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DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

20001

FILE: B-200402

DATE: November 6, 1981

MATTER OF: Claim of Tran Quy Minh

- DIGEST:
1. Tran Quy Minh should be awarded \$5,000 on \$10,000 claim for rent payments since Mr. Minh's former wife might present a future claim arising from the same occurrence. The 6-year Statute of Limitations in 31 U.S.C. § 71a is not a bar since claim accrued less than 6 years before the date claim was submitted to GAO.
 2. Rule that conversion from foreign currency into dollars takes place at time claim is brought is inapplicable since lease provision indicated that parties intended to maintain rate of exchange mentioned in lease.

This responds to a request from Representative Larry J. Hopkins for reconsideration of our Claims Group's denial of a claim of Mr. Tran Quy Minh on the ground that the claim was barred by the 6-year Statute of Limitations in 31 U.S.C. § 71a. Z-2823296, June 26, 1980. For the reasons given below, we have determined that the Statute of Limitations is not a bar to recovery. We have also determined that the amount owed Mr. Minh should be paid in dollars at the rate of 80 South Vietnamese piasters to the dollar. Accordingly, we have concluded that Mr. Minh should be awarded the sum of \$5,000, one-half of the amount claimed, since Mr. Minh's former wife might present a future claim for the remainder.

1. Facts

On August 13, 1965, Mr. Minh leased to the United States, through the United States Army, the premises at 65 Trinh Phong Street, Nha Trang, Vietnam, for a 1-year term at the rate of 30,510 piasters per month (Lease No. USARV-E-172-66). The lease was renewable for four additional 1-year periods under the same terms and conditions as the original lease. An amendment to the lease, agreed to on the same day, provided:

"* * * [i]n the event that the official rate of exchange, which is presently 80\$VN per US\$1.00, is varied upward or downward 20% or more between the first day of a term and the first day of the subsequent term, negotiations shall be reopened at the end of the term to establish a new rental price for the subsequent term."

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The lease was renewed for 4 additional years, as provided in the agreement. Prior to its final expiration, the parties agreed to its extension for an additional year under the same terms and conditions as the original lease. (Supplemental Agreement No. 3.) The lease was similarly renewed the following year. (Supplemental Agreement No. 4, August 12, 1971.) Supplemental Agreements 3 and 4 also were signed by Mrs. Vu Thi Phu, Mr. Minh's former wife. Further, a provision of Supplemental Agreement No. 4 stated that "* * * the rental payment has been held in abeyance at the request of the Lessor since 1 March 1968 pending final decree of divorce settlement. * * *" This provision apparently was included because of an order Mrs. Phu obtained from the Saigon Court of First Instance, which in effect enjoined the Army from making rent payments to Mr. Minh pending disposition of the divorce proceeding between Mr. Minh and Mrs. Phu.

The lease was terminated by the United States in October 1971. Although we do not have a copy of the court order enjoining rent payments, we assume from the statement in Supplemental Agreement No. 4, quoted above, that the order went into effect in March 1968. In any case, rent was not paid for 43 months. At the rent and exchange rate provided in the lease, this would amount to approximately 1,312,000 piasters or \$16,400.

Approximately 1 year after termination of the lease, Mr. Minh signed a Claims Settlement Agreement providing that the United States pay Mr. Minh 289,000 piasters, apparently for damages to his premises and its furnishings. The agreement did not specifically include rent payments. Moreover, the carbon copy of the agreement transmitted to us, which we understand was made from the original, was not signed by a representative of the United States. In June of 1973, an Army status report indicated that \$3,102.71 was committed on the lease. This amount could have been the dollar equivalent of the 289,000 piasters mentioned in the Claims Settlement Agreement. The report also stated that "* * * [f]inal payment and restoration claim is still pending, awaiting court order for distribution of money. * * *" A subsequent status report indicated that a voucher had been prepared and submitted for final payment and restoration of \$2,985.42 with a remaining balance of \$117.29. However, Mr. Minh has never received the payment.

Mr. Minh informally has informed us that the Claims Settlement Agreement provided only for damage to the leased premises and did not include the rents due. However, on its face the agreement released any claim Mr. Minh may have had "arising out of the occupancy" of the leased building.

