

**Pleading, attorneys Löffler, Wenzel & Sedelmeier, submitted to the Stuttgart Landgericht [District Court]
Copy of letter dated 4th September 2000**

To the
Stuttgart Landgericht
- 17th Civil Chamber -
Urbanstrasse 20
70182 Stuttgart

Re: Ref. 17 O 406/2000

In the matter of

Werner Mauss ./ Ren e D e

we shall plead to uphold the Interim Injunction.

At the same time we wish to submit the following comments to the Defendant's statements in the pleading dated 14. 8. 2000:

1. The Defendant's allegation that the Applicant had spread false rumours about him in the past, according to which the Applicant had been an instigator to murder in Turkey, is not true.

Insofar as the Defendant refers to a complaint lodged by the former partner of the undersigned on 20.1.1992, we permit ourselves first of all to attach a photocopy of the complaint at the time as Enclosure Ast 9. It will be seen that this was a complaint by Prof. Wenzel independently and furthermore lodged to safeguard the Applicant's and his agent's legitimate interests. Legitimate interest follows both from the interests of the general public and the Applicant's direct interest arising from his position at the time as a civilian

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member of staff of the BKA [Federal Criminal Police Office], having been made available to the Sonderkommission [special unit] of the Hanover police and subsequently to a Sonderkommission of the LKA [State Office of Criminal Investigation], as explained by us in the application for the order (as to details, see Lackner, StGB [Criminal Code]; marg.nos. 6 and 7).

When the Applicant made any statements, it was done exclusively through his agent within the legal framework permitted for the protection of justified interests. This is not, however, dissemination in the terms of the other side's claim.

The information to the investigating authorities was justified and necessary, especially because of the interest of the general public. Accordingly there was a suspicion that the Opponent might have been party to a murder plot in Turkey which had a link to the robbery of 31.10.1981, possibly simulated by the Opponent.

In this context it has already been indicated in the application that the Opponent, having previously been convicted by the Hanover Landgericht, was indeed acquitted by the Brunswick Landgericht on 13.3.1989 of the suspicion of simulating a criminal offence, of intended fraud as well as of fraudulent misappropriation in connection with the alleged robbery of his business premises. Page 65 of the Decision by the Brunswick Landgericht (ref.no. 33 Kls 127 Js 49258/84) reads as follows:

"The charges brought against the Defendant could not be proved with the certainty required for a conviction".

It must be noted here that during these criminal proceedings the Opponent availed himself of his right to refuse to give evidence as an accused (thus page 65 of the Reasons for the Decision).

The text of the Decision alone shows, that this was a 'second class' acquittal. The Opponent's innocence in connection with the events during the loss of his jewellery was in the final analysis unresolved. As a legal consequence of the acquittal the Opponent did indeed receive a compensation payment for deprivation of liberty. This says nothing, though, about the circumstances of the disappearance of the jewellery allegedly stolen in October 1981.

During the proceedings under civil law before the Hanover Landgericht, which the Opponent's assignees instituted against the insurance company covering theft, the Landgericht, in its Decision of 26.2.1992 (Ref. 13 O 192/91), denied the insurance company's duty to pay compensation

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for several reasons, amongst them fraudulent misrepresentation by the Opponent.

The corresponding explanations on page 18 read as follows:

It is undisputed that Mr. Düe initially reported several watches and rings as having been stolen, but did not correct this statement to the Defendants after having established that these items had not in fact been lost. On the contrary, he intended to use these items to pass them on to someone handling stolen goods, so that the Defendants - after reappearance of the items notified as having been stolen - would be convinced of a robbery and make a payment on account. With this attempt at deception, however, Mr. Düe intended to influence the loss investigations in his favour.

In its Decision of 25.3.1993 (Ref. 8 U 64/92) the Celle OLG [Higher Regional Court] confirmed this in the appeal and reproached the Opponent with fraudulent misrepresentation during the negotiations to ascertain compensation and, amongst other things, based the insurance company's freedom from a liability to pay on this.

During subsequent proceedings regarding assistance as to legal costs, which the Opponent instituted personally against Mannheimer Versicherung AG, the Celle OLG on 15.10.1992 again denied the chances of success also in the appellate procedure and justified the insurance company's freedom from liability to pay with the fact that the Opponent - when the event insured against occurred - had intended to deceive the Insurers in a fraudulent manner. The alleged finding of jewellery which the

Opponent had notified his insurance company as having been stolen, but had then concealed the find from them, was seen as an act of deception (Reasons for the Decision in proceedings 8 W 115/92 before the Celle OLG, pp. 8/9).

All this shows that the lawyer, Prof. Dr. Wenzel, was indeed justified in filing a complaint and thereby - also in connection with the alleged robbery of the Opponent - in introducing further aspects into the proceedings as a consequence of which the robbery claimed by the Opponent had to be seen with a 'considerable number of question marks', above all because there is still much to be said for the events of 31.10.1981 being based on a criminal offence simulated by the Opponent.

