[Crest]

BUNDESGERICHTSHOF
[Federal Court of Justice]

IN THE NAME OF THE PEOPLE

DECISION

V ZR 279/10

Pronounced on:
March 16, 2012
Lesniak, Judicial employee as Clerk of the Court

In the lawsuit

Peter Sachs, 4370 Hidden River Rd., Sarasota/Florida, USA

Plaintiff, Counterclaim Defendant, Appellant, and Cross-Appeal Defendant

Attorney: Dr. Ackermann

versus

Deutsches Historisches Museum, Public Law Foundation, represented by its President Prof. Dr. Alexander Koch, who is represented by the Vice President Dr. Vorsteher, Unter den Linden 2, Berlin

Defendant, Counterclaim Plaintiff, Appellee Cross-Appeal Plaintiff

Attorneys: Dr. Toussaint and Prof. Dr. Schmitt

Upon the hearing of February 10, 2012, the 5th Civil Panel of the Federal Court of Justice [BGH], the Presiding Judge Prof. Dr. Krüger, Judge Dr. Stresemann, Judge Dr. Czub and Judges Dr. Brückner and Weinland adjudged:

> Upon appeal [Revision] by Plaintiff and rejecting the cross-appeal lodged by Defendant, the decision of the 8th. Civil Panel of the Kammergericht in Berlin [Higher Regional Court] of Jan 28, 2010, is revoked in the matter of expense and inasmuch as the claim for the return of the poster "Mastiff" was rejected and the counterclaim was granted.
>
> To the extent of the revocation, Defendant's appeal against the decision issued by the 19th Civil Panel of the Landgericht Berlin [Regional Court Berlin] of Feb 10, 2009, is rejected. The further appeal remains rejected.
>
> Defendant bears the cost of the appeals proceedings.

De Jure

Facts of the case

Plaintiff is the son and legal successor of Dr. Hans Sachs. Since 1896 the latter had collected a voluminous and valuable poster collection, which was taken away from him by order of the Reich Propaganda Ministry in 1938. Because of the National Socialist persecution of Jews, Dr. Sachs left Germany in the end of 1938 and emigrated to the United States.

After the war, the poster collection was initially lost. In 1961 Dr. Sachs received DM 225,000 in compensation as a result of a settlement concluded according to the Federal Restitution Law [BRüG]. Only later did he learn that parts of the collection had been found in the GDR and were located in the Museum of German History in East Berlin. In 1974 Dr. Sachs died and his wife became his heir. She died in 1998 without having asserted claims to the collection after reunification. Plaintiff is her heir.

The poster collection, of which presently 4,259 posters are identified, is presently in Defendant's holdings, a foundation under public law. With the complaint Plaintiff demanded the return of two posters ("Mastiff" and "The Blonde Venus"). Defendant, by

way of counterclaim, applied for establishing that Plaintiff is not the owner of the poster collection, alternatively, that he is not entitled to ask for the restitution of the posters.

The Landgericht sentenced Defendant to return one of the posters ("Mastiff") and rejected the additional complaint as well as the counterclaim. Upon appeals lodged by both parties, the Kammergericht – by rejecting all other motions – granted the counterclaim in the alternative motion. By means of the appeal [Revision] which was granted by the Panel, Plaintiff, who is not pursuing the claim for the restitution of the second poster (The Blonde Venus) any longer, wants to achieve that Defendant be sentenced to the extent granted by the Landgericht, as well as the complete rejection of the counterclaim. Defendant, striving for the rejection of the appeal [Revision], has lodged a cross-appeal by which it turns against the rejection of the counterclaim in the main motion. Plaintiff moves for the rejection of the cross-appeal.

Reasons for the decision:

I.

The appeals court, whose decision is published in ZOV 2010, 87, is of the opinion that Plaintiff's father did not lose ownership of the poster collection either before or by its seizure in 1938. He also did not lose ownership within the scope of the compensation proceedings. Also, the posters did not become public property of the GDR. However, the thus existing claim for restitution by Plaintiff according to § 985 BGB [German Civil Code], would be opposed by the provisions of the Allied Restitution Law and by the Federal Restitution Law [BRüG]. It said that according to consolidated high court jurisdiction, claims based on National Socialist acts of injustice could only be asserted according to the Restitution and Compensation Laws. Moreover, a possible claim for restitution by Plaintiff was forfeited.

This does not stand up in all points to a legal review.

