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Declassified E.O. 12356 Section 3.3/NND No. 785016

ACC

10000/142/318

SEQUESTRATION
AUG. 1944 - JUL

0786

Declassified E.O. 12356 Section 3.3/NND No. 785016

10000/142/318

SEQUESTRATION OF PROPERTY OF SIGNORA SCIPIONI
AUG. 1944 - JUN. 1945

4038/9
4043 ✓ 216
HEADQUARTERS ALLIED COMMISSION
APO 394
FINANCE SUB-COMMISSION
Property Control Division
Tel. 471387

HCK/ev

8A

AC/076/CF

8 June 1945

Subject: Leases on sequestered Allied properties.

To : Regional Property Control Officers Finance Division,
Northern Regions.
(through Regional Commissioners Northern Regions).

1. I am enclosing herewith copies of the following papers:
- a Letter dated 23 May 1945 from Major Cavanaugh to Regional Legal Officer, Liguria, requesting an opinion.
 - b Letter dated 30 MAY 1945 from said Regional Legal Officer responding to Major Cavanaugh's inquiry.
 - c Letter of 31 May 1945 from Major Cavanaugh to this Headquarters.
 - d Opinion of Col. Behrens, Chief Legal Advisor for A.C.
2. This for your information and guidance.

Edward C. King
EDWARD C. KING
Lt. Col., Spec. Res.
Chief, Property Control Division
Finance Sub-Commission

24

Enclosures

8 JUN 1945

Copy for Legal Sub-Commission, A.C.

TO : Property Control Division.

1. I agree with the view expressed by Lt. Col. Elder and yourself.

2. AMG has the power under Proclamation 2 abrogate in future any sequestration made under order of the Italian Government. If therefore a sequestrator is in possession of any property he may either be retained in such possession, in which case the Italian Government whose interests are prejudiced; or he may be dismissed and the United Nations' national may be restored to his legal position, in which case the liability of the Italian Government crystallizes at the date of such restoration. In practice the interests of the national are likely to be better served by the first alternative, and this is the policy which you normally adopt. If however the national is particularly interested to be restored there is no objection to the making of the necessary order by AMG.

3. This however only affects the position of the national against the sequestrator; it does not affect the position of third parties who have acquired a good title through the sequestrator. In other words if there is a valid lease granted by the sequestrator that lease holds good in all its aspects. The national is entitled to the rent as landlord in place of the sequestrator but otherwise he can get no relief. If the tenant maintains that he has a valid lease the only method of deciding such claim is through the Italian Courts.

4. The Scipioni case does not conflict with the above, as the Court found that the lease granted by the sequestrator was not valid but had expired before the date of the AMG order restoring the property to the owner.

LEGAL Sub-Commission
7 June 1945

H. E. BERTENS
Colonel.
Chief Legal Advisor.

C O P Y

HEADQUARTERS
A. M. G. LIGURIA REGION
REGIONAL PROPERTY CONTROL OFFICE
FINANCE DIVISION

GC/ep

SB

LIG/PC/034

31 May 1945

Subject : Leases on sequestered Allied properties.

To : Chief, Property Control Division
Finance Sub-Commission, Hq. A. C.

1. I attach copy of an inquiry posed to R.L.O. and copy of his opinion.
2. I request consideration of this problem by you and possibly an opinion from Legal Sub-Commission. It appears to be down to whether or not Proclamation M.2 does actually abrogate, or authorizes the abrogation of, many measures taken by either Italian Government or discriminate against Allied parties.
3. If the proclamation does not give the R.P.C.O. any authority to intervene in a situation which was created under Italian war-laws even though such creation was the result of due operation of the war-laws, then the R.P.C.O. is very high powerless to aid in protecting the owners against the operation of such war-laws.
4. At this rather crucial time the use and possession of property has an exaggerated value to further deprive or forbid the owners of the use and possession of their property should inflict in some cases not only monetary hardship but physical hardship. The fact that the sequesteror was appointed by one Government or another does not to me appear of vital issue.
5. Your usual careful and thorough consideration of this subject and your opinion supported, if you see fit, by an opinion by a Legal will be most useful to the undersigned.

For the Regional Commissioner

G.K. CAVANUGH,
Major Ordnance, R.P.C.O.

COPY

HEADQUARTERS
LICHIA REGION
ALLIED MILITARY GOVERNMENT
APO 334

Lig/leg/18

WCE/sf
30 May 1945

SUBJECT: Leases on sequestrated Allied properties.

TO X Major C.K. CAVENAUOH - R.F.C.O.

1. Reference your Lig/PC/O34 letter dated 29 May and in particular para 6 thereof.
2. If the sequestrator was appointed by the Republican-Fascist Government (i.e. after 8 September 1943) or under any of its decrees of orders then under the Proclamation any lease made by the Sequestrator shall be null and void. In this case an order can be issued ordering the property vacated forthwith and the owner placed in possession.
3. On the other hand if the sequestrator was appointed prior 8 September then the owner whether or not he consented thereto and always providing they are valid in law. In this case then the lease can be terminated only in accordance with the terms in that respect provided for in the lease. Provided always that if the terms thereof are inequitable relief can be sought by the owner in the appropriate court.

4. Should there be no provision in the lease for determination then the same can be determined on giving reasonable notice. What constitutes reasonable notice depends on the local custom and type of property, for instance, if farming lands notice may have to be given ending with a certain time of year. To give an opinion on this point the terms of the lease and other factors would have to be studied.

S/ W.C. ELDER
Lt. Col., Cdn. Prov. C
Regional Legal Officer

21

COPY

HEADQUARTERS

A.M.G. LIGURIA REGION

SIGNAL PROPERTY CONTROL OFFICER

GKC/ep

SD

LIC/PC/C34

29 May 1945

Subject: Leases on sequestered Allied properties.

To : Regional Legal Officer.

1. Most individually owned Allied real estate sequestered under Italian war-laws has been rented on annual leases by the sequesterator.
2. Such leases carry a clause providing for implicit renewal on the same terms unless one of the parties gives notice at least 3 months before expiration.
3. Certain Italian laws provide for a freezing of rental contracts for the duration and 6 months unless in certain cases the lessor desires to reoccupy the property for himself or certain specified near relatives. I am advised that such matters are covered by following Decree-Laws:

a	Royal Decree Law	12.3.41	N° 142	in	OPF CAZ	29.3.41	N° 76
b	"	"	24.3.42	"	"	25.3.42	" 69
c	"	"	11.3.43	"	"	22.3.43	" 66
4. I am faced with the following particular situation:
 Many of the Allied owners or their attorneys-in-fact are present and desire immediate possession of the sequestered property. If the rental contracts outstanding are permitted to stand until their respective expirations some of these owners will be kept out of the use and enjoyment of their property for an additional considerable period at great inconvenience and financial loss to themselves. The rental charges under the leases are extremely low.
 A ruling is requested by this office as to whether or not under Proclamation No 2 I have authority to terminate upon reasonable notice to the lessee, say 30 or 60 days:
 - a leases or renewals thereof which were outstanding at the time of sequestration, and
 - b lease which have been negotiated and executed by the sequesterator since the sequestration.
5. It is not the desire nor the intention of this office to dispossess any tenant or interfere with the running of the contract unless the owner or his duly appointed attorney-in-fact is being subjected to considerable loss or inconvenience.

