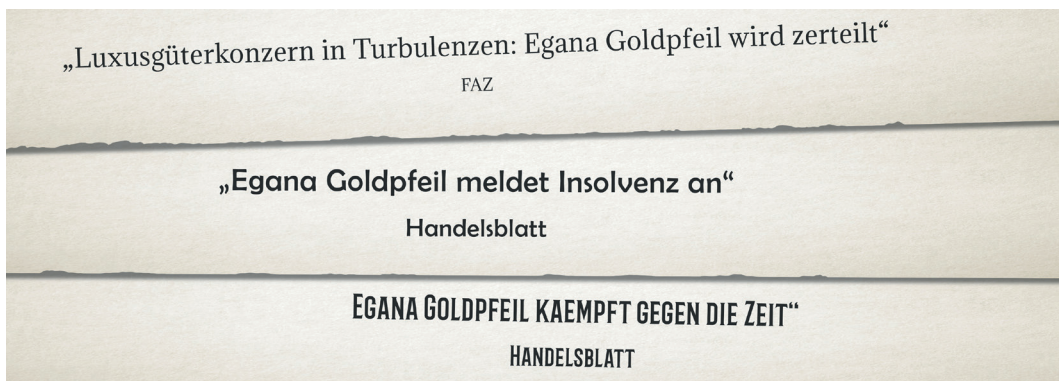


NEWSLETTER

MAY 15, 2018

IUSLAKE WINS IN APPELATE COURT ON BEHALF OF INSOLVENCY ADMINISTRATOR OF EGANAGOLDPFEIL DEUTSCHLAND GMBH



The defendant is the insolvency administrator of EganaGoldpfeil Deutschland GmbH, whose insolvency proceedings were opened in 2009. In this insolvency proceedings, the plaintiff, SEB AG, has enrolled claims from a guarantee agreement concluded with Egana Goldpfeil Deutschland GmbH totaling more than EUR 21 million. The guarantee agreement, which contained a typical limitation language, was part of a loan contract for a comprehensive refinancing of the Egana group in the higher triple-digit million range. This loan agreement was signed by the same two authorized representatives both for the borrower and for the collateral provider. At the time of signing, both authorized representatives were not exempt from § 181 BGB.

After the defendant was inferior in the first instance (inter alia, by reference to the reasons for the decision in a previous parallel procedure), he was able to fully enforce himself in the appellate court with his legal opinion. In particular, the 13th Senate of the Frankfurt Court of Appeal, with judgment of 11 April 2018 (13 U 31/16), followed the argument that the guarantee agreement was reached in violation of section 181 German Civil Code. It is also remarkable that the Senate has expressed the opinion that the loan agreement is exceptionally a change of contract in the form of novation (debt substitution). Moreover, as the plaintiff had failed to register the original loan receivables as a means of insolvency, their subsequent assertion by the plaintiff in the appellate body was also inadmissible. The success of the defendant was all the more gratifying when the Senate had initially suggested to the defendant, in the context of a rejection decision, to withdraw the appeal. Regrettably, in the context of his statement of reasons, the Senate has omitted to respond to the defendant's plea that the limitation language may also be raised after the opening of insolvency. The revision has not been approved.

The Iuslake team represented the insolvency administrator, Mr. Jochen Humbeck (former partner Herrmann Rechtsanwälte, now humbeck law) in both instances and consisted of Dr. Andreas Hautkappe and Dr. Stephanie Schmidt-Ehemann. Iuslake has consulted with colleague Marcus van Bevern, Kantenwein Zimmermann Spatscheck & Partner for questions of revision law.

SEB AG was advised in both instances by Dr. Holger Ellers and Dr. Heiko Plassmeier, Baker McKenzie. Baker McKenzie had also advised the Egana-Group on financing matters regarding the refinancing.

If you have any queries, please contact Dr. Andreas Hautkappe or Dr. Stephanie Schmidt-Ehemann. For more information, please be referred to www.iuslake.de.