II.

Plaintiff's appeal [Revision]

Plaintiff's appeal is substantiated. The appeals court was wrong in denying Plaintiff's claim for restitution of the Poster "Mastiff" according to § 985 BGB [Civil Code] and in determining upon Defendant's counterclaim that Plaintiff is not entitled to ask for the restitution by Defendant of the poster collection previously owned by his father.

1. According to the appeals court's view, Plaintiff as legal successor (heir of an heir) of his father is the owner of the poster collection. The appeal accepts this as being favorable for it (concerning the cross-claim, see III.).

2. The claim for restitution according to § 985 BGB is not replaced by the special provisions on compensation for National Socialist injustice.

a) The appeals court is correct in assuming that this claim is not excluded by the Law Regulating Unsolved Property Questions [Vermögensgesetz – abbreviated: VermG]. It is true that this law, according to § 1 Para. 6 VermG , is also applicable to restitution claims by citizens who – like Plaintiff's father – were persecuted for racial reasons during the time from January 30, 1933 to May 8, 1945, and therefore lost their assets as a consequence of forced sales, expropriations or in other ways. The question – which was affirmed by the Panel (decision of July 7, 1995 – V ZR 234/94, BGHZ 130, 231, 235) only for a restitution claim according to § 1 Para. 1 letter c und Para. 3 VermG – whether a claim substantiated according to provisions of the VermG would have precedence over a claim under civil law, which is also based on the state injustice contained in the VermG, in this case does not arise since the loss of assets suffered by Plaintiff's father does not trigger a restitution claim according to the provision § 1 para. 6 VermG. Its application would require that the asset was located in the acceding territory at the time of the damage (cf. BVerwGE [Decisions of the Federal Administrative Court]135, 272, 277

marginal number 31 with additional references). This is lacking here since the poster collection was seized, according to the determinations of the appeals court, in Berlin-Schöneberg, and thus in the later Western part of the city.

b) Contrary to the appeals court's view, the claim for surrender does not take a backseat to the provisions of the Allied Restitution Laws – in this case the Ordinance BK/O (49) of the Allied Command in Berlin, valid in Berlin, concerning the restitution of identifiable assets to victims of National Socialist oppressive measures (of July 26, 1949, VOBl. für Groß-Berlin I S. 221, hereinafter Rückerstattungsanordnung [Restitution Oridnance] or REAO).

aa) However, the Federal Court of Justice [BGH], in settled case-law, decided that claims resulting from the unlawfulness of a National Socialist expropriation measure can in principle only be pursued according to Restitution and Compensation Laws issued with regard to reparation [Wiedergutmachung] which may be pursued in proceedings provided for in these laws (cf. decisions of Feb 11, 1953 – II ZR 51/52, BGHZ 9, 34, 45; of October 8, 1953 – IV ZR 30/53, BGHZ 10, 340, 343; of May 5 1956 – VI ZR 138/54, RzW 1956, 237 as well as the resolution of May 27, 1954 – IV ZB 15/54, NJW 1954, 1368; also the prevailing view in older literature, cf. Blessin/Wilden, BRüG, 1958, Introduction, marginal number. 26; Goetze, Restitututution in West Germany and Berlin, 1950, comments on Art 57 REG (AmZ) ; Harmening/Hartenstein/Osthoff, Restitution Act, 2nd edition., 1952, Introduction pg. No. 53 Rs.; Kubuschok/Weißstein, Restitution Law, 1950, Art. 49 REG (BrZ) / Art. 57 REG (AmZ) comment 2; Müller, Restitutuion in Germany, 1948, Vorbem. S. 10; Korth, SJZ 1948, 377, 383; a.A. van Dam, Restitution Law for the British Zone, 1949, Introduction pg. 15; von Godin, Restitution of Identifiable Assets, 1950, Art 57 REG (AmZ) Comment. 1; Dubro, NJW 1953, 706).