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b	" " 24.3.42 " 200	" " 25.3.42 " 69
c	" " 11.3.43 " 100	" " 22.3.43 " 66

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b lease which have been negotiated and executed by the sequesterator since the sequestration.

6. It is not the desire nor the intention of this office to dispossess any tenant or interfere with the running of the contract unless the owner or his duly appointed attorney-in-fact is being subjected to considerable loss or inconvenience.

For the Regional Commissioner

G.K. CAVENAGH
Major Ordnance, R.P.C.O

ECK/gv

4034/9

HEADQUARTERS ALLIED COMMISSION
APO 394
FINANCE SUB-COMMISSION
Property Control Division
Tel. 471387

7A

AC/M150/CP

13 February 1945

Subject: Property of Mrs. Andreina Scipioni.

To : Legal Sub-Commission
(Attn: Lt.Col. Thackrah)

1. Herewith ^{rough} translation of the very interesting opinion of the Court in the case which Mrs. Scipioni brought against certain lessees of her property. You will recall that this case came before you on at least one previous occasion when Mrs. Scipioni sought the aid of Allied Commission.

2. Particularly interesting is that portion of the opinion which appears on page 6 thereof.

Edward C. King
EDWARD C. KING

Lt.Col., Spec. Res
Chief, Property Control Division
Finance Sub-Commission

Encl: As mentioned above.

LEGAL SUB-COMMISSION	
CLO	
UCLO	✓
Ch of Counsel	
C/O	
Relation Section	✓
CL RKS	
24 FEB 1945	

TRANSLATION

IN THE NAME OF HIS ROYAL HIGHNESS PRINCE UMBERTO

DI SAVOIA, PRINCE OF PIEMONTE, LIGURIAN CHIEF

OF THE KINGDOM

The Civil Court of Catania, Section 1, composed by:

- 1) Cucciarra Cav. Uff. Filippo - Chairman
- 2) Galati Cav. Felice, Judge
- 3) Amoroso Cav. Giuseppe - compiler

has issued the following

SENTENCE

In the civil case recorded at No. 252 of the General Roll of expedition of 1944 and with No. 2496 of the Register deposit of tax-payer promoted by Mrs. Andreina Scipioni, daughter of Leonardo, proprietor from Port Said (Egypt) and living in Acireale, Via Nazionale 74 and electively at Catania, avv. att. Giuseppe Quattrocchi of 67 Via Umberto, by whom she is represented and defended together with lawyer Natale Glancio, the former as per warrant of attorney dated 29 Jan 44 drawn up by Salvatore Chiara with no. 14999 of the records and the latter as per general warrant of attorney dated 16 May 44 legalized by No. 15400 of the records of the notary Chiara, the plaintiff;

AGAIUST - Dr. Venorendo and Giuseppe Bros. Leonardi sons of Comm. Rosario living at Acireale, represented and defended by the lawyer and attorney Gaetano Grasso Boreo from Acireale, as to mandate of attorney dated 11 Jan 44 legalized by notary Filippo Tropea with No. 4506 of the legal records, principal defendants and plaintiffs for guarantee;

and AGAIUST - Cav. Antonino Mascari, as a director of the Catania Branch of the Bank of Sicily and therefore representative of the Ente di Gestione e Liquidazione Immobiliare (ENELI) living in the premises of his own office, represented and defended by the State attorney of the district, in the double quality of principal defendant and plaintiff for guarantee.

When the case came to public audience on the 20 Oct. 44, the attorneys of the parties have deducted the following conclusions:

The legal attorney avv. Giuseppe Quattrocchi, together with avv. Natale Cencio for the plaintiff, put forth the following:

The Civil Court, 1 section, without considering contrary petitions and exceptions wants: to order, in a prejudicial way, to Bros Leonardi not to trouble the possession in right and fact of the estate Cassara on part of the usufruct Mrs. Andreina Scipioni, French citizen, according to the consignment order issued and carried into effect by the Controller of Property of ANNOT, whose provisions remain in force following law decree 11/2/44 n. 31;

Regarding this matter, to declare solved from now on, as completely null and void, contrary to law 10/3/41 n. 618 and disregarding the rights of the usufruct on account of the smallness of the rent, the lease contract 16/3/43. To take any other decision according to justice. To condemn to pay the expenses and fees. The same attorney, with added and completed conclusions asked: that the involuntary error incurred be certified, affirming and asking in the introductory summons, the request of solution of the lease contract, considering and declaring that this fact had already occurred as ordered by the Allied Authorities (property

SECTION

in the civil case recorded at No. 252 of the General Roll of execution of 1944 and with No. 2499 of the Register deposit of tax-papers promoted by Mrs. Andriana Scipioni, daughter of Leonardo, proprietor from Port Sella (Sgrrt), and living in Acireale, Via Nazionale 74 and electively at Catania, avv. att. Giuseppe Quattrocchi of 67 Via Umberto, by whom she is represented and defended together with lawyer Natale Giarola, the former as per warrant of attorney dated 29 Jan 44 drawn up by Salvatore Chiara with no. 14999 of the records and the latter as per general warrant of attorney dated 16 May 44 legalized by No. 15400 of the records of the notary Chiara, the plaintiff;

ACITIST - Dr. Venerando and Giuseppe Bros. Leonardi sons of Comm. Rosario living at Acireale, represented and defended by the lawyer and attorney Gaetano Grasso Agnes from Acireale, as to mandate of attorney dated 11 Jan 44 legalized by notary Filippo Tropea with No. 4506 of the legal records, principal defendants and plaintiffs for guarantee;

and AGENT - Cav. Antonio Mascari, as a Director of the Catania Branch of the Bank of Sicily and therefore representative of the Pute di Gestione e liquidazione Immobiliare (BOMI) living in the premises of his own office, represented and defended by the State attorney of the district, in the double quality of principal defendant and plaintiff for guarantee.

