

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

In the Matter of the Claim of

Mrs. ANNA LANGENECKER ✓
8986 Keith Avenue
Hollywood 46, California

Docket No. Y-591 ✓

Decision No. 1374

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

Counsel for Claimant:

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PROPOSED DECISION OF THE COMMISSION

This is a claim for \$252,435.13 by Anna Langenecker, a citizen of the United States since September 30, 1930, when she derived such citizenship through the naturalization of her father, Joseph Steiger, and is for the taking by the Government of Yugoslavia of real property, personal property, tenancy rights, and a hemp factory.

Claimant alleges that she and her husband, Nikolaus Langenecker, a Yugoslav citizen, owned a one-half interest in real property taken by the Government of Yugoslavia, consisting of a large residence in Srpski Miletic, eight acres of farmland in Srpski Miletic, plus an unharvested crop, 800 square meters of farmland in Silbas, and, in addition, a house and five acres of plowland and vineyard which Nikolaus Langenecker inherited from his father, Jovan (Johan) Langenecker, who died in August 1945. Furthermore, claimant alleges she owned the entire interest in five acres of farmland near Srpski

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Miletic given to her as a dowry by her father, which was never formally transferred to her, but that she was the "beneficial owner" thereof, and that she had the use of it until 1944 and that it was considered in the community to belong to her.

Certified extracts from Land Register of the County Courts of Odzaci and Silbas (Docket Nos. 213, 617, 1155, 1230 and 1304, Cadastral District of Srpski Miletic and Docket No. 305, Cadastral District of Silbas), filed by the Government of Yugoslavia and admissions of that Government, establish that Nikolaus Langenecker, claimant's husband, owned three parcels of land with an area of 8 jutars, 750 square fathoms; that Jovan Langenecker, claimant's father-in-law, owned ten parcels of land with a total area of five jutars, 1596 square fathoms, with a house on one of the parcels; and that claimant's mother-in-law, Anna Langenecker, nee Knebl, owned one parcel of land with an area of 350 square fathoms, when they were taken by the Government of Yugoslavia on February 6, 1945, pursuant to the Enemy Property Law of November 21, 1944 (Official Gazette No. 2 of February 6, 1945), with the exception of 500 square fathoms owned by Nikolaus Langenecker which were taken pursuant to the Second Agrarian Reform Law of March 18, 1946, as amended, (Official Gazette Nos. 64, 24, 101 and 105 of August 28, 1945, March 22, 1946, November 26, 1947 and December 4, 1948).

The Yugoslav Government further states that investigation has established that claimant owned no real property either in Srpski Miletic or Silbas, but that properties were owned exclusively by her husband, father-in-law, and mother-in-law, as set out in the land extracts. This Commission's investigator also reports that a thorough inspection of the land records established that claimant

is not listed as the owner of any real property in the Odzaci District. In addition to the persons named above as having been the record owners of real property, he adds that Wilhelm Steiger, claimant's father, was recorded as the owner of certain real property.

Claimant is, however, evidently endeavoring to assert a beneficial or equitable interest in one-half the real property she alleges was owned by her husband, Nikolaus Langenecker. Included in such property is a house and five acres of plowland and a vineyard she alleges was inherited from his father, Jovan Langenecker, who, she states, died in August 1945 in Filipovo, Yugoslavia.

Even were we to agree, however, that she would have a one-half interest in her father-in-law's estate, no claim for such an interest could be maintained here. While no evidence has been filed as to his citizenship, it is assumed that he was not a citizen or national of the United States. The Agreement of July 19, 1948 between the Governments of the United States and Yugoslavia settled "all claims of nationals of the United States" for the "nationalization or other taking by Yugoslavia of property" (Article 1), provided they were nationals of the United States "at the time of nationalization or other taking" (Article 2). It also expressly excluded nationals of the United States "who did not possess such nationality at the time of the nationalization or other taking" (Article 3). Since Jovan Langenecker, deceased, was not a national of the United States on February 6, 1945, the date of taking, neither his claim nor any claim by a purported successor-in-interest (claimant) was settled by the Agreement of July 19, 1948, and it is not, therefore, within the jurisdiction of this Commission.