The precedence of the restitution proceedings was substantiated on the one hand by the particular difficulties which resulted from the fact that established law did not provide sufficient basis to reverse asset shifts brought about by National Socialist measures of injustice (regarding this extensively: Anton, Legal Reference Book

Protection of Cultural Assets and Art Restitution Law, vol.. 1, 2010, pg. 689 et seq.), and which was to be counteracted by a special law conclusively ruling on the claims by injured parties. On the other hand, the deadlines – which were considerably shorter by comparison to the general statutes of limitations – within which a restitution claim had to be filed by the injured party (according to Art. 50 Para.. 2 clause 1 REAO by June 30, 1950) were to protect the interests of the public in an early stabilization of economic life as well as the interests of the party obligated to refund or return not to have to expect further claims by the injured party after expiration of the deadline (cf. BGH, decision of October 8, 1953 – IV ZR 30/53, BGHZ 10, 340, 343 ff.).

bb) By contrast, in more recent literature – partly following a decision made by the Great Panel for Civil Matters (Decision of February 28, 1955 – GSZ 4/54, BGHZ 16, 350) – the view predominates that the restitution law primarily served the interests of the injured party. This would rule out denying the injured party claims which were already substantiated according to the general provisions under civil law by the measure of injustice (cf. Hartung, Looting Art during War and Persecution, 2005, pg. 169; Rudolph, Restitution of Works of Art from Jewish Ownership, 2007, pg. 94 et seq.; Schulze, Kunstrechtsspiegel 2010, 8, 9; IPrax 2010, 290, 297; Weller, Kunstrechtsspiegel 2009, 32, 35 as well as 42, 43; similar already in Mosheim, BB 1949, 27: “Meistbegünstigungsprinzip” [Most Favored Nation Principle]).

cc) Whether the last mentioned view gives rise to put in question the present adjudication may be left unanswered. At any rate, the Allied restitution provisions do not have precedence vis-à-vis a restitution claim according to § 985 BGB, if the asset seized because of persecution – as in this case and different from the other cases adjudicated by the BGH – was lost after the war and the injured party only learned about its location after expiration of the deadline for filing restitution claims.

Contrary to the opinion of the appeals court, Art. 51 clause 1 REAO does not oppose the restitution claim in such a case. It is true that if nothing else is determined, claims falling within the scope of the Restitution Ordinance can only be filed according

to their provisions and in keeping with their deadlines .The barrier effect produced by this provision according to the BGH's jurisdiction (cf. Decision of October 8, 1953 – IV ZR 30/53, BGHZ 10, 340, 344 for comparable provisions in the U.S. and British Zones) is, however limited by the principle of restitution in kind controlling this decree.

(1) The Restitution Ordinance primarily governs the restitution of "identifiable" assets (cf. § 1 Para. 1 REAO). The term „identifiable" originally served – in draft versions – to limit the area of application of the Allied ordinances to losses of rights which could be restored by the return in kind of the seized asset (cf. ORG Nürnberg, RzW 1959, 371, 372 r. Sp. also Schwarz, Restitution according to the laws of the Allied Powers, 1974, pg. 118 et seq.). It includes only objects which the beneficiary found possible to reclaim since he knew the current possessor personally (cf. Art. 1 Para. 2 REAO; Goetze, l.c., Art. 1 REG [AmZ] Anm. 2; i. Erg. also Harmening/ Hartenstein/Osthoff, l.c., Art. 1 REG [BrZ] Anm. III.2). This condition was not fulfilled regarding an object whose existence and whereabouts – just like in the case of the poster collection belonging to Plaintiff's father – were unclear during the time period in which proceedings under the Restitution Ordinance could be filed.

(2) The Restitution Ordinance, however, provides for compensation claims of a beneficiary in case the object was lost by the party obligated to return it or if such party could not return the asset for other reasons (Art. 26 Para. 3 und Art. 27 Para. 2 REAO). The Allies, however, considered monetary compensation to be a subordinate form of restitution; this had to be accomplished primarily by the return of the seized asset to the beneficiary (cf. Preliminary Remark and Art. 1 REAO; also Art. 1 Para. 1 REG [AmZ]; Art 1 Para. 1 REG [BrZ] ; Art. 5 of Ordinance No. 120 [FrZ] ; BGH, Decision of May 5, 1956 – VI ZR 138/54, RzW 1956, 237, 238; Blessin/Wilden, l.c., Einl. Rn. 15; Schwarz, l.c., pg. 122 and pg. 175). It does not result from the Restitution Ordinance that claims under it for monetary compensation in case of an object that was initially lost but which resurfaced after expiration of the deadline for filing claims, should nonetheless be considered to be a conclusive restitution (cf. BVerwG, ZIP 1997, 1392, 1393 regarding a

Restitution Claim according to § 1 Para. 6 VermG) - regardless of a possibly existing obligation in this case to repay an already received compensation payment.