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The legal attorney avv. Giuseppe Quattrocchi, together with avv. Natale Cencio for the plaintiff, put forth the following:

The Civil Court, 1 section, without considering contrary petitions and exceptions wants: to order, in a prejudicial way, to Bros Leonardi not to trouble the possession in right and fact of the estate Cassena on part of the usufruct Mrs. Andriana Scipioni, French citizen, according to the consignment order issued and carried into effect by the Controller of Property of AMOT, whose provisions remain in force following law decree 11/2/44 n. 31;

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Avv. Gaetano Russo for the defendants with final report and conclusion: the Court wants: to consider inadmissible, having refused every contrary petition and exception, and to reject in any case the petition of the plaintiff. To consider as valid the offer the second half-year of tenable rent and to consider legal the deposit of it in the Bank of Sicily branch of Catania, and subsequently to enforce the same offer, ordering the unblocking of the sum contained in the credit pass book for deposit of ordinary administrative savings N. 5945 of the Bank of Sicily branch of Catania in the name of Venerando & Giuseppe Leonardi, sons of av. Rosario on behalf of Mrs. Scipione, however changing him with the expenses of the deposit and ordering the reimbursement of those which are not due, and which for more completeness of the offer have been deposited in order to leave the plaintiff to reimburse the law-suit. To consider the means of evidence offered as inadmissible, illegal, unobserving attention and devoid of contents as per facts and law, and absurd in any way and to reject them. To condemn Mrs. Scipione to quit immediately the rooms in which she is living abusively up to the term of lease and to sentence her consequently to pay the damages, to be liquidated in a different law-suit. To condemn Mrs. Scipione in all the expenses of the law-suit and in the indemnities of the defence and to provide that the sentence be provisionally executed. To expressively save from the decisions the law-suit for damage to which they have a right following the fire in the building caused by the short circuit befallen in the electric plant and to have any other right of law-suit and reason in an ample and general form. The same lawyer at another conclusion: as for the claim for the fire damage it is asked: that the Court order to the Bank of Sicily to deposit the copy of the verification report drawn up by the Insurance Co. "La Previdenza" dated 5 Jan 43 by the expert of the Company, Ing. F. Sebastiano and by the engineer of the Insurance Co., Costa and handed over to the Bank of Sicily. From the above mentioned report is results precisely how the fire happened, in a way it cannot be imputed to the defendants. Subordinately to admit the defendants to prove also with witnesses:

- a) that the electric plant built by Mrs. Scipione was anti-technically irregular, the wires being without protective isolators, attached to the beams of the wooden ceiling. He indicates as witnesses Mr. Toscano Galv., living at Acireale and Sofia Rosario living at Acireale;
- b) that Mrs. Scipione left in the house her maid servant, the only one who used the electric plant. He indicates as witnesses Mr. Rosario Arcidiacono, resident in Acireale, S. Maria Amalati, Francesco Scandarra in Luciano resident at Acireale;
- c) that Bros. Leonardi and their dependants never used the electric plant. He indicates as witnesses Mr. Eugenio Giuseppe di Giovanni resident at Acireale, D'Anna Francesco di Luciano resident at Acireale;
- d) that the fire began in the wooden ceiling of the room on account of the short circuit and that the hay got burned because of the collapse of the ceiling. He indicates as witnesses Mr. Fr. Scandarra, living at Acireale, Rosario of the late Carmelo living at Acireale.
- e) that the little quantity of hay existing in the shed and in the parts of the building where they have real ceilings, served for the use of the estate and was collocated in that place. He indicates as witnesses Mr. Fr. Scandarra living at Acireale;
- f) that the quantity of hay was so small that the flames did not come up to one meter as it is shown by the signs of the wall of the room. He indicates as witness Fr. Scandarra living at Acireale.

The same lawyer with conclusions: it is asked that the non-value and the rejection of all the petitions be considered and declared, exceptions and deductions of Mrs. Scipione. It is insisted herewith on all what has been

facts and law, and absurd in any way and to reject them, to condemn Mrs. Scipioni to quit immediately the rooms in which she is living abusively up to the terms of lease and to sentence her consequently to pay the damages, to be liquidated in a different law-suit. To condemn Mrs. Scipione in all the expenses of the law-suit and in the indemnities of the defence and to provide that the sentence be provisionally executed. To expressively save from the decisions the law-suit for damage to which they have a right following the fire in the building caused by the short circuit befallen in the electric plant and to have any other right of law-suit and resort in an ample and general form. The same lawyer at another conclusion: as for the claim for the five damage it is asked: that the Court order to the Bank of Sicily to deposit the copy of the verification report drawn up by the Insurance Co. "la Previdenza" dated 3 Jan 45 by the expert of the Company, Ing. F. Sebastiano and by the engineer of the Insurance Co., Costa and handed over to the Bank of Sicily. From the above mentioned report is results precisely how the fire happened, in a way it cannot be imputed to the defendants. Subordinately to admit the defendants to prove also with witnesses:

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- f) that the quantity of hay was so small that the flames did not come up to one meter as it is shown by the signs off the wall of the room. He indicates as witness Fr. Scandurra living at Acireale.

The same lawyer with conclusions: it is asked that the non-value and the rejection of all the petitions be considered and declared, exceptions and deductions of Mrs. Scipione. It is invited herewith on all what has been concluded and asked in the final answer, in the article of proof, in the instructive reports. In case the rights of the defendants, arising from the lease contract, have been diminished in any way by the Bank in consigning them to Mrs. Scipione, the defendants put forth a petition of guaranty and recovery against Bank and ask that the latter in this case, be condemned in the damages deriving from Bros. Leonardi and to be liquidated in separate law-suit. With the expenses and fees of the defence. The same lawyer with conclusion of discussion notified on the 13 Aug. 44 asked: it is asked that, with the expenses charged to Mrs. Scipione as per law, according to what has been submitted to the Justice of the Court, it is believed that all the requests of Mrs. Scipione will be declared inadmissible and rejected

and that in any case a regular and normal procedure is given to the case according to the methods fixed in the rite Code with respect to the Justice which tried through the case to come to the truth. Consequently the order of remittance to the Court is revoked. The deputy fiscal lawyer for the management of the Bank of Sicily for BOMLI: the rejection of the petition regarding BOMLI is asked, prior approval of the report of the management as it has been offered. Also the rejection of the petitions of instructory methods non influencing the defensive thesis of the deducting Administration is asked.

And finally, if the case with Mrs. Scipione and Mrs. Leonard should carry on (for instance as regards the damages of the burned estate) the exclusion of the BOMLI is asked because of the cessation of its legal quality of administrator as it is agreed between the parties. Everything will be done, Mrs. Scipione being always concerned to pay the expenses as it results from the document which will be shown. The same lawyer with another conclusion: the Court, heard the conclusions of the parties providing them with the cross-examination in the terms of the decrees of the Instructor dated 27.7.44 of remittance of the cause to the Collegio, rejected any other contrary exception and deduction, to provide as follows:

1) to revoke above all the decree itself (art. 177 RO) because none of the cases in which the law permits a decision with partial sentence of merit and with a decisive sentence detached from the total controversy had occurred, and to return therefore, the parties to the Collegio, for the complete examination of the different parts of the petition;

2) to declare, subsequently, inadmissible or to reject because not proved the petition of solution of the lease contract dated 16 May 43 in virtue of the order and the provision of the Property Controller's Office as above mentioned;

3) then, on account of the improbable case of acceptance of such petition and of the other regarding initial nullity of the contract with the consequent duty of Leonard to restore the possession of the estate, to reject their petition of judgment dated 28 Jun 44 because improbable in fact and in right. To put off the judgment to the final decision regarding the expenses by means of the first statement, to condemn Mrs. Scipione to pay the expenses due in the second one, and by means of the third one to condemn Mrs. Leonard to pay the expenses due in the first one. In the interest of BOMLI, to pay the fees of the defence of the attorney in basis of the specific bill, save other deductions and exceptions. The case in consideration, the Court, assembled the chamber of the council has noted:



petition of solution of the lease contract and the provision of the Property Controller's Office as above mentioned; and the provision of the improvable case of such petition and

