CLAIM OF JAMES Y. ZORIKI

[No. 146–35–937. Decided October 10, 1950]

FINDINGS OF FACT

This claim, in the amount of $1,193, was received by the Attorney General on March 1, 1949. The claim involves personal property loss of two distinct kinds, namely, loss from the forced sale of household furniture and other items of personalty, including an automobile, and loss from the theft of stored goods. Except for the automobile, all the items involved represented community property of claimant and his wife, Helen Hatsue Zoriki. In the case of the automobile, legal title was in claimant but actual ownership was in his brother, Mike M. Zoriki, claimant executing the contract of purchase in his brother's behalf because the latter was a minor. Claimant, his wife, and brother were all born in the United States of Japanese parents and have at no time since December 7, 1941, gone to Japan. On December 7, 1941, all three resided at 1137 South Irolo Avenue, Los Angeles, California, and they were living at 2001 South Purdue Avenue, West Los Angeles, when evacuated on April 28, 1942, under military orders pursuant to Executive Order No. 9066, to the Manzanar Relocation Center, Manzanar, California. At the time they were evacuated, the parties were unable to take the property involved with them to the relocation center and shortly before their evacuation, therefore, claimant sold the household furniture together with other basic community personalty, and also the automobile, for the highest and best prices he could obtain. In addition, claimant packed the miscellaneous small community items still remaining, i. e., silverware, dishes, electric toaster, blankets, etc., securely in a trunk which

he stored in the home of a fellow-evacuee, where his mother and several others had likewise stored their effects. While claimant was in the relocation center, the structure housing the goods was torn down and the property stored therein stolen. Claimant has never recovered the trunk or its contents. At the time claimant sold the automobile and community personalty involved, there prevailed a condition wherein there was not a free market upon which claimant could have disposed of the property at its fair value. The property would not have been sold or stored but for the evacuation of the parties and claimant's acts of selling and storing, performed without knowledge of the availability of Government storage facilities, were reasonable in the circumstances. The fair and reasonable value of the community property sold was $668.54 and of that stored $75.75, making a total of $744.29. Of this amount, claimant received $225 for the items he sold, leaving a total community loss of $519.29. The fair and reasonable value of the automobile at the time of its sale was $645. Claimant received $300 from the sale of the vehicle, which amount he turned over to his brother, the real party in interest, who was then still a minor and unmarried. At the time of the sale, there was a balance of $40 due on the car. The loss from its sale, therefore, was $305. The losses involved have not been compensated for by insurance or otherwise and no separate claim has been made by claimant's wife or brother.

REASONS FOR DECISION

The evidence of loss with respect to the community property involved consists of claimant's sworn testimony supported by four statements in writing, two from persons having knowledge of claimant's ownership of the property, a third from another brother of claimant who assertedly purchased one of the major items involved as a wedding gift for claimant and his wife, and the fourth from the fellow-evacuee in whose home the trunk and its contents

were stored. The evidence of loss with respect to the automobile consists of claimant's sworn testimony, supported by written statements from Mike M. Zoriki, the equitable owner. The investigation has revealed nothing contradictory of these materials and they accordingly stand unrebutted. A valuation of the trunk and its contents as of the time of storage in the amount of $75.75 is reasonable. Since claimant acted reasonably in storing this property and would not have done so but for his evacuation, the loss from its theft is allowable. *Akiko Yagi, ante,* p. 11. A valuation of the community personalty which claimant sold in the amount of $668.54 as of the time of sale is also reasonable. Claimant received $225 as proceeds from the sale of this property, leaving an uncompensated balance of $443.54. Inasmuch as claimant had no free market and acted reasonably in selling in the circumstances, this loss is likewise allowable. *Toshi Shimomaye, ante,* p. 1. Adding the two sums involved, i. e., the $75.75 lost in consequence of the theft and the $443.54 lost on the sale, the total allowable community loss is $519.29.

With respect to the automobile, there is presented for original determination the question of proper party claimant in a situation involving equitable as well as legal ownership of property. The record discloses that claimant executed the contract for the purchase of the automobile and took title thereto. It further reveals, however, that he did so solely for the purpose of making possible extension of credit to his brother, Mike M. Zoriki, who was then a minor, and that the latter advanced all monies paid on the car and was its actual owner. Since Mike M. Zoriki was thus the real party in interest, it is clear that the loss from the sale of the vehicle should properly have been claimed for by the said Mike M. Zoriki. The record contains statements from both claimant and the beneficial owner, however, explaining why the latter did not make separate claim, and setting forth the reasons for the inclusion of the automobile by claim-

ant in his claim. From this material it appears that Mike M. Zoriki was desirous of making claim in his own behalf but the parties assumed that since the car had been registered in claimant's name and the latter, as legal title-holder, had sold the vehicle, claimant perforce was the sole party eligible to make claim for the loss from its sale. In consequence of this fact, Mike M. Zoriki necessarily relied on claimant to make claim for him, claimant agreeing to turn over to him any monies allowed for the loss.

