CLAIM OF TSURU YOKOZEKI

[No. 146–35–6322. Decided April 30, 1956]

FINDINGS OF FACT

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During 1941 the claimant had purchased the leasehold interest including furnishings of three apartment houses, namely, the Maxine, the Monterey, and the Silverado apartments. * * * The Maxine and the Monterey apartments were turned over to a real estate management company. * * * The Silverado apartments, the most valuable of the three, were turned over to the claimant's attorney. * * * Shortly after being evacuated, the claimant learned that the Maxine apartments were operating at a net loss each month * * * and thus to avoid further operating losses it was decided that claimant should transfer her furniture in said apartments * * * to the real property owner in consideration for the cancellation of claimant's further liability under the existing lease. * * *

The Monterey apartments continued to operate at a profit during the period of claimant's exclusion. However, the furniture and furnishings fell into disrepair through the negligent operation of the apartments by claimant's agent who had been retained to manage the property. Furthermore, the management company failed to comply with a covenant in claimant's lease to make necessary repairs to the real property. As a result, claimant's landlord filed an unlawful detainer action to oust the claimant for breach of said covenant and for damages to the real property in the sum of $4,500. Claimant retained her attorney and paid reasonable attorney fees in the sum of $132 to defend this action. On the advice and suggestion of counsel, claimant returned under per-

mit from the WRA to Los Angeles in March 1945 in an effort to protect her interests and to aid in the defense of the unlawful detainer action. The claimant and her husband expended approximately $175 in making this trip to Los Angeles. Through negotiations with the landlord at the time of claimant's return, the law suit was dismissed and the claimant agreed to surrender her leasehold interest, together with furniture and furnishings, and thereby sustained a loss in the sum of $4,214 which includes attorney's fees incurred by claimant and also the expenses of travel.

The Silverado apartments, which were left in care of the claimant's attorney, operated during the period of April 1942 until May 1944 at a profit and the property at all times remained in good condition. * * * Approximately 5 months before the expiration of the claimant's lease, she wrote to her attorney and advised him to negotiate on a so-called option, whereby claimant was granted the right of continued occupancy for an additional 2-year period at a rental to be agreed on before the expiration of the existing term. * * * The landlord refused to extend the lease except under an increase of rental. The claimant * * * decided not to continue the operation of the Silverado apartments at the increased rental insisted upon by the landlord and commissioned her attorney to sell the furniture and furnishings. * * * Before an acceptable sale could be made, the lease expired and it became necessary to sell the furniture and furnishings to the landlord on her terms * * *. On May 5, 1944, claimant sold her furnishings, and her tenancy ended on May 31, 1944. Claimant and the lessor at no time came to any agreement on the rent for the optioned term.

REASONS FOR DECISION

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In respect to the Monterey apartments, the evidence is clear that under claimant's personal operation the land-

lord was entirely satisfied with the care given the property and brought the suit for breach of covenant to repair only after the property had been improperly managed during claimant's exclusion. The surrender of claimant's leasehold interest, including the furnishings, to avoid the payment of damages is compensable as a forced abandonment of the property. *Usasuke Charlie Yamamoto, ante,* p. 55; *Toshichi Nakamura, ante,* p. 108; *Alice Suyehiro, ante,* p. 298. But it may also be supported on a stronger ground, the willful wrongdoing of claimant's agent whose failure to comply with the terms of the lease caused the landlord to file the detainer action. Such an act by claimant's agent could not have been reasonably contemplated by the claimant and caused her extraordinary expense for which she should be compensated. *George E. Suzuki, ante,* p. 363. The fees paid to her attorney and also expenditures incurred in her return to Los Angeles in an effort to protect her interest, having been reasonably made for such purpose, are likewise compensable. *Frank Kiyoshi Oshima, ante,* p. 24, and *Masaki Miyagawa, ante,* p. 242. The situation here of claimant's effort to protect property from further damage after she was free to return is like that of the owner's effort in *Suzuki's* case, *supra,* to put an end to termite infestation discovered after his return in September 1945, but arising out of his tenant's neglect during the period of evacuation, and, as in that case, it is immaterial that the damage should have occurred after claimant's return.