Inconsistent with her position in the Statement of Claim that she inherited a one-half interest in property owned by her deceased father-in-law are affidavits she has filed, executed by persons who formerly resided in the locality and who were intimately acquainted with the claimant. The import of these affidavits is that claimant and her husband became owners of the property of her husband's parents, Jovan and Anna Langenecker, upon the marriage of claimant and her husband in 1935. Thus, Joseph Schneider swears that he was present at a meeting in 1935 when Jovan and Anna Langenecker "stated in substance that since Nikolaus was their only child they would give Nikolaus and Anna, immediately upon their marriage, all of their property, on condition that Nikolaus and Anna support them." This affiant also swears that after the marriage, claimant and her husband received either one-half or all of the crops from the parents' land. And Michael Schneider swears that he knows that "by repute" claimant and her husband were the owners of new construction added to the parents' house and that at the death of Nikolaus Langenecker's mother, Anna, in 1937 "it was generally understood in Srpski Miletic that the farm acreage which she owned at Srpski Miletich and one-half of the old construction at Johan's house passed by inheritance to Nikolaus at the time of her death". This affiant makes no claim whatsoever, it is noted, that claimant had any interest whatsoever in her mother-in-law's estate, but that the interest was in Nikolaus Langenecker.

As to the five acres of farmland, claimant alleges was given to her as a dowry, she states that it was never "formally" transferred to her in the land register. And her sister, Mary Schneider,

in her affidavit, states that as the senior member of her family in Srpski Miletich, she "did not agree to a transfer on the property records of part of the land to Nikolaus and Anna" because of the legal difficulties involved since her father and step-mother were in the United States. She did, however, agree that in subsequent years they were to have one-half or all of the crop.

It is well settled that ownership of real property or immovables is exclusively subject to the laws of the government within whose territory it is situated. Beale, The Conflict of Laws, § 50.1, p. 292; Goodrich on Conflict of Laws (Hornbook), 3rd Ed. p. 454. Thus, in The United States of America on Behalf of John Bezanos v. The Republic of Turkey (Opinions 250, 260, American-Turkish Claims Settlement), it was stated: "It is recognized throughout the world that all incidents of the ownership of real property are governed by the law of the place where the property is situated."

The real property involved here is located in the Vojvodina area, which was governed by the Hungarian customary law. However, for the purposes of acquisition and relinquishment of title to real property the same principles applied in the Vojvodina region as in those provinces of Yugoslavia governed by the Austrian Civil Code of 1811. By Section 322 of that Code, where land registers or similar registers are established, the legal possession of a right in real property can be acquired only by a regular entry in the public books. And by Section 431, in order to transfer the ownership of real property, the acquisition thereof must be recorded in public books established for this purpose.

With one exception, Yugoslav law does not recognize equitable ownership in real property, and the law is strict in this respect.

The exception is that persons may acquire real property from a decedent's estate through his heirs, and they may record the ownership of land as if it had been acquired from the decedent himself. The rule is, furthermore, that the record owner of real property is considered as the legal owner as against the whole world - except as against the sovereign - and if there are rights acquired by third persons, these rights are contractual rights only. Here, we do not find that claimant had even contractual rights against the record owners.

Even were we to recognize a beneficial or equitable interest in real property located in Yugoslavia, we are not persuaded that claimant has shown such an interest in view of the lapse of a considerable length of time during which she apparently took no steps whatsoever to perfect title. This lapse is particularly significant here, since claimant resided in Yugoslavia continuously from at least 1935 to 1946.

We conclude that claimant owned no real property or a right and interest in and with respect to real property which was taken by the Government of Yugoslavia and the claim for such property is denied.

Claimant also alleges the taking of twine in a twine factory in Odzaci with machinery and equipment, horses and farm equipment on farms at Srpski Miletic, an Opel automobile, and furniture and other personalty inherited from Jovan Langenecker, the father of claimant's husband.

We have previously held that claimant cannot maintain any claim for real property owned by her deceased father-in-law, since he was not a national of the United States at the date of taking. The Enemy Property Law of November 21, 1944, supra, applied both to movable and immovable property (Article 4). Consequently, the claim for such

personalty would be affected by the same circumstances as the claim for the real property claimed to have been inherited from Jovan Langenecker, deceased.