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2. It is therefore immaterial whether the rumours concerning the Opponent's involvement in the murder plot are accurate or not. It is also not the case that they have turned out to be false. It is indeed correct that the competent Oberstaatsanwalt [senior public prosecutor] stayed the proceedings. The suspicious circumstances described by Prof. Wenzel in his letter of 20.1.1992 are not at all refuted by this in their entirety. It is rather that there are still a great many suspicious circumstances which the Staatsanwaltschaft did not follow up on, or rather did not follow up on in the required manner.

3. The Opponent's claim on pages 10 et seq. of the Pleading of 14.8.2000 is also flawed, according to which it followed from the interview in connection with Enclosure Ast 6 that the Applicant had again taken up the allegedly false rumours in order to harm the Opponent.

The Applicant's statement during the course of the Interview in the "Wochenspiegel" and other newspapers is evidently solely an expression of a suspicion to the effect that continuing suspicions had increased that the Opponent had merely simulated the robbery. The cause for the interview with the Applicant was a find of 10.8 kg of jewellery, pieces of jewellery which had been notified by the Opponent as allegedly having been stolen. They were found this year in June in the ceiling of the business premises of the Opponent's father who had died prior to this find being made; this was 400 m from the alleged scene of the crime. After the Opponent's imprisonment, his father had changed the locks and sold the business to a third party, so that the Opponent was denied access to the premises. We also refer to the relevant and correct press report in the magazine "Der Spiegel", see Enclosure Ast 2.

According to this the Opponent alone had access to the safe at the scene of the crime and also had access to his father's business premises. Since the Opponent, on his part, has always stated that the perpetrators had escaped with the spoils, the suspicion arises - in view of the place where the items were found, i.e. the business premises of his father at the time - that the Opponent himself hid the jewellery notified as stolen in the ceiling of his father's business premises and merely simulated the robbery; and that, in truth, he did not lose any jewellery on 31.10.1981.

The place where the pieces of jewellery with a weight of 10.8 kg in total were found in 2000 on the one hand, and the conspiratorial handing over of the pieces of jewellery having been notified as stolen contrary to the truth in 1982 on the other, fit seamlessly with the Brunswick Landgericht's findings in the criminal proceedings against the Opponent ending with his acquittal

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due to lack of evidence. On page 79 of the Reasons for the Decision, the Court, deceived by the Opponent, states the following:

The Defendant on his part described how it happened that he was still in possession of – compared with the number of pieces stolen (over 3,000) – a few pieces of jewellery and watches. The Chamber heard via the witness Ottemann of the Defendant's pleading concerning this at the time. According to this pleading the Defendant found some of the pieces around Christmas 1981/beginning of 1982 in his father's business premises and the 4 Piaget watches in his flat, whereby he too was of the opinion that he had notified the Piaget watches as having been stolen. He then decided not to notify the insurance company of the find yet, in order - in his view - not to give them a reason to refuse a payment on account. Because even without the actions of the agent Mauss, elements of an offence could have been attributed to him, if he had reported the subsequent discovery of the pieces of jewellery.

The Court, deceived by the Opponent, could not even suspect at the time that a further quantity of 10.8 kg of jewellery existed behind the ceiling of the business premises, and could only have been hidden there by the Opponent. If the Court had known of these incredible events, this would inevitably have led to a confirmation of the Decision which at the Hanover Landgericht had originally ended with the Opponent's 7-year prison sentence.

That the find should cause renewed speculation in the press regarding the perpetration of the offence and simulation of a crime on 31.10.1981 - as can be seen from the "Spiegel" report in Enclosure Ast 2, page 73, is obvious. It is therefore not true, when the Opponent spreads allegations about the Applicant, that the latter had again taken up the events in question in order to harm him. Correct is, that after the rediscovery of the jewellery the question naturally arose in the media whether the Opponent had hired third parties to rob this business premises, and what the story behind this was in connection with Yildizsoy's possible confession, according to which the latter had killed the Turk hired with him, on orders of the Opponent (also see Enclosure Ast 2). Again on the basis of protection of legitimate interests

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the Applicant merely stated in this respect that such rumours and allegations should be followed up.

If, in the interest of complete clarification of the case after rediscovery of the jewellery, the Applicant made a statement to the press (Enclosure Ast 6) that references (still in circulation) concerning the alleged order for murder in Turkey should also still be followed up, this served and still serves clarification of the case only. The Applicant had been brought into the original investigations and was evidently not concerned with, for example, harming the Opponent by "taking up again" some kind of rumours, but solely with full clarification of a case which had been partly resolved by the jewellery find.

In view of his earlier mandate and also in view of the public interest the Applicant's statements solely served clarification and the interests of the administration of justice.

The Applicant therefore did not make his statements in order to harm the Opponent but to serve the administration of justice. After all this, this is evident.

The Interim Injunction should therefore be upheld.

Signed
- Dr. Garmer -
Attorney