That the parties should have assumed that claimant alone was eligible to claim and that Mike M. Zoriki consequently should have made no claim in his own behalf though desirous of doing so, is readily understandable. Not only was such an assumption natural in the circumstances, but no regulations had been issued defining a proper party claimant under the Act, and the form provided claimants for making claim was devoid of instructions indicating that where both legal and equitable ownership were involved the equitable owner, as true party in interest, should claim. This being the case, and since the provisions of Section 2 (a) of the Statute bar Mike M. Zoriki, the equitable owner, from making claim at the present time, it is clear that failure to recognize the claim as presented would be unjust and defeasive of the statutory purposes. It is true, of course, that in recent times the tendency of the judiciary, in the exercise of its rule making power, has been to require prosecution of actions in the name of the real party in interest. Thus, for example, Rule 17 (a) of the *Federal Rules of Civil Procedure* contains a specific provision to this effect. 28 U. S. C., following § 723 (c). It is obvious, however, that the reason primarily underlying the requirement, namely, avoidance of multiplicity of actions, has no relevancy here. Moreover, it is significant to note that the requirement is usually accompanied by certain exceptions with respect to persons having legal title and a common law right of action (Cf. *Chew* v. *Brumagen*, 80 U. S. 497), and that Rule 17 (a) of the Federal Rules,

therefore, specifically exempts therefrom certain designated fiduciaries. 28 U. S. C., *supra.* Included among these is a "trustee of an express trust" who, the rule provides, may sue in his own name without joining with him the party for whose benefit the action is brought. *Ibid.* That claimant falls within this category is clear from the facts involved and from examination of the applicable authorities. See e. g., *Chew* v. *Brumagen, supra,* and *P. N. Gray & Co.* v. *Cavalliotis,* 276 Fed. 565, 566–569; cf. *Hunter* v. *Robbins,* 117 Fed. 920, 921–923, and see also, *Scott On Trusts,* Vol. 3, § 462.1.

Furthermore, it must be remembered that the rule making authority vested in the Attorney General under the Act is extremely broad, Section 6 (h) of the statute empowering him to prescribe such rules and regulations as he may deem proper in carrying out the statutory provisions. In view of the intent and purposes of the Act it is manifest that any rules or regulations prescribed thereunder would necessarily provide for liberal procedure and recognize persons as proper parties wherever possible in order to assure total achievement of the statutory aims. *A fortiori,* therefore, such a policy must be pursued in situations resulting from the absence of any rules and regulations. Finally, it should be noted that the record contains a statement from claimant to the effect that any monies awarded for the loss from the sale of the automobile will be turned over by him to his brother in accordance with their understanding at the time of making claim, and also a statement from Mike M. Zoriki verifying the original understanding and consenting to and approving such payment in his behalf. In light of these facts and the several considerations adduced above, the loss having been occasioned by the evacuation of the equitable owner and the latter being jurisdictionally eligible, and the parties having acted reasonably in assuming that the holder of the legal title was the sole eligible party claimant, it is proper to allow the loss from the sale of the automobile as part of the instant

claim. Such allowance is, of course, expressly contingent upon the receipt by the holder of the legal title of the moneys allowed for the loss in a strictly fiduciary capacity and for the benefit of the real party in interest.

A valuation of the automobile as of the time of sale in the amount of $645 is reasonable. Of this amount, the sum of $300 was received as proceeds from its sale. In addition, there must be deducted the further amount of $40 which was still due on the car. *Akira Hirata, ante,* p. 32. This leaves an uncompensated balance of $305 which, on the facts found, is allowable. *Shimomaye, supra.* The beneficial owner, Mike M. Zoriki, in consequence of whose evacuation the loss occurred, is jurisdictionally eligible to claim under the Act but has not done so in reasonable reliance upon the making of claim by the holder of the legal title. Since the latter was the owner of the property for purposes of purchase and sale and has agreed to turn over the amount awarded to the true party in interest, the award in the instant case may properly include the $305 loss from the sale of the automobile.

In light of the foregoing, then, claimant is entitled to receive the sum of $519.29 for the community property losses involved, together with the further sum of $305 to be received by him as trustee for Mike M. Zoriki for the loss on the automobile, or a total of $824.29 under the above-mentioned Act as compensation for loss of personal property as a reasonable and natural consequence of the evacuation of himself, his wife, and his brother, Mike M. Zoriki. Insofar as it relates to community estate, this claim includes all interest of the marital community in the subject property since claimant's wife has made no separate claim, although eligible to do so under the Act. *Tokutaro Hata, ante,* p. 21.