[DE] Düsseldorf Appeal Court Exempts Hidden Allegations from “Stolpe Ruling”

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In a judgment of 16 October 2013, the Oberlandesgericht Düsseldorf (Düsseldorf Court of Appeal - OLG) decided that the so-called “Stolpe ruling” does not apply to hidden allegations.

The dispute in the case at hand concerned what the plaintiff claimed was a negative impression created by reading “between the lines” of a report on an insolvency procedure. As far as these “hidden statements” were concerned, an injunction could only be granted against allegations under Articles 823(1) and 1004(1)(2) of the Bürgerliches Gesetzbuch (Civil Code) in conjunction with Articles 1(1) and 2(1) of the Grundgesetz (Basic Law) if a distinction was made between the communication of individual facts from which readers could draw their own conclusions and an actual hidden statement in which the author, through the interplay of open statements, created an additional factual statement or forced readers to draw a particular conclusion. According to the OLG, only in the latter case could a hidden statement be equated with an open statement by the author and therefore justify an application for an injunction. However, in view of the freedom of the press, an injunction could not be granted if the reader drew his own, non-compelling conclusions from the facts reported.

The OLG referred to the so-called “Stolpe ruling” of the Bundesverfassungsgericht (Federal Constitutional Court), under which an injunction could be granted against ambiguous statements even if only one of a range of possible meanings infringed the privacy of the person concerned. In order that the chilling effect of court sanctions did not excessively infringe the freedom of expression, the Bundesverfassungsgericht had, at the same time, given the author the opportunity to clarify his statement in a declaration to the person concerned. Any claim to a future injunction was therefore excluded on account of the subsequent removal of the risk of a repeat infringement.

In the case at hand, however, the OLG Düsseldorf adhered to the traditional case law of the Bundesgerichtshof (Federal Supreme Court - BGH), according to which, where “hidden statements” were concerned, the aforementioned distinction had to be drawn between the open communication of individual facts, from which the reader independently drew his own conclusions, and the interplay of open statements that forced readers to draw a particular conclusion. The principle behind the Stolpe ruling only applied in the latter case. Since, in the present case,

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readers had not been forced to conclude that an insulting statement had been made, the freedom of the press was worthier of protection than the plaintiff's general right to privacy.

Urteil des OLG Düsseldorf vom 16. Oktober 2013 (Az. I-15 U 130/13)

http://www.damm-mann.de/assets/DammuMann_20131028122942.pdf

Ruling of the Düsseldorf Court of Appeal of 16 October 2013 (case no. I-15 U 130/13)

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