Subsequently, in October 1974, in reply to an inquiry from the Army Real Estate Office, Mr. Minh suggested that the owed rents be

paid to Mr. Minh's and Mrs. Phu's lawyer pending a final decision in the divorce proceedings. Mr. Minh also stated that it was the opinion of both himself and Mrs. Phu that the amount due would be divided between them. In March 1975, Mr. Minh informed the Real Estate Office that there was little chance his divorce case would be settled in the near future and suggested that the Army pay him the money, for which he would be responsible until the court's decision. The Army was unwilling to make this payment without further information on the divorce case, which the Saigon court was unable to provide. Mr. Minh then offered to write a letter to Mrs. Phu asking her to come to Saigon so they could reach a compromise concerning the rental payment. Apparently, this did not occur and, in late April 1975, Mr. Minh left Vietnam in the final evacuation and came to the United States.

Some 2 1/2 years later, Mr. Minh wrote to the "Defense Attache Office" of the Naval Supply Center claiming he had lost all the papers relating to the lease as a result of his swift departure from Vietnam and asking for assistance both in finding the agreements and in receiving payment in dollars of the rental owed him. In his letter Mr. Minh claimed that he had leased to the Army not only the premises at 65 Trinh Phong Street, but also those at 65B Trinh Phong Street. (Lease No. USARV-1025A-66.)

The Navy apparently transmitted Mr. Minh's letter to the Army Directorate of Real Estate, which, after receiving more information from Mr. Minh, transmitted to our Claims Group Mr. Minh's claim for final payment and restoration, which it characterized as amounting to 289,000 piasters (the amount provided in the Claims Settlement Agreement). The transmittal letter suggested that the 6-year period of limitations set forth in 31 U.S.C. § 71a precluded further consideration of the claim.

After our Claims Group denied Mr. Minh's claim on the basis of its being barred by 31 U.S.C. § 71a, Mr. Minh asked Representative Hopkins for assistance. In his letter to the Congressman, Mr. Minh stated that in mid-April 1975, the United States Army Real Estate Service called for him to receive final payment of approximately 1,000,000 piasters but that he had no time to get it because he had to leave Vietnam immediately. Congressman Hopkins then asked this Office to investigate Mr. Minh's claim. Our Claims Group treated the Congressman's letter as an appeal of its decision, and, subsequently, the matter was submitted to our Office of General Counsel. Mr. William Reed, Mr. Minh's attorney, subsequently presented a settlement offer of \$10,000, a figure consistent with Mr. Minh's estimate that he is owed something more than \$10,000.

2. Law

Prior to discussing the Statute of Limitations and currency exchange rate problems raised by Mr. Minh's claim, we think it pertinent to describe briefly our proof requirements. Generally, we have required all claims against the Government to be supported by the best evidence obtainable. 55 Comp. Gen. 402, 404 (1975). However, we have also held that when unusual circumstances make that presentation impossible or impractical we would exercise our discretion in establishing the quantum of evidence necessary to certify a claim. In this regard, we have stated we would accept other pertinent data from which the necessary information might reasonably be reconstructed. Id. at 404-05.

Although the facts presented in support of Mr. Minh's claim are not as fully corroborated as we might like, the circumstances of war and forced evacuation are sufficiently unusual to allow us to make findings of fact that might otherwise require additional support. In this regard, we find that the Army held in abeyance the rent payments owed on the leased premises from March 1968 through October 1971 because of the pending divorce proceedings; that no rental payments have been made since March 1968; that as of March 1975 the divorce proceedings between Mr. Minh and Mrs. Phu had not yet terminated; that Mrs. Phu might have been awarded a portion of the rent proceeds as part of the divorce settlement; and that there is insufficient evidence to support Mr. Minh's claim that he also leased premises to the Army at 65B Trinh Phong Street.

(a) Statute of Limitations

Section 71a of title 31 of the United States Code provides that a claim against the United States shall be barred unless received within the General Accounting Office (GAO) within 6 years after the date it accrues. Mr. Minh's claim was received in GAO on June 6, 1980. Therefore, unless his claim accrued on or after June 6, 1974, it is barred by the limitation in 31 U.S.C. § 71a.