3) that, on account of the improbability of the consequent duty of of the other regarding initial nullity of the contract with the petition of Leonard to restore the possession of the estate, to reject their petition guaranty dated 28 Jun 44 because improbable in fact and in right. To put off the judgment to the final decision regarding the expenses by means of the first statement, to condemn Mrs. Scipione to pay the expenses by means of the second one, and by means of the third one to condemn Bros. Leonard to pay the expenses due in the interest of ROMULI, to pay the fees of the defence of the attorney in basis of the specific bill, save other deductions and exceptions. The case in consideration, the Court, assembled the chamber of the council has noted :

J E F C P

In July 1940 Mrs. Scipioni Andrea of Leone, born at Port Said and living at Acireale because of her French nationality was sent away from her home by the Italian Government and interned in a concentration camp distant from Sicily while her properties, according to the law July 1938 No. 1415 and 10 June 1940 No. 566, were sequestered. By Decree of the Prefect of Catania of 16 August 1940 the Ente di Gestione e Liquidazione Immobiliare (EGELI) was appointed sequester of the aforementioned properties among which the estate called Gazzera located in the territory of Acireale measuring about 45.80,51 hectares, cultivated as orchard, vineyard and olive grove of which Mrs. Scipioni was the usufructuary and the Leonardi brothers Giuseppe and Venerando were owners and in possession. By contract of 21 August 1941 the EGELI was authorized representative of the local branch of the Credito Fondiario of the Banco di Sicilia granted the lease of the Gazzera estate to the Leonardi brothers for the duration of one year, namely from 1 September 1941 to 31 August 1942 for a rent of Lire 35,000. Subsequently by private written agreement of 15 March 1943 the Leonardi brothers obtained the tenancy of the Gazzera estate for other 3 years, from the 1st of September 1942 to 31 August 1945, for a yearly rent of Lire 60,000 (sixty thousand lire) to be paid in two equal half yearly instalments, the first due on the 1st of September and the other on the 1st of March of each lease year. Subsequent to the practices signed between Italy and the United Nations, Mrs. Scipioni having returned to Sicily asked for the reversion of her sequestered properties which were consequently reconsigned to her with verbaux dated 3, 4 and 9 November 1943 by the Officer attached to the Allied Commission in the capacity of Property Controller for the Province of Catania, Captain Russi Felix. By summons of the 25th and 26th February 1944 Mrs. Scipioni appeared before this Court asking to be confronted with the Leonardi brothers and Ageli:

- 1) The statement of accounts on the management of the Gazzera estate for the whole period of sequestration with payment of the sums still due;
- 2) The accusation both of the Leonardis and of Ageli as regards damages caused by fire to furniture contained in a small house on the estate according to the description in the inventory and the estimation by the technical adviser;
- 3) The accusation of the Leonardi brothers both together in their position of owners not in possession of the Gazzera estate and apart from the responsibilities for the rebuilding of the destroyed houses destroyed by the fire with authority for the plaintiffs to make repairs charging expenses to the responsible parties;
- 4) The request of the Leonardis together with Ageli for the breaking and null especially

of the abovementioned properties among which are about 45.80,31 hectares, located in the territory of Acireale measuring about 45.80,31 hectares, cultivated as orchard, vineyard and olive grove of which Mrs. Scipioni was the usufructuary and the Leonardis brothers Giuseppe and Venenado were owners not in possession. By contract of 21 August 1941 the Scipioni is authorized representative of the local branch of the Credito Fondiario of the Banca di Sicilia granted the lease of the Gazzera estate to the Leonardis brothers for the duration of one year, namely from 1 September 1941 to 31 August 1942 for a rent of Lire 25,000. Subsequently by private written agreement of 15 March 1943 the Leonardis brothers obtained the tenancy of the Gazzera estate for other 3 years, from the 1st of September 1942 to 31 August 1945, for a yearly rent of Lire 60,000 (sixty thousand lire) to be paid in two equal half yearly installments, the first due on the 1st of September and the other on the 1st of March of each lease year. Subsequent to the certificate signed between Italy and the United Nations, Mrs. Scipioni having returned to Sicily asked for the restoration of her sequestered properties which were consequently reconstituted to her with verbales dated 3, 4 and 9 November 1943 by the officer attached to the Allied Commission in the capacity of Property Controller for the Province of Catania, Captain Russi Felix. By summons of the 25th and 26th February 1944 Mrs. Scipioni appeared before this Court asking to be confronted with the Leonardis brothers and Agelli:

- 1) The statement of accounts on the management of the Gazzera estate for the whole period of sequestration with payment of the sums still due;
- 2) The accusation both of the Leonardis and of Agelli as regards damages caused by fire to furniture contained in a small house on the estate according to the description in the inventory and the estimation by the technical adviser;
- 3) The accusation of the Leonardis brothers both together in their position of owners not in possession of the Gazzera estate and apart from the accusations as to their responsibility for the rebuilding of part of the houses destroyed by the fire with authority for the plaintiff to make repairs charging expenses to the responsible parties;
- 4) The request of the Leonardis together with Agelli for the breaking of the 3 year tenancy contract 16-3-1943 as void and null especially to Mrs. Scipioni's disadvantage as there is no relation between the rent and the actual income of the estate and the consequent duty of the plaintiff to make a statement of accounts on the actual proceeds from the beginning of the lease. Subsequently Mrs. Scipioni asked for measures of procedure for the ascertaining of the causes of the fire and the damages produced by it in cases where the researches made under art. 696 C.I.C. were not sufficient for the appraisal of the actual income

of the Cassano estate in order to check the consistency of the rent and of the witnessed profits that the tenants, only in the "Coleria" campaign 1943-1944 collected over Lire 500,000. Furthermore and lastly she asked that all documents regarding the administration, in particular the verbatim of the inventory, the deeds regarding the fire, the accounts on the management with all the relative supporting documents and balance sheets and the appointment of an accountant technician adviser for the examination of the same, be submitted to the court. The request of the plaintiff^{was} modified in the procedure by Mrs. Scipioni who wished to bring to the notice of the court two questions, namely the concerning the cancelling of the tenancy contract by order of the Command of Allied Troops, the other, previously outlined herein, concerning the annulment of the same as against her interests. By the subsequent verbatim of 21 June 1944 the same attorney outlined more clearly his main reasons maintaining that by the verbatim di consegna of 3, 4 and 9 November 1943, the Controller of Property had already physically and judicially re-annexed the estate. He therefore requested that the case be submitted to the College in order to obtain a partial judgement on the case in question, making reservation for further decisions on the other questions, and in case separate decision could not be taken on the preliminary question he stated he would renounce the other requests. The Leonardi brothers did not accept the renunciation, a second appeal to the case being submitted to the college and secondly made a request for annulment of the case they should be left without the estate in their capacity of tenants. The Judge Instructor with the Order of 27 July 1944 postponed the submission of the case to the College both for the decision of the main question and as to the validity of the renunciation to the points of the question regarding the indemnity for fire damages and the statement of accounts. The attorneys for the parties outlined the above reached conclusions.

