

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
Washington, D. C.

In the Matter of the Claim of

REGINALD PARKER

College of Law

Willamette University

Salem, Oregon

Docket No. Y-1018

Decision No. 1201

Under the Yugoslav Claims Agreement
of 1948 and the International Claims
Settlement Act of 1949

affirmed
HC
12-9-54

FINAL DECISION

A Proposed Decision was issued on September 1, 1954, denying this claim on the ground that claimant had not met the burden of proving that he owned property or a right and interest in and with respect to property which was taken by the Government of Yugoslavia. Subsequent to the issuance of the Proposed Decision, claimant filed objections, with accompanying brief, and an affidavit executed by Emilio Von Hofmannsthal.

Claimant's first objection is to the Commission's finding that he never acquired title to the stock. In support of this position claimant shows that the word "titulus" should not be translated as "title", since it means "claim", and concludes that the Proposed Decision "quotes, and mistranslates, the last sentence of § 451 of the Austrian Civil Code".

Reference to the Proposed Decision, however, shows that the word "title" did not appear in the translation we quoted. In fact, that quotation agrees with claimant's to the effect that a pledge

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does give the creditor a claim (titulus), and we never indicated otherwise. Our finding was that a pledge does not give title in the sense of ownership, and claimant has not attempted to contradict that finding.

Claimant next assigns as error what he conceives as the conclusion in the Proposed Decision that if he had acquired title, it would have been extinguished. But the Proposed Decision did not find that title was lost. It held that the evidence, while inconclusive, indicated that the pledge was lost and that he had not established ownership of the stock or that he was a pledgee of the stock on the date of taking.

Claimant's argument that he could have instituted proceedings to obtain substitute certificates in case of their loss is irrelevant. We did not hold that the certificates were lost; we held that the evidence indicated the pledge was lost.

Finally, claimant has filed an affidavit executed by Emilio Von Hofmannsthal, who swears as follows:

"When I learned from the contents of the 'Proposed Decision' page 2, last paragraph that 72,884 of the existing 80,000 shares, the whole block of shares belonging to the partners and family members of the Ludwig Marx, Gaaden, including my 2000 shares, 'were kept in a safe in the Yugoslav factory' it was clear to me what had happened: Dr. Konrad Links had sent them thereto for voting purposes at the next shareholders meeting. There, they were rightly kept in the safe mentioned under 2.) As transportation of securities over a border was not easy at that time, the shares were left there for further shareholders meetings, and also for the changing of their nominal value in 1941 (affidavit Dr. Links). No wonder that after so many years Dr. Links may not have recalled the sending of these shares what might have been done by a clerk in his law office. Based on my experience with corporations in Central Europe I declare that the holder of shares does not lose constructive possession by sending them to the corporation for voting or similar purposes."

This affidavit is manifestly incompetent to establish what it seeks to establish - that Links sent the certificates to the Yugoslav company to be kept in a safe for voting purposes. The affiant has no

personal knowledge of the disposition of the share certificates and attempts to substitute his speculation as to what might have happened for the inability of the custodian, Links, to verify their disposition. We can, therefore, accord no probative value to this affidavit.

For the foregoing reasons, the Proposed Decision denying this claim is affirmed.

Dated at Washington, D. C. DEC 15 1954

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PROPOSED DECISION OF THE COMMISSION

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Aug 27, 1954

This is a claim for \$1,715 by Reginald Parker, a citizen of the United States since his birth in the United States on August 23, 1904, and is for the taking by the Government of Yugoslavia of the Ludwig Marx Lackfabrik A.G., a Yugoslav corporation, in which the claimant allegedly owned shares of stock.

The Government of Yugoslavia has advised the Commission that Ludwig Marx Lackfabrik Aktiengesellschaft at Domzale, Yugoslavia was confiscated on February 6, 1945 under the Enemy Property Law of November 21, 1944 (Official Gazette No. 2 of February 6, 1945). That Government has furnished a statement, dated January 20, 1947, which shows that the procedures set forth in the Confiscation Act of June 9, 1945 (Official Gazette No. 40 of June 12, 1945) were carried out by the Decision of the District Commission for Confiscation in Kamnik, Opr. No. 548/2, becoming final by the Decision of the County Commission for Confiscation in Ljubljana, No. 11/46 of February 16, 1946.