Generally, a cause of action accrues, and a statute of limitations begins to run, as soon as the facts exist which allow the plaintiff to institute and maintain a lawsuit against the defendant. See Hodge v. Service Machine Co., 438 F.2d 347, 349 (6th Cir. 1971); Konecny v. United States, 388 F.2d 59 (8th Cir. 1967). In this case, Mr. Minh could have first brought a lawsuit at the time that the United States refused to pay him rental payments he was entitled to receive.

From the record it is impossible to determine precisely when the United States first refused to pay Mr. Minh. The fourth supplemental agreement to the lease indicates that the United States withheld rental payments after March 1, 1968, "at the request of the Lessor [Mr. Minh]." However, a memorandum in the Army's Real Estate Record File, dated March 14, 1975, states that all rental payments had been frozen by an order from the Saigon Court of First Instance. We do not have a copy of the court's order and we assume one is not now available. Because we do not know for sure the exact reason why the Army withheld rental payments, we must speculate about several possibilities to determine the earliest possible date that Mr. Minh could have been entitled to payment and been refused by the United States.

If, because of the pending divorce proceedings, Mr. Minh requested the Army to hold his rent payments in abeyance, this would have constituted a waiver of his right under the contract to receive quarterly payments. So long as this waiver remained in effect, the withholding of rent payments by the Army did not constitute a refusal to pay Mr. Minh money to which he was entitled. It would have only been when Mr. Minh indicated that he no longer was waiving his rights to receive payment that withholding by the Army would have been a refusal to pay, and, thus, given rise to Mr. Minh's cause of action.

The earliest possible indication we can find in the record that Mr. Minh was requesting payment, and thus withdrawing his waiver, was his October 1974 letter to the Army Real Estate Office suggesting that payment be made to his attorney pending a final decision in the divorce proceeding. If Mr. Minh's cause of action is considered as having accrued at the time of this letter, it is not barred by the statute of limitations, because Mr. Minh's claim was filed in the GAO within 6 years.

There are two other events in the record which might be considered as showing Mr. Minh withdrew his waiver of payment. The first was his oral request to the Army Real Estate Office in March 1975 that he be paid the money, pending the divorce settlement. The second was his September 9, 1977, letter to the Naval Supply Center requesting that he be paid the rental that he was owed. If either of these constituted the accrual of Mr. Minh's claim, it is, again, not barred.

On the other hand, it is possible from the record that the Army withheld the rental payments because it was required to do so by the order of the Saigon court. This order may have been directed at Mr. Minh, enjoining him from accepting any payments, or it may have been directed at debtors, ordering them not to make any payment to Mr. Minh. In either event, during the time that this order was

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effective Mr. Minh would not have been entitled to receive payment, and thus the Army's withholding the rent would not have given rise to a cause of action.

In our opinion, the court order would have been effective against the United States and Mr. Minh so long as the South Vietnamese regime remained in power and the Army and Mr. Minh were within the jurisdictional area of the Saigon court. The fall of the South Vietnamese regime and the evacuation of the Army and Mr. Minh from Vietnamese territory, occurred in April of 1975. It was at this time that the court order no longer would have prevented the Army from paying Mr. Minh, and therefore Mr. Minh's claim would have accrued. If this were the time of accrual, Mr. Minh's claim would not be barred.

In our view, based on the above, the earliest that Mr. Minh's claim against the Army could have accrued was October 1974. Since this was after June 6, 1974, the date which was 6 years before the filing of the claim, Mr. Minh's claim is not barred by 31 U.S.C. § 71a.