124

to bring to the notice of the court the questions, a main one concerning the cancelling of the tenancy contract by order of the Command of Allied troops, the other, previously outlined herein, concerning the annulment of the same on account of her interest. By the subsequent verbal of 21 June 1944 the same attorney outlined more clearly his main reasons maintaining it by the verbal of 21 consequent of 3, 4 and 9 November 1943, the Controller of Property had already physically and juridically reconstituted the estate. He therefore requested that the case be submitted to the College in order to obtain a partial judgement on the case in question, making reservation for further decisions on the other questions, and in case separate decision could not be taken on the preliminary question he stated he would renounce the other requests. The Leonardi brothers did not accept the renunciation, made opposition to the case being submitted to the college and secondly made a request for guarantee to appeal in case they should be left without the estate in their capacity of tenants. The Judge Instructor with the Order of 27 July 1944 postponed the submission of the case to the College both for the decision of the main question and as to the validity of the renunciation to the points of the question regarding the indemnity for fire damages and the statement of accounts. The attorneys for the parties outlined the above reasoned conclusions.

I N T E R V I E W

A) In the first place the College points out that it cannot seriously be ~~contended~~ ^{argued} that the Controller of Property of the Province of Catania could have given to the party taking action full physical and legal possession of the Gazzena land, restoring to her all rights lost through sequestration of the properties by the Italian Government, and restoring to her the same juridical right she had prior to sequestration, apart from juridical transactions which had taken place in the interval. This is evident by the contents of the verbatim for the taking of possession drawn up by the Allied Office. Thus the verbatim 3 November 1943 reads as follows: "I have ordered the present owner of the house Mr. Fichera Vincenzo to leave the villa clear and free of persons and surplus things, as from the present moment Mr. Scipioni shall have to be considered installed in the lawful possession of the real estate, and to whom the keys shall have to be delivered. Mrs. Scipioni made actual demonstration of ownership when, complying with the request of Mr. Fichera, she granted the use of a few rooms to him, the dining room and the study up to the 15th of November 1943. The other verbatim of 4 November 1943 reads as follows: as there is nothing further in the villa to add to the inventory, I have redesignated everything to Mrs. Scipioni." Exactly the last verbatim of 9 November 1943 of the same Controller of Property, Captain Rucci Felix reads verbatim: "We have visited all the other buildings on the estate which have been reassigned to Mrs. Scipioni who states that she is taking them over in order to directly administer them from this date. Captain Rucci and Dr. Francesco Carlinato (representative of the Bank of Sicily) respectively state that from now onwards Mrs. Scipioni must be considered full and unquestioned owner and administrator of the Gazzena estate restored by the present and previous verbatim, and we consequently order whomever it may concern not to question the possession and management of the said estate for whatever reason." It is obvious from the abovementioned documents that the Allied Military Government meant authoritatively to restore to Mrs. Scipioni the same right which she held before sequestration by the Italian Government. Such order must be considered entirely lawful because it was issued by the ruling powers held by the Allied Government. The fact that the Allied Proclamation N°6 abolished all laws, decrees, laws, etc., issued by the Italian Government for the sequestration of properties belonging to citizens of the United States and Great Britain, and that only later by the Proclamation N°19 of 2 February 1944 the provisions of Proclamation N°6 were extended to French citizens, this fact is not sufficient to invalidate Mrs. Scipioni's ownership of the Gazzena estate, recognized in November 1943 by the Allied Military Government, just because of its ruling power in Sicily at the time. "Quod Principi placuit legis habet vigorem" (what the Prince has decreed has the force of law). Just as a power had deprived Mrs. Scipioni of

the Allied Office. Thus the verbatim of November 1943 reads as follows: "I have ordered the present owner of the house Mr. Fichera Vincenzo to leave the villa clear and free of persons and surplus things, as from the present moment Mrs. Scipioni shall have to be considered installed in the lawful possession of the real estate, and to whom the keys shall have to be delivered. Mrs. Scipioni made actual demonstration of ownership when, complying with the request of Mr. Fichera, she granted the use of a few rooms to him, the dining room and the study up to the 25th of November 1943. The other verbatim of 4 November 1943 reads as follows: as there is nothing further in the villa to add to the inventory, I have reconsigned everything to Mrs. Scipioni." Finally the last verbatim of 9 November 1943 of the same Controller of Property, Captain Russi Felix reads verbatim: "We have visited all the other buildings on the estate which have been reconsigned to Mrs. Scipioni who states that she is taking them over in order to directly administer them from this date. Captain Russi and Mr. Francesco Garlinato (representative of the Bank of Sicily) respectively state that from now onwards Mrs. Scipioni must be considered full and unquestioned owner and administrator of the Gazzena estate restored by the present and previous verbuli, and we consequently order whomever it may concern not to question the possession and management of the said estate for whatever reason." It is obvious from the abovementioned documents that the Allied Military Government meant authoritatively to restore to Mrs. Scipioni the same right which she held before sequestration by the Italian Government. Such order must be considered entirely lawful because it was issued by the ruling powers held by the Allied Government. The fact that the Allied Proclamation No 6 abolished all laws, decrees, orders, etc., issued by the Italian Government for the sequestration of properties belonging to citizens of the United States and Great Britain, and that only later by the Proclamation No 19 of 2 February 1944 the provisions of Proclamation No 6 were extended to French citizens, this fact is not sufficient to invalidate Mrs. Scipioni's ownership of the Gazzena estate, recognized in November 1943 by the Allied Military Government, just because of its ruling power in Sicily at the time. "Quod Principi placuit legis habet vigorem" (Ulpiano fr. 1 D. 1, 4). Just as a power had deprived Mrs. Scipioni of her properties, another ruling political power restored to her the possession of her properties. This cannot be but recognized by the juridical authorities. Such recognition must also be made in view of the obligation assumed by the Italian State when Allied administration ended to respect and have others respect the effects consequent to the Allied orders and proclamations. Having thus proved that from

November 1943 the party taking action is in all judicial and physical possession of the Gazzera estate, the request made by the party taking action to the Leonardi brothers not to disturb her lawful possession appears superfluous. Authority to exercise protection by lawful measures is a consequence of the reacquired possession and does not necessitate a statement on the subject by the Magistrate. The fact that the Leonardi brothers or others must not disturb Mrs. Scipioni's lawful possession of the estate is inherent to the restored possession; the Court therefore cannot but prove such restoration of possession, which has taken place by order of the Allied Military Government ever since November 1943.