As for the claim for the Opel automobile, the Yugoslav Government reports that prior to the liberation, her husband, Nikolaus Langenecker, took it to Sombor where it was taken away subsequently by Soviet military forces. With respect to movable property in a twine factory in Odzaci, the Yugoslav Government reports that no "rope factory" of any kind was in Odzaci. This Commission's investigator reports that according to local officials the twine stock allegedly located in Odzaci as well as all personal and movable property were taken away by the "enemy armed forces" during the latter days of the war and also confirmed the circumstances regarding the Opel automobile.

Claimant has filed her affidavit executed on September 20, 1954, in which she swears that Jovan Langenecker told her in July 1945 that "government agents had taken our property at Srpski Miletich, and that he had seen the government agents take away our wine and grain stores, a large quantity of spun linen yarn which we had at Srpski Miletich, and all my household furniture, silver, dishes, and furnishings". In addition, she swears that thereafter she went to Srpski Miletich and observed that everything they owned had been taken from the house and that a woman who was cooking for government workers in the field told her that "the house and our farm acreage had been taken by the government". She also swears that in 1946 another woman on the premises warned her to get away as "the government people might think I was there to find some of our property which might be hidden in the house".

However, in an affidavit of May 5, 1947, filed with the Department of State, she swore as follows:

"That my husband, Nikolaus Langenecker is being held by the Soviet Government since 1944 as a slave-worker; that we were residing at Vajska, Backa, Yugoslavia, with our two children . . . when the Soviet Government confiscated our property and took my husband as a prisoner . . .

"That we also owned an Opal automobile, three horses, two wagons, harnesses were confiscated at Vajska.

"That in the town of Srpski Militics (sic), we owned a large brick home . . . and this property was inherited by my husband from his parents. That they confiscated all horses and farm equipment . . . "

In view of the fact that claimant's knowledge of the taking of personal property by the Government of Yugoslavia, as stated in her affidavit of September 20, 1954, was based on hearsay, and in view of the apparently inconsistent statements she made in her affidavit of May 5, 1947, in which she speaks of the confiscation of property by the Soviet, we conclude that she has not sustained the burden of proof for the taking of any personal property by the Government of Yugoslavia. Therefore, the claim for such property is denied. This denial does not, however, affect certain personal property on the premises of the hemp factory, as will appear subsequently.

In addition, claimant claims tenancy rights in 57 acres of wheatland in Vajska "plus unharvested crop". In her affidavit of September 20, 1954, she swears that "the people from whom my husband

and I leased 57 acres of farmland at Vajska came to me, told me that they understood the government was taking all the Langenecker property, and said they were cancelling our leases."

If we understand claimant's position correctly, it is that the cancellation of the leases came about through the taking of her real property. However, we have held that she owned no real property which was taken by the Government of Yugoslavia. Assuming she and her husband had a lease, it was a personal contract between them and the lessors, and if she suffered a loss through its cancellation her recourse would be against the lessor. We do not find with respect to the cancellation of the lease that it involved the nationalization or other taking by the Government of Yugoslavia of property and this item of the claim is likewise denied.

Finally, the claimant alleges ownership of a one-half interest in a hemp factory in Vajska, with machinery, raw materials, and equipment. She further alleges the factory was purchased in the Bankruptcy Court in Sombor for 180,000 dinars in June, 1939.

In a Note of November 21, 1949 to the American Embassy, Belgrade, from the Yugoslav Ministry of Foreign Affairs, it was stated that claimant and her husband owned a hemp factory valued at 500,000 dinars in 1938. It was further conceded that the buildings were destroyed after the liberation and the machinery dismantled and assigned to other enterprises together with three horses of a value of 6,000 dinars. The valuation of the property by a four-party committee was also submitted.

This Commission's investigator confirms the taking of the hemp factory by the Government of Yugoslavia except for certain movable items, which it alleges were taken or destroyed by German and Hun-

garian armed forces. The Agreement of July 19, 1948 between the Governments of the United States and Yugoslavia settled claims for "the nationalization and other taking by Yugoslavia of property," (Article 1). Destruction caused by military action or looting by the armed forces of Germany and Hungary is not, in our view, a nationalization or taking of property by the Government of Yugoslavia. We, therefore, hold that claims for war damage or looting of the sort involved herein were not settled by the Agreement of July 19, 1948 and are not within the jurisdiction of this Commission.