(b) Rate of Exchange Between Piasters and Dollars

When payment is due in a foreign country in the currency of that country, the general rule is that conversion from the foreign currency into dollars takes place at the time of judgment. Deutsche Bank Filiale Nurnberg v. Humphrey, 272 U.S. 517, 519-20 (1926); Tillman v. Russo Asiatic Bank, 51 F.2d 1023, 1025 (2d Cir. 1931) cert. denied, 285 U.S. 539. This rule has been followed in several Comptroller General decisions involving claims against the United States on obligations to be paid in South Vietnam in piasters. For example, in B-192685, May 14, 1979, we denied a claim for services rendered to the United States in South Vietnam on a contract providing for payment in piasters since, at the time the claim was brought, the piaster had no present value. Similarly, in B-189121, November 30, 1977, we denied a claim for payment in dollars based on the value of the riel (the currency of the Khmer Republic) at the time a lease with the United States commenced, because the lease provided for payment only in riels and at the time of the decision the riel was valueless. In both of these cases, payment in the contract and lease was provided for only in piasters or riels without pegging that currency to an equivalent in dollars.

The strict application of the Deutsche Bank rule necessarily would render Mr. Minh's claim worthless since the piaster currently has no value. However, unlike the obligations in the cited

Comptroller General decisions, Mr. Minh's lease with the United States provided that:

"* * * [i]n the event that the official rate of exchange, which is presently 80\$VN per US\$1.00 is varied upward or downward 20% or more between the first day of a term and the first day of the subsequent term, negotiations shall be reopened at the end of the term to establish a new rental price for the subsequent term."

Since this provision was not changed during the 6-year lease period, we assume that the parties intended to maintain the rate of exchange mentioned in the lease, that is, 80 piasters to the dollar. Cf. Truong Xuan Truc v. United States, 212 Ct. Cl. 51, 58, 64-65 (1976). We think this provision, which establishes a particular rate of exchange between piaster and dollar, and covers risks of currency fluctuations to both those currencies, distinguishes this case from Deutsche Bank and the Comptroller General decisions relying on it. Thus, we conclude that the amount owed Mr. Minh should be paid as the parties intended, in dollars at the rate of 80 piasters to the dollar.

3. Award

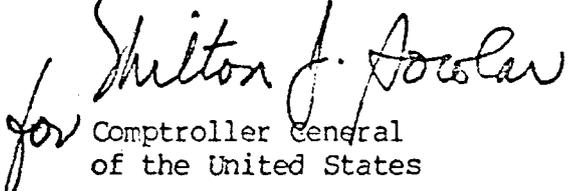
Our file shows that Mr. Minh estimates he is owed something more than \$10,000, a figure in accord both with his attorney's offer to settle the matter for \$10,000 and with the figure of one million piasters ^{1/} also suggested by Mr. Minh. If the amount due for the 43 month period during which rent was not paid is computed at the rent and exchange rate provided in the lease between Mr. Minh and the United States, the total would be approximately \$16,400. On the other hand, the Claims Settlement Agreement described above provided for a payment of 289,000 piasters, or some \$3,600 at the rate of exchange provided in the lease. The problem with using the Claims Settlement Agreement figure as the amount due is that it is not clear whether that Agreement included both rents due and damage to the premises or just damage to the premises. Furthermore, the agreement was never signed by the Government nor was payment made pursuant to its terms.

In view of the different figures presented, we consider the \$10,000 suggested by Mr. Minh's attorney to be the reasonable value

^{1/} This assumes an exchange rate of 80 piasters to the dollar.

of the claim. However, we cannot pay the full amount to Mr. Minh. Mrs. Phu, Mr. Minh's former wife, may be entitled to a portion of any payments under the lease as part of the divorce settlement with Mr. Minh, particularly since the record indicates that she has an interest in such payments. Since there is a possibility that she or her successors in interest could present a future claim against the United States for her part of the lease proceeds, Mr. Minh can be awarded only half of the amount claimed, that is \$5,000.

We assume that it is unlikely that Mr. Minh's former wife would be entitled to more than 50 percent of the amount unpaid under the lease. Although Mr. Minh was willing to sign an agreement to make the United States whole, should we ever be required to pay his former wife's share, we do not think it would provide sufficient protection to the Government's interests in the event of Mr. Minh's future inability to pay. Moreover, as a condition of receiving payment we would require that Mr. Minh agree that the \$5,000 award includes rent payments owed on the lease of the premises at 65 Trinh Phong Street, and any rents claimed by Mr. Minh under the alleged lease at 65B Trinh Phong Street, as well as any sums allegedly due for damages.

for 
Comptroller General
of the United States