(3) The overriding goal of restitution in kind furthermore opposes the assumption that a restitution claim under civil law would be superseded by the Allied Restitution Ordinance even if it was impossible for the beneficiary to achieve the return of the seized asset within its scope because it – as in this case – was lost until the expiration of the deadline for filing claims under § 50 clause 1 REAO and thus was "not identifiable". If, in such a case, even after the object was found again, Art. 51 clause 1 REAO still would have the barrier effect which had so far been assumed by the BGH, the beneficiary and his legal successors would be permanently excluded from a desired restitution in kind which is the overriding goal, even though this is actually also legally possible at a later point in time – on the basis of general laws. The Allied restitution provisions thus would have withheld from the beneficiary all possibilities to demand the restoration of the rightful state, and would have perpetuated in this way the National Socialist injustice. Such a result is irreconcilable with the spirit and purpose of these provisions, to protect the interests of the injured party (cf.. BGH, Decision of February 28, 1955 – GSZ 4/54, BGHZ 16, 350, 357).

c) The Federal Restitution Law [BRüG] also does not oppose Plaintiff's restitution claim. It only created a legal basis for the calculation and fulfillment of restitution claims against the German Reich which had arisen already according to other legal provisions which aimed at a monetary amount or indemnification (cf. § 2 in combination with § 11 No. 1 BRüG; Biella, Das Bundesrückerstattungsgesetz, [The Federal Restitution Act], 1981, pg. 83 and the following one; Kemper/Burkhardt, Bundesrückerstattungsgesetz, 2nd edition., 1957, Introduction pg. 16) and insofar reopened the deadlines for filing claims (cf. § 29 BRüG). It does not contain provisions from which would result that the rights to which the beneficiary is entitled because of ownership in the (supposedly) lost object, would devolve to the public authorities upon fulfillment of the restitution claim. It also did not establish – apart from the provisions of §§ 12, 13 BRüG which are not relevant here – new claims in favor of parties affected by

National Socialist persecution, with regard to which the question could arise concerning the relationship to claims according to general civil law.

3. The appeals court did not establish that Plaintiff's father had made a statement in connection with the compensation granted in 1961 – which could oppose the restitution claim – that he renounced all existing rights regarding the poster collection. Since one cannot assume a renunciation of rights in general, unambiguous conduct would be necessary which could be understood by the statement's recipient to be the surrender of a right (cf. BGH, Decision of November 16, 1993 – XI ZR 70/93, WM 1994, 13). This condition is not fulfilled by Plaintiff's father's letter from the year 1966 in which he commented to a staffer of the Museum of German History in East Berlin that he was interested in a cooperation for idealistic reasons, not material ones, and that incidentally he had received a considerable settlement amount which covered all his claims. The fact that Plaintiff's father emphasized his purely idealistic interest in the collection would primarily have served to dispel the obvious fears of the museum staffer that he would assert rights regarding the collection in order to prevent a termination of the contact by the museum. In this context one has to bear in mind that Plaintiff's father had to consider any claim for the return vis-à-vis a state-run museum in the GDR during the time of the Cold War to be unsuccessful; this also does not suggest that the advice of having received compensation expresses a final renunciation of rights to the collection, but served to dispel a possible mistrust on the part of the museum with regard to the reason for initiating this contact.

4. The restitution claim, with regard to which Defendant does not expressly plead the statute of limitations, is not forfeited.

a) A right is forfeited if the debtor, because of his creditor's inactivity over a certain period of time, might expect, judging objectively, and does expect, that the same would no longer assert his right, and if he did so at a later time would breach good faith. In addition to the passage of time there have to be special circumstances based on the conduct of the beneficiary which justify the confidence of the debtor, that the beneficiary

would no longer assert his claim (settled case law, cf. Panel, Decisions of December 12, 2008 – V ZR 49/08, NJW 2009, 847, 849 marginal number 39 [insofar in BGHZ 179, 146 not printed] und of October 30, 2009 – V ZR 42/09, NJW 2010, 1074, 1076 marginal number 19 with additional references). Forfeiture can also occur with the restitution claim by the owner according to § 985 BGB (cf. Panel, Decision of April 30, 1993 - V ZR 234/91, BGHZ 122, 308, 314 re § 894 BGB). However, one has to take into account in this case that the claim is a core element of ownership and that its negation would be the expropriation of the owner in economic terms, and this is why forfeiture can only be assumed in exceptional cases (cf. Panel, Decision of March 16, 2007 - V ZR 190/06, NJW 2007, 2183, 2184 with additional references).

