DECISION

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

FILE: B-185960 DATE: August 19, 1976

MATTER OF: Lessor's FIART, L.D.B. and ISMEIM

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DIGEST:

1. Regulation of national currency constitutes a sovereign act. Therefore lessor is not entitled to additional rental from United States Government for lease of land and buildings in foreign country because of devaluation of dollar.

2. Where lease agreements with United States in foreign country provide for payment of rental in dollars, lessor may not be paid amount in excess of stipulated rental on theory that intrinsic value of dollar as expressed in gold has decreased, since dollar may not be considered as specie having intrinsic value.

3. Fact that agency includes "cost of living" clause in its current lease contracts does not authorize granting of relief under existing lease contracts of agency which do not contain such a clause.

4. While provision of foreign law allows contractual relief where performance becomes excessively onerous, foreign lessor may not be allowed additional rental payments by United States agency based on present record, since claimant has not furnished data to support its claim of increased costs and since it it not clear that relief provision applies to leases. However, if agency subsequently determines that provision should be applied, relief may be afforded.

The Naval Facilities Engineering Command (Navy) has submitted for our decision claims for additional rental by Societa per Azioni FIART (Fabbriche Italiane per l' Applicazione della Resine Termoindurenti), acting on behalf of itself and the Instituto Meridionale Immobiliare (ISMEIM) and the Societa Loy Dona and Brancaccio (L.D.B.) (collectively, FIART).

The record discloses that the Navy has entered into a number of rental agreements with FIART, for land and buildings all located in Naples, Italy. The buildings were erected or modified by FIART, for use by the Navy. These agreements obligate FIART to provide all extraordinary maintenance and include restrictions against alienation. The leases covered a period of nine years,

commencing on various dates from April 15, 1960, through September 8, 1968, subject to subsequent amendments between the parties. Each agreement as amended provides for a term of years, with options thereafter in the Navy to renew the lease from year-to-year for stated periods, expiring on dates from June 30, 1981, to June 30, 1987. The agreements are for a fixed price, and contain no escalation clauses.

FIART asserts that it has suffered unanticipated financial losses in regard to these transactions, which it attributes to devaluation of the value of the dollar relative to the value of gold and to inflation. In particular, FIART has claimed that interest rates and labor costs have increased three-fold. FIART has estimated that it is incurring annual cash losses in excess of rent receipts.

FIART contends that it is entitled to rent in excess of that being paid on the basis:

> " * * * that the Government of the United States, which is directly one of the contracting parties in our contracts, cannot arbitrarily devaluate the object of its performance, i.e., the dollar, without applying a corrective coefficient to the rentals for the purpose of maintaining unchanged the total contractual value of said performance."

We do not agree with this contention. Regulation of a national currency is clearly a sovereign act. A distinction must be made between the acts of the United States as sovereign, and those obligations which the Navy may incur as a party to a particular agreement. This view is reflected in SIMMEL, Industrie Meccaniche S.p.a., B-181687, September 23, 1975, 75-2 CPD 167, wherein we held that devaluation of the United States dollar during the original and extended term of a contract denominated in dollars would not support price adjustment since the United States is not liable as a contractor for the consequences of its acts as sovereign absent contractual provisions authorizing modification in such an event. Cf., also, 53 Comp. Gen. 157 (1973).

FIART also relies on Italian Civil Code § 1280, which provides that:

> "* * * Payment shall be made in specie having intrinsic value, if it is so provided in the instrument or transaction constituting the debt, provided that such specie was legal tender at the time when the obligation arose.
>
> "However, if such money is unavailable, or is no longer legal tender, or if its intrinsic value has changed, payment shall be made with current money representing the intrinsic value of the specie at the time when the obligation was assumed."

FIART states that it was agreed that the dollar would be the measure of rental value because it was:

> "* * * desir[ed] to honestly guarantee a stable balance between the real lease value of the properties and the real value of the rentals * * * in that the dollar was a money steadily hooked up to * * * gold and therefore having an intrinsic value as officially guaranteed by the American Government lessee."

The short answer to this contention is that the dollar is not legal tender in Italy, whereas the provisions of Italian Civil Code § 1280 expressly apply only to a "specie" which "was legal tender at the time when the obligation arose." In this connection, it appears that the rent has been paid in lira for that reason.

FIART next maintains that we should consider this dispute from an equitable standpoint, and in particular, we should give weight to its belief that the Navy "is now using in [similar] contracts * * * a clause by which the rentals are automatically adjusted in accordance with the variations of the cost of living indexes published by the 'Istituto Centrale di Statistica'."

This Office is without authority to consider a request for modification, reformation, rescission or cancellation of an agreement on equitable grounds. Cf. Clark Manufacturing, Inc., B-182789, June 26, 1975, 75-1 CPD 388; Genuine Motor Parts, Inc., B-182204, December 16, 1974, 74-2 CPD 347. Moreover, no officer or employee of the United States is empowered to modify an existing

Government contract or lease, to favor another party, or to surrender or waive a right inuring to the United States, except in receipt of some compensating benefit by the Government. 40 Comp. Gen. 309, 311 (1960); cf. B-174058, October 18, 1972. Therefore, the fact that the Navy now includes a "cost of living" clause in its lease contracts would not authorize relief under the instant lease contracts. In the absence of such a clause, stability of price is one of the elements which a contractor is presumed to take into account, "and he cannot expect the other party to guarantee him against unfavorable changes in those prices." Chouteau v. United States, 95 U.S. 61, 68 (1877).

Finally, FIART argues that Italian Civil Code § 1467 "establishes a law for the protection of the contracting party which encounters difficulties." The provision cited provides:

> "* * * In contracts for continuous or periodic performance or for deferred performance, if extraordinary and unforeseeable events make the performance of one of the parties excessively onerous, the party who owes such performance can demand dissolution of the contract * * *.
>
> "Dissolution cannot be demanded if the supervening onerousness is part of the normal risk of the contract.
>
> "A party against whom dissolution is demanded can avoid it by offering to modify equitably the conditions of the contract."

FIART states that because of "the dollar devaluations and because of the disastrous increase of the costs and of the bank interests" it is unable to perform its obligations under these lease agreements and remain in business. FIART states that it faces bankruptcy if relief is not forthcoming, which would result in the forced sale of its property. As the Navy points out, however, the claimant has not furnished detailed accounting data to support its contention. Therefore we are unable to determine if cost increases have made performance of these lease contracts excessively onerous for the claimant. Moreover, we note that there is a question whether Italian Civil Code § 1467 is intended to apply in the case of lease payments. Under the circumstances we cannot authorize rental adjustments on the basis urged. However, if the Navy should determine that Section 1467 may be applied and if the claimant is able to demonstrate to the Navy that

its situation falls within the reach of that section we would not object to appropriate relief in accordance with the provisions of that section.

R.F. Keller

Deputy Comptroller General
of the United States