B) It is now necessary to examine the validity of the tenancy which was made by the contract 16 March 1943 between the Sestione Credito Fondiario della Banca di Sicilia as representative of EGELI and the brothers Giuseppe and Venerando Leonardi. The party taking action requests the annulment from now of the contract based on the fact of its deficiencies. In the first place previous authorization by the Intendenza di Finanza to Egeli for the stipulation of the contract is missing, but it is sufficient to recall the last paragraph of Art. 299 R.D. 8 July 1938 No 1415 to exclude the necessity of authorization. A tenancy contract, even if stipulated for the duration of 3 years, is not out of the province of ordinary administration (Art. 1572 C.C.) and does not, therefore, necessitate authorization. Even the second motive for deficiency appears inconsequent as the suspicion of foul play and of exclusion which was thrown cannot be based on any act in the case. Moreover it must be excluded for the inherent nature of Egeli ante Pubblico supervised throughout its management. Every means of information for ascertaining the average annual effective income of the estate cannot be but refused because of no consequence. The deduced violation of Art. 12 R.D. 10 March No 618 which runs as follows appears to be unfounded: "In cases where the sequestrator provides for the tenancy of the properties entrusted to his administration the duration of the relative contracts cannot exceed a year, or in the case of land estates cannot exceed the minimum of time fixed by local custom." In this particular instance the real estate is designated to varied cultivation as it has a kitchen yard, acid fruit plantation, vineyard, and olive grove and there are no customs in the Acireale territory which determine the minimum period of 3 years duration for estates destined to varied cultivation as there is consideration where the cultivation of acid fruit cannot be considered prevailing. Moreover the first contract between the Banca di Sicilia and the Leonardi of 27 August 1941 was stipulated for the duration of exactly one year, from the 1st of September 1941 to the 27th of August 1942 and only later with the contract of 16 March 1943 tenancy for 3 years was agreed upon, with a retroactive effect from the 1st of September 1942. Furthermore

B) It is now necessary to examine the validity of the tenancy which was made by the contract of 16 March 1943 between the Senione Credito Fondiario della Banca di Sicilia as representative of EGELI and the brothers Giuseppe and Venorando Leonardi. The party taking action requests the annulment from now of the contract based on the fact of its deficiencies. In the first place previous authorization by the Intendenza di Finanze to EGELI for the stipulation of the contract is missing, but it is sufficient to recall the last paragraph of Art. 299 R.D. 8 July 1938 No. 1415 to exclude the necessity of authorization. A tenancy contract, even if stipulated for the duration of 3 years, is not out of the province of ordinary administration (Art. 1572 C.C.) and does not, therefore, necessitate authorization. Even the second motive for deficiency appears inconsequent as the suspicion of foul play and of exclusion which was thrown cannot be based on any act in the case. Moreover it must be excluded for the inherent nature of EGELI into Publico supervised through out its management. Every means of information for ascertaining the average annual effective income of the estate cannot be but refused because of no consequence. The deduced violation of Art. 12 R.D. 10 March No. 618 which case as follows appears to be unfounded: "In cases where the sequestrator provides for the tenancy of the properties entrusted to his administration the duration of the relative contracts cannot exceed a year, or in the case of land estates cannot exceed the minimum of time fixed by local custom." In this particular instance the real estate is designated to varied cultivation as it has a kitchen yard, acid fruit plantation, vineyard, and olive grove and there are no customs in the Acireale territory which determine the minimum period of 3 years duration for estates destined to varied cultivation as those in consideration where the cultivation of acid fruit cannot be considered prevailing. Moreover the first contract between the Banca di Sicilia and the Leonardi of 21 August 1941 was stipulated for the duration of exactly one year, from the 1st of September 1941 to the 21st of August 1942 and only later with the contract of 16 March 1943 tenancy for 3 years was agreed upon, with a retroactive effect from the 1st of September 1942. Furthermore the said party taking action had previously made arrangements for the limiting of the administration to a simple supervision of collection as about 35 tumuli for vegetable growth had been granted to direct cultivation, the acid fruit plantation and the olive grove had been granted to agricultural unions and this could not be

disregarded by either of the contracting parties on the obligation of the closing of the contract for a period not exceeding a year deriving directly from the law and the violation of it brought injury to the rights of the party taking action. Consequently the tenancy contract can be considered valid for only a year, from the 1st of September 1942 to 31 August 1943 and subsequently to the latter date must be considered void. The fact that Mrs. Scipioni collected the six months rent due on the 1st of September 1943 cannot be considered an affirmation of the contract as the collection of 30,000 Lire not received by the Leonardi but by the Banco di Sicilia is certainly not an act of volition to be interpreted as a ratification of the contract in question; on the contrary it is common knowledge that the affirmation of a contract subject to annulment must result from an act in which the contract and the motive for its annulment are mentioned with the specific statement that affirmation is intended. The request, however, for affirmation of the real offer of the second 6 months rent made by the Leonardi to Mrs. Scipioni by the verbale 2 March 1944 must necessarily be refused.

(c) The acceptance of the request made within the abovementioned limits by the party taking action does not as a consequence bring the acceptance for guarantee made by the Leonardi against Egeli. In point of fact Egeli granted the tenancy of the Gasceva estate to the Leonardi for a period of time exceeding the limit put to it.

This fact was well known to the other contracting party as it was explicitly provided for by law. If at the present date the validity of the contract is limited by legal terms independently from Egeli's will, obviously no responsibility can be thrust upon it, therefore the request for guarantee made by the Leonardi brothers must be rejected. There remains to be considered the question of the effectiveness of rejection to the other points in question relative to the damage indemnity, the fire insurance and the statement of accounts. In the first place the inconsistency of the claim made by order of the Istruttore who submitted the sides of the question to the College must be considered, because the case ready for the decision as regards the principal question had nevertheless to be postponed to the College for the remaining part as a preliminary statement on the effectiveness or not of the renunciation made by the party taking action for what concerns the other two points in question was necessary. The said renunciation on Mrs. Scipioni's part although prompted by her wish to see the main question definitely settled and by her wish to avoid that the procedure of the inevitable instructive formalities as regards requests for statement of accounts and damage indemnities should end by postponing the dispute cannot however be considered valid because not accepted by the contracting parties. The party taking action is in substance also aware of the above as in her latest statement she declares that the renunciation was

in question; on the contrary it is common knowledge that the affirmation of a contract subject to annulment must result from an act in which the contract and the motive for its annulment are mentioned with the specific statement that affirmation is intended. The request, however, for affirmation of the real offer of the second 6 months rent made by the Leonardi to Mrs. Scipioni by the verbale 2 March 1944 must necessarily be refused.

c) The acceptance of the request made within the abovementioned limits by the party taking action does not as a consequence bring the acceptance for guarantee made by the Leonardi against Egeli. In point of fact Egeli granted the tenancy of the Gassena estate to the Leonardi for a period of time exceeding the limit put to it. This fact was well known to the other contracting party as it was explicitly provided for by law. If at the present date the validity of the contract is limited by legal terms independently from Egeli's will, obviously no responsibility can be thrust upon it, therefore the request for guarantee made by the Leonardi brothers must be rejected. There remains to be considered the question of the effectiveness of rejection to the other points in question relative to the damage indemnity, the fire insurance and the statement of accounts. In the first place the inconsistency of the claim made by order of the Istruttore who submitted the sides of the question to the College must be considered, because the case ready for the decision as regards the principal question had nevertheless to be postponed to the College for the remaining part as a preliminary statement on the effectiveness or not of the renunciation made by the party taking action for what concerns the other two points in question was necessary. The said renunciation on Mrs. Scipioni's part although prompted by her wish to see the main question definitely settled and by her wish to avoid that the procedure of the inevitable instructive formalities as regards requests for statement of accounts and damage indemnities should end by postponing the dispute cannot however be considered valid because not accepted by the contracting parties. The party taking action is in substance also aware of the above as in her latest statement she declares that the renunciation was made by her only as a precautionary measure and has requested the affirmation of her right to file separate legal judgement or otherwise continue the present dispute. There is therefore no reason to avoid the opportunity of considering the other two points in question.