b) This is not a case of forfeiture.

aa) Contrary to the opinion of the appeals court, the time before October 3, 1990, cannot be taken into consideration for the evaluation whether the assertion of the restitution claim by Plaintiff is an inadmissible exercise of a right. Since up to this day a request for the return expressed by Plaintiff's father or (after his death in 1974) by Plaintiff's mother – which is also assumed by the appeals court – had to obviously turn out to be hopeless since the poster collection was located on the territory of the GDR and therefore a claim for its return under private law could in all probability not have been enforced (cf. BGH, Decision of January 14, 1964 – VI ZR 44/63, Insurance Law, 1964, 404, 405 concerning the "reverse" case that the claim's creditor was residing in the GDR; Schoen, JNW 2001, 537, 543). Inasmuch as the appeals court nonetheless considers that the time up to reunification may be taken into consideration by referring to the provision of § 206 BGB – concerning the suspension of the statute of limitations because of force majeure – it overlooks that this regulation does not contain any principles going beyond the limitation period (cf. BGH Decision of October 24,1960 - III YR 132/59, BGHZ 33, 360, 363; Erman/Schmidt-Räntsch, BGB, 13th edition., § 206 marginal number 2 with additional references).

bb) Accordingly, the crucial period of time of 16 years, during which Plaintiff's mother and, (after her death in 1998) Plaintiff himself did not assert a restitution claim, is, all in itself, not sufficient to substantiate the forfeiture of the claim (cf. Panel, Decision of October 30, 2009 – V ZR 42/09, NJW 2010, 1074, 1075 marginal number 19). Further circumstances from which Defendant could draw the conclusion that a restitution claim concerning the poster collection would no longer be asserted, are not discernible. The contents of the letter written by Plaintiff's father from the year 1966 (see 3. above) does not satisfy the fact of trust necessary for the assumption of forfeiture, neither does his statement in an article published in 1970/71, according to which he said he was sure that "West and East Germany (…) would know how to safeguard their treasures". For this, at best, would mean that Plaintiff's father himself, who at that time was already very old, would no longer pursue claims, and not that his heirs would also be in agreement with the fact that the collection would permanently remain in a museum. The appeals court did not determine any statements suggesting anything else.

cc) Finally, the appeals court is wrong in its opinion that Defendant was able to trust that after the time for asserting restitution claims under the VermG on June 30, 1993 had expired, it could be confident of no longer being exposed to any restitution claim by the owner of the poster collection. In the case to be decided upon here, in which the assets seized by the NS regime were only brought to the acceding territory after their seizure, the VermG does not apply – which the appeals court itself assumes elsewhere (cf. BVerwGE [Decisions by the Federal Administrative Court] 135, 272, 277 marginal number 31, as well as above, under 2.a). The fact that up to the decision rendered by the Federal Administrative Court in 2009 this was evaluated differently in the literature does not create a trust by the rightless possessor which would be worthy of protection.

dd) Whether – as is assumed by Plaintiff – Defendant, as a foundation under public law, may not plead the forfeiture of the restitution claim – already in light of the statement subsequent to the Washington Declaration of December 3, 1998, "made by the German Government, the German States and the central associations of local governments regarding the discovery and return of cultural assets seized as a

consequence of NS persecution, particularly when coming from Jewish ownership" of December 14, 1999 (printed by Anton, l.c., pg. 736 and the following one., 739 and the following one), according to which the parties making this statement "(will) see to it that in the competent committees of responsible bodies of public institutions assets which can be identified as having been seized as a result of NS persecution and can be allocated to certain injured parties, will be returned after individual examination to the legitimized former owners or their heirs", does not need to be decided upon here.

III.

Defendant's cross-appeal

Defendant's cross-appeal, by which it seeks that it be determined that the Plaintiff lacks ownership in the poster collection, is without merit. Plaintiff's father remained owner of the collection in his lifetime. After his death, ownership initially devolved by succession to his wife and thereafter to Plaintiff.

