

**“IROIJ LABLAB” MO JITIAM and TOKBAR ISHIGURO;
“ALAB” IOANE T. and “DRI JERBAL” NEIKWOJ, including all
other members of the “IROIJ”, “ALAB”, and “DRI JERBAL’S
BWIJ” who hold any and all interests in the landlease in question,
including CHIHAYA ANMONTA, heir to “IROIJ LABLAB’S” in-
terests in the same land and lease, Plaintiffs**

v.

ACME IMPORTERS and SHIGERU WASE, Defendants

Civil Action No. 6-73

Trial Division of the High Court

Marshall Islands District

August 1, 1974

Action to cancel lease. The Trial Division of the High Court, Turner, Associate Justice, held that issue of cost of lessee’s improvements, to be paid lessee by lessor, under the lease agreement, on cancellation of the lease, could, by agreement of the parties, be submitted to arbitration.

1. Arbitration—Trials

In the absence of a statutory prohibition, arbitration may, as a matter of common law, be used to decide a disputed issue of fact at a trial, provided the parties so agree.

2. Arbitration—Arbitration Contracts

An arbitration agreement is a contract and subject to the same rules of law as to interpretation and enforcement as any other contract, and the mere fact that litigants orally agree to submit a question to arbitration does not make the contract any less enforceable.

3. Judgments—Interest

Generally, interest does not run on an unliquidated claim until after judgment, though it may be allowed in special situations from the time of filing of suit.

4. Judgments—Interest

Where lease did not provide for interest to run on the cost of improvements, to be paid lessee in the event of termination of the lease, interest could be recovered only as of the time of judgment, not as of the time of filing of suit.

Assessors:

*KABUA KABUA, District Court Pre-
siding Judge, and MORRIS JALLY,
District Court Associate Judge*

Interpreters:

OKTAN DAMON and MILTON ZAKIOS

Counsel for Plaintiffs: JOHN R. HEINE

Counsel for Defendants: JERRY KRAMER

TURNER, *Associate Justice*

This action involves a lease of valuable downtown property in DUD Municipality, Majuro Atoll, the Marshall Islands District center. The court is called upon to interpret and enforce the lease provisions.

Plaintiffs sought to cancel the lease because of its assignment by the original lessee to the defendants. The defendants seek to recover "the reasonable cost of all improvements . . . permanently attached to the premises." The lease provides that in the event of the lessors' determination to terminate the lease (for cause, omitted but implied) after notice given:

"The Lessee shall have the same right of removal as provided above except that the Lessors shall compensate the Lessee for the reasonable cost of all improvements and fixtures contributed by the Lessee and permanently attached to the premises. Such costs shall include both labor and materials costs and any other reasonable costs which may have been incurred by the Lessee in adding an improvement or fixture to the premise. The Lessee shall have continued use of the premises under the terms of this agreement until such compensation has been paid in full."

The quoted provision of the lease encompasses the crux of this litigation. The principle issue, aside from the "cost" of the improvements, is the lessors' right to cancel the lease upon written notice. The question need not be considered because of defendants' stipulation after plaintiffs rested. The defendants confessed judgment as to cancellation of the lease and asked for recovery of improvement costs. Defendants submitted a claim for \$18,422.95 representing the amount spent by the original lessee and by defendants after the assignment and prior to temporary injunction pendente lite issued by the court on plaintiffs' petition restraining

defendants from proceeding with further construction. (Defendants' Exhibit I.)

Plaintiffs insisted they were unable to challenge defendants' claim for construction costs without a detailed and time consuming examination of invoices, ledgers, and other supporting documents which were made available to them by defendants. Because of the exigencies surrounding this phase of the controversy, the defendants proposed the matter be settled by a board of appraisers, one to be appointed by each side and the third to be appointed by the court.

[1] There is no provision in the Trust Territory Code for submitting a disputed issue of fact to arbitration. There need not be specific statutory authorization because arbitration comes from an ancient common law origin. As a matter of common law, in the absence of statute or local custom, it is applicable and enforceable in the Trust Territory. 6 C.J.S., Arbitration and Award, Sec. 1, and 1 TTC 103.

[2] An arbitration agreement is a contract, subject to the same rules of law as to interpretation and enforcement, as any other contract. The mere fact the litigants orally agree to submit the question to arbitration does not make their contractual understanding any less enforceable.

The agreement, evidenced by the court order appointing the three-man board of arbitrators, called upon the arbitrators to "consider, determine, and report to the court" in writing, the reasonable cost of "all improvements permanently attached to the premises."

The Board duly reported the "current cost" of all improvements to be \$13,246.56 as against the defendants claim of \$18,422.95, which included \$2,000 for annual rental for 1972 and 1973 and 6% interest of \$1,364.67 from March 1973 to July 1974. Neither of the latter two items are properly includable in the "cost of improvement"

even though they are admittedly part of the defendants' out-of-pocket disbursements lost as result of plaintiffs' decision to terminate the lease.

The original lessee assigned the lease to defendants, January 25, 1973, and suit was brought February 7, 1973, and a temporary restraining order issued against the defendants enjoining them from proceeding with construction. Defendants moved and the court granted a motion to dismiss for failure to join necessary parties plaintiffs. After an amended complaint was filed, the restraining order was re-instated. In the meantime, however, the defendants paid the annual rental for 1973 of \$1,000.00, but because of plaintiffs' restraining order, defendants were unable to use, improve, or occupy the premises. The court believes defendants should be reimbursed for the rent paid.

[3] As far as interest claimed by the defendants, the general rule of law is that interest does not run on an unliquidated claim until after judgment. Interest may be allowed, however, from the time of filing suit on an unliquidated claim in a special situation. The exception to the general rule is not applicable to the present case.

[4] If the parties had intended that interest run on the "cost of improvements" to be paid by the lessor to lessee in the event of termination of the lease, they should have specifically provided for it in the lease. The lease is silent as to payment of interest. The court believes the defendant should recover interest only on the judgment amount.

Ordered, adjudged and decreed:—

1. That the lease between plaintiffs and Lisa Noland assigned by her to defendants is terminated for the parcel of land known as Aibwij wato, located between the property of Robert Reimers and the post office building in DUD Municipality, Majuro Atoll.

2. That the defendants shall have and recover from the

plaintiffs the sum of Thirteen Thousand Two Hundred Forty-Six dollars and Fifty-Six cents (\$13,246.56) as and for the costs of improvements permanently attached to the property, and the defendants shall have and recover the further sum of One Thousand dollars (\$1,000.00) for rental paid on said lease for the year 1973, together with interest on the judgment amount of \$14,246.56 at the rate of 6% per annum from date of entry until paid.

3. That the defendants shall retain control and possession of said premises until this judgment has been satisfied in full.

4. That defendants shall have their costs in accordance with the law.