

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
International Crane Company) ASBCA No. 49604
)
Under Contract No. N62477-90-C-0044)

APPEARANCE FOR THE APPELLANT: Douglas G. Worrall, Esq.
Wright, Constable & Skeen LLP
Baltimore, MD

APPEARANCES FOR THE GOVERNMENT: Arthur H. Hildebrandt, Esq.
Navy Chief Trial Attorney
Chuck Kullberg, Esq.
Senior Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE SHACKLEFORD
ON
GOVERNMENT' S MOTION FOR RECONSIDERATION

The Government has moved for reconsideration of our decision (00-1 BCA ¶ 30,624) on its Motion to Dismiss. The basis for the Motion to Dismiss was the Government' s contention that, due to a forfeiture of its corporate charter, appellant lacked standing as a corporate entity under Maryland law when it submitted a certified claim to the contracting officer and subsequently appealed the final decision.

We held as follows:

Appellant lost its right to conduct business as a Maryland corporation after submitting but prior to certifying its claim to the contracting officer and it lacked legal standing as a corporate entity under Maryland law when it appealed the contracting officer' s decision denying that claim.

However, under § 3-515(c)(3) of the Maryland statute, the surviving director-trustees have the authority to bring suit in their own names or in the name of the corporation in connection with winding up the corporate affairs. The litigation began when the claim was submitted and a final decision requested. At that time, the corporate charter was in good standing. In our view, the appeal by the director-trustee

in the name of the corporation was consistent with and rationally related to “winding up” the corporate affairs. Consequently, the ICC had legal standing as a corporate entity to file the appeal under Maryland law.

(00-1 BCA at 151,174)

The Government asserts that certain dates are pertinent to its motion for reconsideration, as follows:

Appellant submitted its request for a contracting officer’s final decision on 19 September 1995. (R4, tab 11). Appellant forfeited its corporate charter on 3 October 1995. Appellant, however, did not certify its claim until its letter dated 19 October 1995. (R4, tab 12). Appellant faxed that letter to the Government on 20 October 1995 as evidenced by the attached fax cover sheet. (R4, tab 12). Mr. David Crispino signed the 19 September 1995 request for a final decision, but Mr. William D. Angelotti certified the claim.

(Mot. recon. at 1)

We should add that Mr. Crispino was a director of the corporation and Mr. Angelotti was Vice President for Operations of the corporation but was not a director.

The Government asserts and we agree that the claim which exceeded \$100,000 was not a proper one under the Contract Disputes Act until it was certified and that the contracting officer was not obligated to issue a decision until receipt of the certification. We further agree with the Government’s assertion that when Mr. Crispino requested a final decision, the State of Maryland had not forfeited the charter and thus he was not acting as a trustee under § 3-315 of the Maryland Corporations and Associations Code.

Finally, we agree with the assertion that subsequent to forfeiture the director-trustees had only limited rights that included suing or being sued in their own capacity or in the name of the corporation. However, those limited rights also included the power to carry out the contracts of the corporation, and to do all acts necessary to liquidate the corporation or wind up its affairs. The Government then argues without legal authority, as follows:

Since the request for a contracting officer’s final decision lacked legal effect as [a] claim prior to the forfeiture, there was no right under the Contract Disputes Act that remained

after the forfeiture. The trustees could only be successors to those rights possessed by International Crane Company prior to the forfeiture. [footnote omitted] Mr. Angelotti's act of certifying the claim had no legal effect because there was no claim to certify. The trustees could have submitted a certified claim after the forfeiture in accordance with Maryland law, but they never did so. The Government does not deny that a right to bring a claim would have passed to the trustees, but the trustees could not give legal effect to a claim after the forfeiture when the claim did not have legal effect prior to the forfeiture.

(Mot. recon. at 2)

It seems to us that notwithstanding there was no proper CDA claim prior to forfeiture, there still existed a disputed request for an equitable adjustment. Since the director-trustees had the right to carry out the contracts of the corporation and to do all things necessary to wind up its affairs, the act of certification is surely such a right that was properly exercised under Maryland law. To the extent the Government is arguing that Mr. Angelotti, as a non-director-trustee, was not authorized to certify the claim after forfeiture, we observe that the Maryland statute does not require that the director-trustees personally sign all documents. *Cf., Lone Star Industries, Inc., v. Redwine*, 757 F.2d 1544, 1550 (5th Cir. 1985) (Delaware law limits the activities in which a dissolved corporation may engage, but "nothing in the statute purports to limit in any way the board's discretion as to how permissible activities - such as winding up - may be accomplished" and nothing in the statute requires the directors to personally execute every aspect of winding up.)

The motion for reconsideration is denied. The parties are directed to file a joint status report within 45 days of receipt of this decision, which at a minimum, should state whether the parties wish to resolve the appeal through binding mediation as previously agreed or some other form of Alternative Disputes Resolution. If not, the parties should indicate if a hearing is desired and if so, an agreed discovery schedule and three

alternative hearing dates should be submitted. Joint status reports will thereafter be required every 45 days.

Dated: 11 August 2000

RICHARD SHACKLEFORD
Administrative Judge
Armed Services Board
of Contract Appeals

I concur

MARK N. STEMLER
Administrative Judge
Acting Chairman
Armed Services Board
of Contract Appeals

I certify that the foregoing is a true copy of the Opinion and Decision of the Armed Services Board of Contract Appeals in ASBCA No. 49604, Appeal of International Crane Company, rendered in conformance with the Board's Charter.

Dated:

EDWARD S. ADAMKEWICZ
Recorder, Armed Services
Board of Contract Appeals