



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Claim of Ngu Hung Tran

File: B-217439

Date: June 2, 1987

DIGEST

Since the claimant has not satisfied the burden of proof necessary to support his claim, claim for rent payments arising from a rental agreement between the claimant and the United States Army is denied. Z-2846403-089, Oct. 6, 1986, is affirmed.

DECISION

Ngu Hung Tran asks for reconsideration of Z-2846403-089, Oct. 6, 1986, in which we denied his claim for rent payments totaling \$63,984. For the reasons given below, we affirm the denial of his claim.

Background

By letter of August 23, 1980 to the Secretary of Defense, Mr. Tran claimed that early in 1974 he entered into a contract with the United States Army for rental of property including a warehouse, helicopter field and parking lot, at a rate of approximately \$6,398 per month.^{1/} Rent payments were to be made every 3 months, with notice of termination to be given 1 month prior to termination. The rental contract was to continue unless notice of termination was given. Mr. Tran alleges that he did not receive payments from July 1974 to April 1975, totaling \$63,984, because the Army's budget was not approved on time. He also claims he is owed \$383,904 for payments between May 1975 and June 1980.

The record suggests that after the United States evacuation from Vietnam in April 1975, Mr. Tran was incarcerated and

^{1/} It appears that this amount was to be paid in piasters.

tortured by government authorities, and, as a result, suffered serious injuries. Apparently, he escaped from Vietnam in July 1979, and reached the United States in June 1980.

In his letter to the Secretary of Defense, Mr. Tran mentioned that his dealings were with S. H. Kulp, the Chief of Army Real Estate in Saigon. Mr. Kulp's statement of the facts differed somewhat from Mr. Tran's. Mr. Kulp informed the Army that he was responsible for developing policies and procedures for real estate acquisition. He stated that rental agreements were not written for more than 5 years, and more typically were written for a 1-year period with renewal options at predeveloped rental schedules. Mr. Kulp suggested Mr. Tran's lease was for a 2-year period that may have begun in mid-1972.

Mr. Kulp was unable to confirm or deny Mr. Tran's statements about payments in 1974; however, to the best of his knowledge, he thought that funds for lease payments always were available. He also thought that the most Mr. Tran could be owed would be rental for the period between October 1974 and April 1975.

We received Mr. Tran's claim on December 16, 1980. The Army forwarded Mr. Tran's claim to us to bar running of the 6-year period of limitation in section 3702(b) of title 31 of the United States Code. Previously the Navy had located two vouchers showing payments to Mr. Tran under lease USARV-E-1515-72, apparently in piasters, on June 9, 1973 and November 20, 1973. The second payment was for the period December 1, 1973 through February 28, 1974. Neither the Army nor the Navy were able to find any evidence of a lease beyond February 1974. In Z-2846403, Nov. 30, 1983, our Claims Group denied Mr. Tran's claim on the ground that it was barred from our consideration by the 6-year period of limitation set forth in section 3702(b) of title 31 of the United States Code.

Subsequently, Mr. Tran filed an action against the United States in the United States Claims Court, essentially for the same amounts and on the same grounds. Tran v. United States, No. 655-84c (U.S. Cl. Ct. filed December 10, 1984). In its order of July 18, 1985, the court found that after Saigon fell and the jurisdiction of both the South Vietnamese and United States Governments ceased on April 30, 1975, there was no further contractual relationship between the United States and Mr. Tran. The court thus concluded that Mr. Tran's claim must have accrued prior to April 30, 1975, and was therefore barred by the statute of limitations

in section 25012/ of title 28 of the United States Code. At oral proceedings, the court suggested that Mr. Tran's only remedies were through reexamination by this Office or a private relief bill. Transcript of the Proceedings at 26-30, Tran v. United States, Case No. 655-84c (U.S. Cl. Ct. July 17, 1985). In this regard, the court suggested that this Office had incorrectly applied the 6-year period of limitation in section 3702(b) of title 31 to part of Mr. Tran's claim. Id. at 29.

On reconsideration, our Claims Group acknowledged that its initial decision about application of the 6-year period of limitations in section 3702(b) of title 31 was in error. It found that if the lease had continued to run until April 30, 1975, the claim for payments for the period after December 30, 1974 would not have been barred. Nevertheless, the Claims Group found that there was insufficient evidence to support the claim. Z-2846403-089, Oct. 6, 1986.

Mr. Tran again has requested reconsideration, maintaining that there is "substantial collateral validation of the fact that the lease did run until the United States withdrew from Viet Nam." The validation he relies on is Mr. Kulp's belief that this was so, Mr. Tran's own statements, and the fact that the United States Government was using Mr. Tran's land until its withdrawal in April 1975.

Legal Discussion

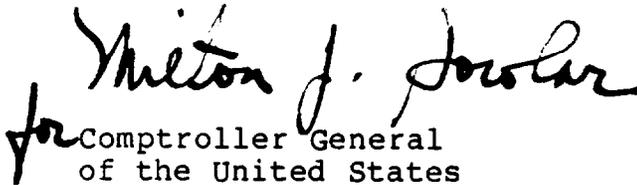
We agree with the Claims Group's corrected statute of limitations determination. Mr. Tran's claim was filed with this Office on December 30, 1980. Thus, if he did have a lease agreement with the United States Army, any payments that were due between December 30, 1974 and April 30, 1975 would not have been barred by the 6-year period of limitations set forth in section 3702(b) of title 31. We agree with the United States Claims Court that the United States would have no obligation to pay amounts claimed between April 1975 and June 1980, even if there had been a lease agreement covering the period. In this regard the court said: "[t]he intervention of hostile forces and the change

2/ Section 2501 generally provides for a 6-year statute of limitations, but allows an additional 3 years for persons under legal disabilities or who are beyond the seas when a claim accrues. The court noted that Mr. Tran's disability ceased in June 1980 when he moved to the United States. Since the complaint was filed on December 10, 1984, nearly a year beyond the running of the additional 3-year period, the court found the claim to be barred.

in governmental structure" made it impossible for Mr. Tran to make his property available or for the United States to accept it after April 30, 1975. Tran v. United States, Case No. 655-846 (U.S. Cl. Ct. July 18, 1985).

Regardless of the statute of limitations issue, however, the evidence presented by Mr. Tran is not sufficient to support his claim. It is well established that the burden of proof in establishing the liability of the United States is on the claimant. 4 C.F.R. § 31.7; 31 Comp. Gen. 340, 341 (1952). We regret the very painful experience that Mr. Tran suffered after the American evacuation from Vietnam, and agree that it would have been next to impossible for him to have retained records supporting his claim. Nevertheless, what little information we have been able to gather does not warrant our finding that a lease contract did exist between Mr. Tran and the United States during the period December 30, 1974 through April 30, 1975. Other than his own statements, Mr. Tran has not presented any evidence either that a lease existed for the period in question or that the Army continued to use his property until April 1975.

Mr. Kulp, the Army Real Estate official who dealt with Mr. Tran, recalled the location and use of the area but believed the rental period began in mid-July 1972. He also guessed that the lease was for a 2-year period, and thus would have ended in July 1974. Moreover, in conflict with Mr. Tran's assertions, he believed monies were available for rent payments during the entire period at issue so that the failure to make payments was not based on a lack of available funds. Accordingly, we affirm Z-2846403-089, Oct. 6, 1986.


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