As regards the statement of accounts it is obvious that Egeli in its capacity of conservator must report on the entire period of administration, while the Leonardi brothers, with the expiration of the lease on the 31st of August 1943, have to consider themselves after such date owners without title of the Gaszera estate. Consequently Mrs. Scipioni's request for the statement of account must be fully recognized starting, however, from the 1st of September 1943, that is to say for the period following the expiration of the lease. The order of the execution must be submitted to the Istruttore for the statement of accounts for the procedure of the request for damage indemnities for the fire reported by Mrs. Scipioni. On this point at the present stage no definite provision can be issued as researches on the facts and the causes of the fire must still be examined and both sides request advice and proof by witness; the Court therefore provides for it by a separate order of the same date. The result of the procedure can determine what responsibility, if any, can be thrown upon the persons present. Expenses of the present case are postponed to the definite one. The clause of the temporary execution will be granted taking into account the danger of damages for delay.

FOR THESE REASONS

THE COURT, having heard the legal attorneys of both sides, speaking on the claims made by Mrs. Scipioni Andree against the Leonardi brothers Venerando and Giuseppe against the Banco di Sicilia Sezione Credito Fondiario represented by the Ente di Gestione e Liquidazione Immobiliare stated in the document 25-26 February 1944 and following deeds and on the subject of the request for guarantee made by the Leonardi brothers to Egeli, having rejected the opposite requests and exceptions, provides as follows:

- 1°) States that the party taking action Scipioni Andree is to be considered installed in the physical and legal possession of the Gaszera estate by virtue of the verbal 3.4 and 9 November 1943 of the Provincial Court of Property in Catania, Captain Russi Felix.
- 2°) States that the tenancy contract of 31 August 1943 stipulated between the Leonardi brothers Venerando and Giuseppe by private printing of 16 March 1943 has expired.
- 3°) States that the renunciation made by the party taking action as regards the two main questions relative to the statement of accounts and to the indemnity for fire damage is void.
- 4°) Refuses the request for ^{indemnity} guarantee made by the Leonardi brothers to Egeli.
- 5°) Compels the Leonardi brothers Giuseppe and Venerando to submit

at the present stage no definite provision can be issued as reasons on the facts and the causes of the fire must still be examined and both sides request advice and proof by witness; the Court therefore provides for it by a separate order of the same date. The result of the procedure can determine what responsibility, if any, can be thrown upon the persons present. Expenses of the present case are postponed to the definite one. The clause of the temporary execution will be granted taking into account the danger of damages for delay.

FOR THE DEFENDENTS

THE COURT, having heard the legal attorneys of both sides, speaking on the claims made by Mrs. Scipioni Andrei against the Leonardi brothers Venerando and Giuseppe against the Banco di Sicilia Cassa Credito Fondiario represented by the Ente di Gestione e Liquidazione Immobiliare stated in the document 25-16 February 1944 and following deeds and on the subject of the request for guarantee made by the Leonardi brothers to Egeli, having rejected the opposite requests and exceptions, provides as follows:

1°) States that the party taking action Scipioni Andrei is to be considered installed in the physical and legal possession of the Cassena estate by virtue of the verbali 3.4 and 9 November 1943 of the Provincial Cancellor of Property in Catania, Captain Russi Felix.

2°) States that the tenancy contract of 31 August 1943 stipulated between the Leonardi brothers Venerando and Giuseppe by private printing of 16 March 1943 has expired.

3°) States that the renunciation made by the party taking action as regards the two main questions relative to the statement of accounts and to the indemnity for fire damage is void.

4°) Refuses the request for ^{indemnity} guarantee made by the Leonardi brothers to Egeli.

5°) Compels the Leonardi brothers Giuseppe and Venerando to submit the accounts of the revenues collected from the Cassena estate after the expiration of the tenancy contract (31 August 1943) and refuses the request for affirmation of the real offer made by the Leonardi brothers to Mrs. Scipioni by the verbale of 2 March 1944 authorizing the same Leonardis to collect the sum of 30.300 lire deposited to the account of the Banco di Sicilia N°5945 issued at the office in Catania on 28 April 1944.

6°) Directs the Cavaliere Ufficiale Mascari Antonino in his capacity of Director of the Banco di Sicilia, Sezione Credito Fondiario and the latter as representative of Mascari to submit the statement of accounts for the administration of the Gozzena estate for all its length.

7°) He submits the questions to the Istruttoria by separate orders, for statement of accounts and for the request of indemnity for fire damages.

8°) responds to the final court all statement as regards expenses of the present case.

9°) Allows the temporary execution of the present sentence. Such as was decided upon in Catania in the Chamber of Council for the first section.

/s/ Cucciolera F. Galiffi. G. Amoroso estensore.

orders, for payment of expenses, for fire damages.

8°) responds to the final court all statement as regards expenses of the present case.

9°) Allows the temporary execution of the present sentence. Such as was decided upon in Catania in the Chamber of Council for the first section.

/s/ Cucchiara F. Galfr. G. Amoroso estensore.

File

(6A)

HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

ACC/4034/9/L.

/gb.
1 Sept 44.

SUBJECT : Sequestration of property of Signora SCIPIONI.
TO : Regional Commissioner - Region 1.

1. We find that thru a stenographic error our response to yours RIE/013.043/WRJ dated 24 August 1944 was sent to Regional Legal Officer, Region 3. (Southern Region)

2. Enclosed is a copy thereof.

3. We have requested Regional Legal Officer, Southern Region immediately to return to you the enclosures contained in your above mentioned letter.

8

MARC J. GROSSMAN,
Lt. Col.,
Chief Counsel,
for Acting Chief Legal Officer.

File

(5A)

HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

ACC/4034/9/L.

/gb.
1 Sept 44.

SUBJECT : Sequestration of property of Signora SCIPIONI.
TO : Regional Legal Officer (Thru Regional Commissioner)
Southern Region.

- 1; Reference your L/2140 dated 29 August 1944.
2. Our letter ACC/4034/9/L. dated 27 August 1944 was sent to you in error. It was intended for the Regional Commissioner, Region 1.
3. Will you please immediately forward the same with enclosures to him and greatly oblige.

