file.

The parties do not request any further parts of the file from file 24 Cg 88/10d of the St. Pölten Regional Court other than those that have already been submitted as documents.

It is noted that the plaintiff did not appear.

The plaintiff's representative states that he is not aware of the reasons for his absence. The plaintiff's representative also states that despite several attempts to reach the plaintiff by cell phone and leaving messages on his voicemail, the plaintiff has not yet responded. The summons was sent to the plaintiff on June 20 by the legal representative by e-mail. Since then, however, there has been no further contact from the plaintiff. It is not known whether the plaintiff is currently on sick leave or undergoing inpatient treatment again.

The **plaintiff** adds:

It is requested that the plaintiff be summoned again to the hearing of the parties, as it is not certain that he was not prevented from appearing today for health reasons.

Furthermore, it is requested that the expert Dr. Gotschy be summoned for a supplementary discussion of his expert opinion, in particular with regard to the extent to which the expressions "in the narrower scientific sense" and "in the broader sense new method" used by him, each according to point 1. in the summary of his expert opinion, page 9 below, 10 above, in application to the present case do not ultimately mean that at the time of Dr. Nyman's expert opinion new scientific methods, the application of which was recognized, were available. In the event that the request for a summons is not granted, it is politely requested that the written expert opinion be supplemented by answering this very question.

The defendant opposes the renewed summons and questioning of the plaintiff, as the plaintiff has no expertise in the subject matter of the proceedings.

Furthermore, the defendant also opposes the summoning of the expert Dr. Gotschy or a written supplement to the expert opinion, as the subject matter of the proceedings has already been clarified in detail from the existing expert opinion and the application merely serves to delay the proceedings.

The plaintiff disputes this.

It is **discussed** on which specific topic of evidence the consultation of an expert from the field of forensic handwriting examination is conducted, in particular whether it is not only a request for evidence on the topic of whether the will in question is actually forged and not a request for evidence on the topic of whether new scientific methods and findings form the basis of Dr. Nyman's expert opinion.

The hearing will be adjourned at 10.44 a.m. until the scheduled video conference at 11.00 a.m. interrupted.

The hearing will continue at 11.00 a.m. in the video conference room.

The witness

Prof. Dr. Georg NYMAN,

born on 16. 9. 1949, pensioner, residing in 1060 Vienna, Schadekgasse 2, states that he has been provisionally questioned as a witness without being sworn in, following a hearing and presentation pursuant to Section 321 ZPO:

It is true that I gave an expert opinion in proceedings concerning the plaintiff before the St. Pölten Regional Court. I can still remember that.

The plaintiff's representative asked whether the subject of the order was to assess whether the methods used by the expert witness Dr. Rettenbacher in assessing the will were the same as those that were common at the time the expert opinion was prepared by the witness in 2015: Although this was not the specific court order, this question was implicitly included.

When asked by the representative of the plaintiff what thoughts the witness had when preparing his expert opinion when he read Dr. Rettenbacher's expert opinion, in particular whether he thought that it was clear that Dr. Rettenbacher had come to a different assessment, since he did not yet have the methods at his disposal that the witness had: "In this regard, I can explain that, first of all, I not commissioned to assess Dr. Rettenbacher's expert opinion, but that my task was to assess Dr. Sobotka's expert opinion, and not with regard to the interpretation of the results, since I am not a handwriting expert. Rettenbacher's expert opinion, but my task was assess Dr. Sobotka's expert opinion from a technical and scientific point of view, not with regard to the interpretation of the results, as I am not an expert witness.

The second part of my assignment was to show whether there are differences between the will and the comparative documents, to demonstrate this using technical means and to document it. When I looked at the Rettenbacher report I thought to myself that the recordings reproduced there were pretty bad and that you couldn't recognize much from them. The quality of the footage was such that I thought to myself that if they could have done it better, they could have done it better. At the time, only film technology was available. But if you had the right equipment back then, you could have made better quality recordings. I don't know what equipment Dr. Rettenbacher used. I also don't know what his skills were in terms of macro and micro photography. The quality was certainly available and possible on an optical level at the time.

As far as I know, Dr. Rettenbacher was a handwriting expert and not an expert in optical devices, as I am, which is why I must be better at such things.

When I was preparing my report, it was clear to me that I had newer methods at my disposal than were available in 1999. In particular, I would like to point out that not only digital photography has now been introduced, but above all image processing systems that make it possible to visualize contrasts, for example in the thickness of lines.

It is possible to recognize contrast differences or differences in the lines under the microscope. The clearer these are, the more clearly they can be seen under the microscope. If you know where to look, you can also see them under the microscope. However, clear identification is only possible through post-processing. You can see differences in thickness in the paint application under the microscope. However, it only becomes particularly clear through image processing.

I refer here, for example, to the images on page 33 or page 34 in my expert opinion of January 10, 2015 in the proceedings before the St. Pölten Regional Court. The differences in density shown there are visible under the microscope. However, they only emerge with such clarity through image processing, which was not yet possible in 1999.

When questioned by the legal representative, whether the witness also needed the digital image processing systems for the identification of differences or only for documentation purposes when preparing his expert opinion:

The use of digital image processing systems was necessary for me in order to comply with the expert's assignment, which was to carry out an evaluation from a scientific expert's point of view. If you want to carry out an evaluation from a scientific expert's point of view, it is necessary to document the differences visible under the microscope with the naked eye using the digital image processing systems.

On questioning by the defendant's representative:

The comparison documents, which were submitted as undisputed comparison documents, all have the same technical characteristics.

No further questions.

The witness does not claim any fees.

Plaintiff in addition:

The request for evidence to call in an expert from the field of forensic handwriting examination is upheld as in ON 25, in particular to prove that the expert opinion of the expert Dr. Nyman is based on new scientific methods which were not yet known at the time of the expert opinion by the expert Rettenbacher in 1999.

For the time being, **the defendant** no statement on this request for evidence.

The parties will briefly inspect the list of experts in the field of document examination, handwriting and manuscripts. The judge will first contact one of the experts by telephone to see whether they can provide an expert opinion and then make an expert proposal on which the parties can comment within a certain period of time.

The hearing for the oral hearing of the dispute is scheduled for
indefinite for the time being
extends.

End: 11.53 a.m.

Duration: 2 hours F.d.R.d.Ü.:

C. Nowak transmitted on: July
18, 2016