The claimant alleges that the Ludwig Marx Lackfabrik, a partnership located in Gaaden, Austria (hereafter referred to as "the Austrian company"), owed him and still owes him for legal services rendered. He further alleges that as security for the debt the Austrian

89
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company pledged to him bearer shares in the Yugoslav company, although he has not specified the number of shares pledged for his debt alone.

As supporting evidence, the claimant has filed a photocopy of what purports to be an agreement made in October 1937 between the Austrian company and three of its creditors, including the claimant. Under the agreement, the Austrian company obligated itself to pay the claimant its debt to him of 4,459.56 schillings plus 5% interest from January 1, 1937, minus payments already made, at a specified rate. As security for the obligations, the Austrian company agreed to pledge in favor of the creditors "the package of Domzale shares at this time deposited with Dr. Links, in a priority immediately following the pledge of Counts Seilern." All remaining installments on the debts were to fall due on default if there were a default of two installments amounting to 1,000 schillings.

The claimant alleges that there was a default of two monthly payments in May 1938, and that the claims of the Counts Seilern were satisfied by the Austrian company on May 5, 1943, their rights in the pledged shares terminating as of that day.

As to the disposition of the stock certificates, the evidence is inconclusive. In an affidavit of April 16, 1952, the above-mentioned Dr. Konrad Links makes no statement regarding their disposition but does state that he left Austria in November 1942. In an affidavit of March 20, 1952, Dr. Georg Weisl of Vienna, who represented claimant and two other attorneys as well as himself in their claims against the Austrian company, states: "The shares were left in custody of Dr. Konrad Links (and have apparently disappeared during the Nazi occupation)."

The Yugoslav Government reports that the shares of the Yugoslav company were kept in a safe in the Yugoslav factory, and has filed documentary evidence that 72,884 shares of the 80,000 shares outstanding

were deposited on January 20, 1947, by the Yugoslav company with the "Denarni Zavod" bank in Ljubljana, pursuant to the Decree regarding the Issue and Registration of Shares of June 17, 1946 (Official Gazette No. 50 of June 21, 1946). The whereabouts of the certificates for the remaining shares is unknown.

Under the civil law, as under our law, a pledgor continues to retain ownership of the property given as security. (Sherman, Roman Law in the Modern World, Vol II, Sec. 623; see also Amos, Roman Civil Law, pp. 153-4.) This proposition is incorporated in Section 451 of the Austrian Civil Code of 1811, as amended, in which it is stated:

"A creditor who is entitled to a pledge does not have any rights 'in rem', but only a personal claim to obtain the thing."

Consequently, the claimant did not acquire title to the stock as a pledgee. Furthermore, claimant has not shown that he subsequently obtained title to the shares by foreclosure under Section 461 of the Code which provides as follows:

"If the pledgee is not paid and satisfied after the time due for the payment, he is entitled to request foreclosure of the pledge through the court. The court has to proceed according to the rules of civil procedure."

We conclude, therefore, that claimant has not proved that he ever acquired title to stock in the Yugoslav company.

Furthermore, the evidence shows that Links lost possession of at least a majority of the shares, since, as has been mentioned, the Yugoslav company deposited 72,884 of the total of 80,000 shares with the bank on January 20, 1947. While bearer shares are considered the property of the pledgor as long as they are in the possession of the pledgee or of his agent, if either disposes of such certificates without the authorization of a court, any bona fide transferee becomes the

legal owner of such shares. (Section 367 of the Code.) Section 467 of the Code provides that a pledge may be extinguished by destruction, renunciation, or return.

While the claimant has filed evidence corroborating his assertion that he acquired a pledge of stock in 1937, he has filed none whatsoever that he held the pledge on or that he had acquired title to the pledged property at the date of taking. On the contrary, the evidence, while inconclusive, indicates that the pledge was lost.

The claimant has not met the burden of proving that he owned property or a right and interest in and with respect to property which was taken by the Government of Yugoslavia; therefore, the claim is denied.

Dated at Washington, D. C.

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