MARC J. GROSSMAN,
Lt. Col.,
Chief Counsel,

Copy to: Regional Commissioner, for Acting Chief Legal Officer.
Region 1.

4034/9 ✓ *file*

(4A)

HEADQUARTERS
SOUTHERN REGION, ALLIED CONTROL COMMISSION
LEGAL DIVISION
APO 394, U.S. Army

L-2140

29 August 1944

SUBJECT: Sequestration of property of Signora SCIPIONI.

TO : C.L.O., Legal Sub-Commission ACC, HQ.

1. From ACC/4034/9/L dated 27 August 1944 refers.
2. The letter referred to in the first paragraph does not appear to have emanated from this HQ.
3. May I ask that you will supply me with a copy thereof together with an indication of the Officer to whom your reply is to be directed.

LFD/ga

L.F. Dawson
L.F. DAWSON
Lt. Col. G.L.
Regional Legal Officer

D.P.C

Extract from Royal Decree of 10 March 1941 No 618.

Article 12. Location of sequestered property.

Pursuant to the provisions of the second para of Art. 299 (of the Laws of War - 8 July 1938) in cases in which the sequesterator must provide for the letting of the property entrusted to his administration, the duration of the relative contracts shall not exceed one year and in the case of rural properties, they shall not exceed the minimum period established by local custom.

However, the intendants of finance, may authorize the sequesterator to stipulate a contract of location of longer duration when appreciable advantages accrue to the management.

Extract from The Laws of War - 8 July 1938

Article 299. The custodian shall, under the supervision of the Intendant de Finances, be charged with the custody, conservation, maintenance and administration of sequestered property. He shall in all cases act in good faith.

----- . Acts or deeds which are not considered in the course of the ordinary administration

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Pursuant to the provisions of Art. 299 of the Laws of War - 8 July 1938) in cases in which the sequester must provide for the letting of the property entrusted to his administration, the duration of the relative contracts shall not exceed one year and in the case of rural properties they shall not exceed the minimum period established by local custom.

However, the intendants of finance, may authorize the sequester to stipulate a contract of location of longer duration when appreciable advantages accrue to the management.

Ex tract from The Laws of War - 8 July 1938

Article 299. The custodian shall, under the supervision of the Intendente di Finanza, be charged with the custody, conservation, maintenance and administration of sequestered property. He shall in all cases act in good faith.

---. Acts or deeds which are not considered in the course of the ordinary administration require the authorization of the Intendente di Finanza.

I. Practice with respect to cancellation of leases or other contracts by mandate of DPC or other A.M. & officers:

A. It cannot be said that there is an established practice

B. In a few instances leases have been cancelled by the arbitrary mandate of an officer.

C. There appears to be no legal authority for cancelling a lease, whether the lease was made by the owner or a sequestrator, either in A.M. & areas or in transferred areas. There is certainly no authority to cancel a lease or to perform other administrative acts in transferred territory.

II. Is the subject lease valid? The answer, it seems to me, is yes, unless

A. It was not made in good faith. See Article 299, Laws of War, or,

B. It was made in violation of Art 12 Royal Decree Law of 1941, or of said Art 299, or

C. It was cancelled by the verbales of 3/11/43.

III. The matter is one for decision by the National Courts ^(over)

IV. In any event the life tenant may have a claim against the Italian government for loss accruing by reason of improper acts of the sequestrator, such claim to be asserted at some future time.

HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

(2A)

ACC/4034/9/L

27 Aug 44

SUBJECT: Sequestration of property of Signora SCIPIONI
TO : R.L.O. (thru RC) Region 3

1. Reference your letter 24 Aug 44 reference RLE 013.043/WRJ and enclosures.

2. We are of the opinion that nothing contained in Proclamation No 6 or in the Verbale of 3 Nov 43 had the legal effect of abrogating the lease which is the subject of your inquiry.

3. Certainly, following the restoration of the territory to the Italian Government, no administrative or other action could directly be taken by ACC which would have that effect.

4. It would appear that the said lease is legally binding unless unlawfully entered into by the sequestrator either because he acted beyond the scope of his authority or for other reasons under Italian law, e.g., that the lease was not made in good faith; that it was for a time in excess of the period provided by law.

5. Whether or not the lease is valid is a mixed question of law and fact. It is indicated by Capt Mathews' letter that the rental is unconscionably low, whereas Squadron Leader Dickie (now Wing Commander Dickie) in an earlier letter said that it is the same as under a prior lease. The inference is drawn in Major Caspell's letter that there may have been collusion between the sequestrator and the lessee both allegedly being good fascists, but it also appears that the lessee was the holder of the reversionary interest in the property which may well have made him the natural person to select as lessee.

6. These questions all appear to have been raised in the case pending before the Italian Court and in the absence of evidence to the contrary we must assume that they will be honestly resolved in accordance with Italian law.

7. It is the view of the Legal Sub-Commission that the sequestration decree is a reasonably fair and adequate piece of legislation which was well calculated to meet the exigencies of war. In taking up her residence in Italy, though allegedly a French subject, the owner of the property made herself amenable to Italian law in so far as property located in Italy is concerned.

- 2 -

If, pursuant to the sequestration decree, the lease was lawfully entered into by the sequesterator, it would seem to us that she was bound thereby. If, on the other hand, its invalidity is asserted under Italian law, the owner must pursue her remedies in the Italian courts as she has already undertaken to do. Any interference at this juncture by the ACC would seem to us to be an unwarranted invasion upon the functions of the Italian courts and might well carry the inference of an unjustified reflection upon their integrity.

8. We are accordingly of the opinion that the ACC can appropriately manifest its interest only by a request through the proper channels that the trial of the case be expedited.

9. This matter has had the consideration of the Property Control Sub-Commission and it concurs in the views herein expressed.

Richard H. Wilmer
RICHARD H. WILMER,
Colonel, C.A.C.
Acting Chief Legal Officer.

REELS: G/261/L of 31 July 44 from LO Catania
Letter of 14 March 44 from PIO Catania
RLE 013.043/HD of 20 March 44 from RLO Region I

2

4034/9
new file please

ALLIED CONTROL COMMISSION
SICILY REGION HEADQUARTERS
APO 394

(1A)

File: RLE 013.043/WRJ

24 August 1944

SUBJECT: Sequestration of Property of Signora Scipioni.

TO : C.L.O., A.C.C. HQ. APO 394.

1. Transmitted to you, for appropriate action and your opinion, in consultation with Controller of Property A.C.C. HQ., are the attached papers.

2. This matter is urgent, as the case will come before the courts of Catania early in September 1944.

For the Regional Commissioner:

William R. Jordan
WILLIAM R. JORDAN,
Colonel, C.A.C.,
R.E.O.

sf

Encl: Papers ref. G/261/L

LEGAL SUB-COMMISSION	
CLD	
DDO	
Chief Clerk	
CFO	
Indian Secretary	
CL RKS	

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