We conclude, on the basis of the evidence, that claimant owned a one-half interest in a hemp factory, including buildings and appurtenant machinery, and also three horses, which were taken by the Government of Yugoslavia. Since the real property of claimant's husband was taken on February 6, 1945, pursuant to the Enemy Property Law of November 21, 1944, supra, that law would have applied likewise to his interest in the hemp factory and all other property owned by him, since it took all property of persons of German ethnic origin to whom it applied. Accordingly, we hold that the date of taking of the hemp factory was February 6, 1945.

This Commission's investigator has appraised the hemp factory, on the basis of 1938 values, at 1,212,000 dinars. In addition, from data available to the Commission with respect to the average value of farm animals in 1938, we conclude that the value of the three horses was 9,000 dinars.

The Commission is of the opinion, on the basis of all evidence and data before it, that the fair and reasonable value of all property of claimant which was taken by the Government of Yugoslavia was 610,500 dinars as of the year 1938.* That amount, converted into

United States dollars at the rate of 44 dinars to \$1, the rate adopted by the Commission in making awards based upon evaluations as of the year 1938, equals \$13,875.*

AWARD

On the above evidence and grounds, this claim is allowed to the extent indicated and an award is hereby made to Anna Langenecker, claimant, in the amount of \$13,875 with interest thereon at 6% per annum from February 6, 1945, the date of taking, to August 21, 1948, the date of payment by the Government of Yugoslavia, in the amount of \$2,946.81.*

Dated as Washington, D. C.

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* For the Commission's reasons for use of 1938 valuations, use of exchange rate of 44 dinars to \$1, and the allowance of interest, see attached copy of its decision in the claim of Joseph Senser.

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FINAL DECISION

A Proposed Decision was entered in this claim on October 20, 1954, and an award was made to Anna Langenecker, claimant, in the amount of \$13,875 plus interest in the amount of \$2,946.81. Subsequent to the issuance of the Proposed Decision, the claimant, through her attorney, filed objections and requested a hearing. In addition, the Government of Yugoslavia filed a brief as amicus curiae. We have carefully considered the brief but conclude that its objections as to the rate of exchange used in the Proposed Decision and the allowance of interest are without merit.

At the hearing, testimony was received with respect to the taking of certain personal property by the Government of Yugoslavia and its value, and that such personalty was acquired by claimant and her husband, Nikolaus Langenecker, subsequent to their marriage.

We are satisfied from the evidence that certain personal property, as will be further described hereafter, was taken by the

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Government of Yugoslavia on February 6, 1945, pursuant to the Enemy Property Law of November 21, 1944 (Official Gazette No. 2 of February 6, 1945). We are also satisfied that this personalty was acquired by claimant and her husband subsequent to their marriage. The law of that region of Yugoslavia where claimant and her husband resided is governed by the Hungarian customary law. Under that law, each spouse owns one-half the personal property acquired during marriage. We find, therefore, that claimant owned a one-half interest in the property taken.

We conclude on the basis of all the evidence that the following property was taken by the Government of Yugoslavia on February 6, 1945, that claimant owned a one-half interest therein, and that it had the following value, based on 1938 prices:

Raw materials and inventory in hemp factory	1,000,000 dinars
Household furniture, etc. in Srpski Miletic	75,000 "
Horses and farm equipment at Srpski Miletic	75,000 "
Opel automobile	30,000 "
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	1,180,000 dinars.

We find, therefore, that the value of claimant's interest in the above personalty was 590,000 dinars or \$13,409.09, converted at the rate of 44 dinars to the dollar, or a total of \$27,284.09 for all real and personal property of claimant taken by the Government of Yugoslavia.

While claimant contends that certain new construction added to the house of her parents-in-law with the funds of her husband and herself is considered personal property under the law of the situs, we find no merit in this contention, and this part of the claim is denied.

Accordingly, in full and final disposition of the claim, an award is hereby made to Anna Langenecker, claimant, in the amount of \$27,284.09, with interest thereon in the amount of \$5,794.68.

Done at Washington, D. C. **DEC 29 1954**