Although the principle is clear under which loss is allowed for money spent for railway travel, taxi fare, food, and lodging (in all $175) in the course of the trip which claimant and her husband made from the Relocation Center to Los Angeles and back in March 1945, a word further should be said on the peculiar circumstances which necessitated the journey and which limit the doctrine upon which the allowance rests. As claimant testified, her legal counsel advised her that she should return and try to get the unlawful detainer suit settled out of court,

and she had no other motive in making the journey. Her husband accompanied her, presumably to aid in the negotiation, since he had a community interest in the property. The necessary expenses of settlement were, therefore, "a loss incurred to prevent a greater loss." *Oshima* case, *supra.* At this time, however, persons of Japanese ancestry, in the absence of individual exclusion orders, of which there is no evidence, might have returned to California permanently for the military exclusion orders had been rescinded effective January 2, 1945. But since both claimant and her husband were aliens, their travel was controlled by the Attorney General's Regulations of February 5, 1942, which were not revoked until December 10, 1945. Both claimant and her husband received, therefore, a short-term pass from the Relocation Center Officer, authorizing departure from March 2 to 30, 1945, "For Relocation Purpose." They later departed permanently under Alien's Travel Permits, dated August 27, 1945. The March trip was made solely to protect property and the loss of property in the Monterey apartment resulting from claimant's agent's mismanagement and the subsequent legal action brought by the lessor is allowable because the cause which put in train this result sprang from claimant's evacuation. *Fusataro Isozaki, ante,* p. 193. On this account, it is clearly distinguishable from losses on sales made after the claimant was free to return, as in *Harue Yoshida, ante,* p. 286; *Shuzo Kumano, ante,* p. 148; *George Shiino, ante,* p. 160.

The net loss on the Maxine Apartment House has been allowed without respect to any gain which may have been derived by the claimant in the way of rent from the Monterey and Silverado Apartments. The allowance, in other words, has been made without regard to the comparative net worth of the claimant on her evacuation and on her release from the Relocation Center. Each transaction has been viewed separately and by itself. * * *

No allowance can be made for the claim for the indeterminate option for two years of the Silverado Apart-

ments * * * since it cannot be said that she lost any "property" in the option. The "option" had a fixed term but no fixed rent, and obviously in these circumstances claimant could not have sold it to anyone else. * * * It did not constitute an interest in land of which she was deprived. Claimant held over until May 31, 1944, but her tenancy after April 15, 1944, was a tenancy at will, from month to month, and not a tenancy for 2 years under the option. In *Emery* v. *Boston Terminal Co.*, 178 Mass. 172 (1901), an eminent domain case in which the question was the validity of a lease renewal based only on oral promises and an after-made memorandum under the State Statute of Frauds, the Court, per Holmes, C. J., said "The Statute here is not dealing with promises, in which case it naturally would be directed only to the rights of the parties to a contract, but with estates, which are interests *in rem,* good against all the world" (p. 183); and again, "It appeared that the owners had been in the habit of renewing the petitioners' lease from time to time * * *. Changeable intentions are not an interest in land, and although no doubt such intentions may have added practically to the value of the petitioners' holding * * *. They added nothing to the tenants' legal rights, and legal rights are all that must be paid for. Even if such intentions added to the saleable value of the lease, the addition would represent a speculation on a chance, not a legal right" (p. 185). An option has been said to be a conditional unilateral contract, the conditions being the giving of notice by the receiver of the option that he wishes to exercise it and the concurrent payment by him of the purchase price or rental. See Langdell in 18 *Harv. Law Rev.* 1, 12. More generally it has been held a binding agreement to keep an offer open. See 18 *Harv. Law Rev.* 457, and cases there cited. But under either view notice by the claimant here to the lessor would not have created a binding obligation on her lessor. The lessor had merely made an offer to negotiate a bilateral contract. Just as "changeable intentions" in *Emery's* case, *supra,* could

not, because of the Statute of Frauds, create an interest in land, the lessor's offer here to negotiate a further lease would not have conferred on the claimant lessee any property right for which claimant could have obtained a price in the market. The claimant's unenforceable right, like the lessee's in *Emery's* case, would "represent a speculation on a chance, not a legal right." The Act compensates only for "property" lost by evacuation or exclusion. No loss can be allowed, therefore, for this so-called option.