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CLAIMS TRIBUNAL

دیوان داری دعاوی ایران - ایالات متحد

ORIGINAL DOCUMENTS IN SAFE

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Case No. 36

Date of filing: 2 Dec 86

** AWARD - Type of Award _____
- Date of Award _____
_____ pages in English _____ pages in Farsi

** DECISION - Date of Decision _____
_____ pages in English _____ pages in Farsi

** CONCURRING OPINION of Correction by Mr Ameli
- Date 2 Dec 86
2 pages in English _____ pages in Farsi

** SEPARATE OPINION of _____
- Date _____
_____ pages in English _____ pages in Farsi

** DISSENTING OPINION of _____
- Date _____
_____ pages in English _____ pages in Farsi

** OTHER; Nature of document: _____

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_____ pages in English _____ pages in Farsi

IN HIS EXALTED NAME

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IRAN UNITED STATES CLAIMS TRIBUNAL	داورگاه داوری دعاری ایران - ایالات متحده
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CASE NO. 36
 CHAMBER ONE
 AWARD NO. 259-36-1

FLEXI-VAN LEASING, INC.,

Claimant,

and

THE GOVERNMENT OF THE
ISLAMIC REPUBLIC OF IRAN,

Respondent.



CORRECTION TO CONCURRING
 OPINION OF JUDGE AMELI

The following corrections should be made in the English version of my Concurring Opinion filed in this Case on 10 November 1986:

1. Page 10, last paragraph, first line: insert the word "there" after the word "that".
2. Page 23, line 20: close quotation (") after the phrase "change of circumstance".

A copy of the corrected pages is attached.

Dated, The Hague

11 Azar 1365/2 December 1986



Koorosh-Hossein Ameli

100 agreements, rather than 1000. When not on the witness stand however, he later informed the Tribunal that the precise number was 141. (Minutes of the Hearing, page 10.) Upon examination, the Report itself revealed that 11 of the alleged agreements covered 70% of the equipment claimed; that 10% of the agreements could not be located; and that a portion of the contracts located were not even signed. It was in the light of these questions that the Tribunal, prior to the Hearing, granted the Claimant's request to file a Report on the agreements instead of producing them. But this Report only provides secondary evidence as to the agreements, and does not resolve the questions originally raised.

b) The Expropriation claim

aa) The Star Line agreements

I agree with the Tribunal's finding that the evidence before us does not establish "such interference with the Claimant's [alleged] contract rights vis-à-vis Star Line as to engage the Government's responsibility for an expropriation of these rights". However, I disagree with the earlier statement that "it seems clear that Star Line, through the Foundation [for the Oppressed] came under government control". This statement, although obviously hesitant, was made despite the correct observation earlier in the same sentence that there is "no need to determine here" whether Star Line was a controlled entity within the meaning of Article VII, paragraph 3, of the Claims Settlement Declaration. It thus has the character of an obiter dictum rather than a specific finding.

Quite apart from the fact that there is no need to make any finding on government control, since the claims have been dismissed on substantive grounds, the evidence which

the full amount.¹⁶ It is also the case where the unjustified benefit arose between parties who were already in a duty relationship with each other when the benefit accrued to one party as a result of a breach of duty by the other.¹⁷

The English law position that the duty of restitution imposed on the party enriched rests on "natural justice and equity," is utilized under American law to weigh up the "equities" in each individual case. Thus, American law takes account of situations where no actual benefit remained to the defendant out of what he had acquired to deny any restitution or compensation. Thus, in one leading case the New York Court of Appeals held that restitution should not be granted "if payment has caused such a change in the position of the other party that it would be unjust to require him to refund."¹⁸ Furthermore, Section 142 of the American Law Institute's Restatement of the Law of Restitution also makes "change of circumstance" a good defence to all restitutionary claims. Such "change of circumstance," under both German and American law, is found to exist where the enrichment had disappeared: for example, destruction, loss or theft of the object received; unprofitable use or sale at a loss; expenses incurred on the property received; the assumption of legal obligations which are unavoidable or avoidable only at a loss; the surrender of rights or securities; the omission to exercise one's right in due time; unprofitable investment of money received; gifts made out of what was received; and speculation by staff.

¹⁶ Skyring v. Greenwood, (1825) 4 B. & C.281, 107 Eng. Rep. 1064.

¹⁷ Deutsche Bank v. Beriro, (1895) 73 L.T. 669.

¹⁸ Mayer v. New York, 63 N.Y. 455 (1875).