

DEPARTMENT OF STATE
INTERNATIONAL CLAIMS COMMISSION
OF THE UNITED STATES

In the Matter of the Claim of

SIMPSON, SPENCE & YOUNG

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

Docket No. Y-1695

Decision No. 447

PROPOSED DECISION

MARVEL, CHAIRMAN.

This claim is before this Commission upon the proceeding of the Solicitor of the Commission pursuant to Section 300.16 of the Rules of Practice and Procedure of the Commission.

The facts appearing from the evidence before the Commission can be briefly summarized by stating that in March 1944 a charter-party was executed in London between the Royal Yugoslav Government, as owner of the vessel "Vis", and the Charterers, who are described in the contract as "W. S. A. and the Minister of War Transport, on behalf of His Majesty". Article 14 of the charter-party provided as follows:

14. The Charterers or their Agents to advance to the Master, if required, necessary funds for ordinary disbursements for the Vessel's account at any port charging only interest at one per cent, such advances to be deducted from hire.

Claimants allege that they were the "Agent for the vessel" in the United States and on instructions of the agents of the British Minister of War Transport remitted on October 16 and December 4, 1944, a total of approximately eleven thousand dollars to E. Urguidi & Co. of Norfolk, Va., representing cash to be advanced to the Master of the "Vis".

Thus, under Article 14 of the charter-party, the Charterers were required to repay claimants and were then permitted to deduct such disbursements from the hire of the vessel. It thus appears that claimants have not established any debt obligation owing to them by the Yugoslav enterprise. And even if claimants could by adequate proof establish such a debt obligation, they would be in no better position.

The only debt obligations dealt with in the Yugoslav Claims Agreement of 1948 are debt obligations owed by nationalized enterprises (Article 4) and debts owed by Yugoslav residents to any individual, firm, or governmental agency in the United States (Article 10). In its Final Decision No. 39, In the Matter of the Claim of Joseph and Liana Menton (Y-435), this Commission stated:

It is the opinion of the Commission that creditors' interests were not settled or discharged by the Yugoslav Claims Agreement of 1948. Such a claim is not based upon the ownership of property or a right or interest in property. This view is fortified by that of the Senate Committee on Foreign Relations, which in its Report No. 800 stated:

. . . the claims settled do not include creditor interests. They are confined to ownership interest in property, either legal or beneficial, direct or indirect. This is consistent with traditional United States policy in connection with espousals. (Id. at p. 11.)

We reaffirm that holding and this claim is denied in whole.

Commissioner McKeough concurs in the above.

Commissioner Baker will file his concurring opinion.

November 19, 1952

DEPARTMENT OF STATE
INTERNATIONAL CLAIMS COMMISSION
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In the Matter of the Claim of

SIMPSON, SPENCE & YOUNG

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

Docket No. Y-1695

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FINAL DECISION

MARVEL, CHAIRMAN.

In March 1944 a charter-party was executed in London between the Royal Yugoslav Government, as owner of the vessel "Vis", and the Charterers, who are described in the contract as "W. S. A. and the Minister of War Transport, on behalf of His Majesty". Article 14 of the charter-party provided as follows:

14. The Charterers or their Agents to advance to the Master, if required, necessary funds for ordinary disbursements for the Vessel's account at any port charging only interest at one per cent, such advances to be deducted from hire.

Claimants allege that they were the "Agent for the vessel" in the United States and on instructions of the agents of the British Minister of War Transport remitted on October 16 and December 4, 1944, a total of approximately eleven thousand dollars to E. Urguidi & Co. of Norfolk, Va., representing cash to be advanced to the Master of the "Vis".

Under the above facts, the claimant seeks to be compensated out of the fund established by the Yugoslav Claims Agreement of 1948. It is unnecessary for us to restate the views of this Commission with respect to the theory that the above facts created a debt which is within the terms of the Yugoslav Claims Agreement of 1948 and the International Claims Settlement Act of 1949. For the reasons set out in the Proposed Decision in this claim proceeding, we reaffirm that

creditors' interests were not settled or discharged by the Yugoslav Claims Agreement of 1948.

Claimant now suggests a new theory to support its claim in order to bring it within the terms of the Agreement above referred to. This theory is that, by the advances of monies to the master of the vessel, claimant obtained a maritime lien against the vessel and thus acquired rights and interests in and with respect to property. Claimant relies on the case of Rodriguez v. British M/V G. K. Dauntless, 70 F. Supp. 958. An examination of that case leads us to the conclusion that it is not applicable to the facts presented here. The doctrine of that case is that a special agent, acting in a particular port for a particular voyage, acquires a maritime lien for advances made to the master of the vessel. Here we find that the claimant was not the special agent and thus does not come within the holding of Rodriguez v. British M/V G. K. Dauntless. We find that in making the advances claimant did not rely on the credit of the ship itself but rather on the credit of its principal. Under such circumstances the law does not create a maritime lien. See The Fort Gaines, 24 F.2d 438; The Eurana, 1 F.2d 684; The West Irmo, 1 F. 2d 87; The American Star, 11 F.2d 479; The M. Vivian Pierce, 48 F.2d 644; The Maret, 145 F.2d 431. See also The Ascutney, 278 F. 999, and The Odysseus III, 77 F. Supp..297.

We therefore conclude that no maritime lien was created against the vessel "Vis" and consequently it is unnecessary for us to consider the defense of laches, which has been raised.

The claim is denied in whole and this final decision constitutes a full and final disposition of this claim proceeding.

Commissioner McKeough concurs in the above.

June 23, 1953