1. The fact that the poster collection was taken away from Plaintiff's father in 1938 by order of the Reich Propaganda Ministry, does not change the existing ownership situation. According to the determinations – which were not appealed – by the appeals court, this action was a seizure without an act of expropriation. One can also not detect a legal basis for the appropriation of possession of the poster collection by the German Reich in the 11th Ordinance to the Reich Citizen Law, which, among others, ordered the forfeiture of Jewish assets. This ordinance has to be considered void a priori because of the degree of unlawfulness contained therein which contradicts all basic requirements of any constitutional organization, and therefore was unable to create any legal effects (cf. BGH, Decision of February 28, 1955 – GSZ 4/54, BGHZ 16, 350, 353 f.; BVerfGE [Decisions of the Federal Administrative Court] 23, 98, 106; BVerwGE 98, 261, 263).

2. Defendant is unsuccessful in asserting that Plaintiff's father no longer was the owner of his collection at the time it was seized, because he had sold it to the banker, Dr.

Lenz, prior to that. Since the collection had been in his possession until the end, one could only consider an assignment according to § 930 BGB; this would require that Plaintiff's father had given up his own possession of the collection and transferred it to the acquirer based on constructive possession by agreement [constitutum possessorium] according to § 868 BGB. The appeals court's presumption that these requirements could not be established is free of legal errors.

a) Contrary to Defendant's view, the appeals court did not mistake the requirements for a *constitutum possessorium*. The agreement of constructive possession replaces the transfer of an object provided for by § 929 clause 1 BGB. This function is opposed to a change of ownership, in which the seller's intent to posses this object, which is in his own possession, in proprietary possession on behalf of another in the future, is recognizably manifest, not only in any which form, and be it only vis-à-vis the buyer (cf. BGH, Decision of November 18, 1963 – VIII ZR 198/62, NJW 1964, 398 f.). A transfer of ownership that remains in secret to such an extent would be irreconcilable with the principle of publicity ruling property law – even though it is limited in § 930 BGB in favor of facilitating legal relations concerning moveable objects (cf. PWW/Prütting, BGB, 6th edition.,§ 930 marginal number 1).

b) The appeals court was not able to determine that before the poster collection was taken there was an express creation of a constitutum possessorium or at least the change of previous ownership situation by implied conduct (cf. BGH, Decision of October 29, 2001 – II ZR 314/99, NJW-RR 2002, 854, 855; Palandt/Bassenge, BGB, 71st edition, § 930 marginal number 8 with additional references). The statement made by Plaintiff's father in 1953, which was cited by Defendant, according to which the collection had already been "formally assigned" at the time of its seizure, does not allow the conclusion that an effective transfer of ownership occurred. The same is true for Dr. Lenz's statement from the year 1946, according to which the collection was transferred to him "in pledge", in order to save it in this way from the impending confiscation. Both statements ultimately limit themselves to inform of a legal opinion – and in view of Dr. Lenz's statement this legal opinion is also not unambiguous. Whether this is correct

cannot be judged for the lack of factual determinations concerning the events on which they are based.

3. Defendant also asserts, also without success, that the ownership of the poster collection devolved upon the then possessor by operation of law, because Plaintiff's father had not filed a restitution claim to it. The Restitution Ordinance's purpose was to secure an accelerated restitution of identifiable assets (cf. BGH, Decision of February 28, 1955 – GSZ 4/54, BGHZ 16, 350, 360). If claims based on this ordinance could no longer be asserted because of the exclusionary character of the deadline for filing them, the person who possessed the object at the time did, it is true, no longer have to be exposed to restitution claims. However, this did not mean that an original acquisition of ownership by parties obligated to restitute, who had obtained possession only, and not ownership, of the seized object, was bound up with this.

4. Defendant does not object to the appeals court's assumption that Plaintiff's father also did not lose ownership of his poster collection at a later point in time. Insofar, legal errors are not evident either.

IV.

Thus, the appeals decision is to be revoked to the extent it was contested by the Revision (§ 562 Para. 1 ZPO). The Senate has to decide on the merits themselves, since the revocation of the decision occurs only because of an infringement in the application of the law and since according to the latter the case is ready for the final decision (§ 563 Abs 3 ZPO [Code of Civil Procedure]).

V.

The decision on costs is based on § 91 Para. 1, § 92 Para. 2, § 97 Para. 1 ZPO.

Krüger Stresemann Czub

Brückner Weinland

Previous instances:

LG Berlin, Decision of 2/10/2009 - 19 O 116/08

KG Berlin, Decision of 1/28/2010 – 8 U 56/09