

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of -- )  
 )  
International Source and Supply, Inc. ) ASBCA Nos. 52318 and 52446  
 )  
Under Contract No. N00604-97-C-0061 )

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APPEARANCES FOR THE GOVERNMENT: Arthur H. Hildebrandt, Esq.  
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OPINION BY ADMINISTRATIVE JUDGE WILLIAMS  
ON APPELLANT’S MOTION FOR SUMMARY JUDGMENT

Appellant moves for summary judgment in these appeals. We deny the motion for the reasons discussed *infra*.

FINDINGS OF FACT  
FOR PURPOSES OF THE MOTION

1. In 1997, the Navy (Government) awarded Contract No. N00604-97-C-0061 (contract) to International Source and Supply, Inc. (ISSI or appellant). The contract called for ISSI to deliver four chilled water units (“chillers”) for use on submarines. A “chiller” is a device that provides a vessel with cold water while the ship’s chilled water plant is not in operation. The water is used to operate and maintain equipment on board the vessel. (R4, tab 2)

2. In addition to supplying the chillers, ISSI was also expected to furnish various “accessories” for each chiller, such as water pumps and expansion tanks. The specifications provided that “chillers shall be . . . completely assembled and ready for immediate use.” (R4, tab 2, attachments 1 and 2, at § 1.1)

3. ISSI delivered the requisite items, but did not attach the accessories to the chillers. Since the chillers could not function properly without the accessories, the Government determined that ISSI had not complied with its contractual responsibility to furnish chillers that were “completely assembled and ready for immediate use.” Accordingly, the Government refused to accept the chillers as delivered. ISSI subsequently agreed, under protest, to install the accessories. (R4, tabs 25, 31 and 32)

4. ISSI filed a claim with the contracting officer seeking compensation in the amount of \$214,660.48. The claimed amount represents additional expenses allegedly incurred by ISSI in the installation process. By final decision of 30 July 1999, the contracting officer denied ISSI’s claim and asserted a Government claim against ISSI in the amount of \$69,873.00. The Government alleged that ISSI had injured the Government by failing to adhere to the original delivery schedule. ISSI timely appealed to this Board. (R4, tab 1)

### DECISION

ISSI now moves for summary judgment in these appeals. In evaluating the motion, we follow the established rule that summary judgment is appropriate when no material facts are genuinely in dispute and the moving party is entitled to judgment as a matter of law. *Mingus Constructors, Inc. v. United States*, 812 F.2d 1387, 1390 (Fed. Cir. 1987); FRCP 56. A material fact is one which may effect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). Inferences must be drawn in favor of the party opposing summary judgment. *Hughes Aircraft Co.*, ASBCA No. 30144, 90-2 BCA ¶ 22,847. Our task is not to resolve factual disputes, but to ascertain whether material disputes of fact are present. *General Dynamics Corp.*, ASBCA Nos. 32660 and 32661, 89-2 BCA ¶ 21,851.

In support of its motion, ISSI contends that the contract required ISSI only to furnish chillers whose internal components were completely assembled and ready for use, together with the specified accessories. In ISSI’s view, installation of the accessories was the responsibility of the Government. ISSI advances a number of arguments to support its interpretation of the contract’s requirements. ISSI maintains, for instance, that the contract specifications, when read in connection with other provisions in the agreement, support an inference that installation of the accessories was the Government’s responsibility; that chiller accessories are customarily installed by the buyer after delivery as a matter of industry practice; and that, if the Board finds the contract specifications to be ambiguous, the ambiguity is latent and should be construed against the Government, which drafted the contract.

The Government opposes the motion, insisting that all accessories should have been attached to the chillers prior to delivery. The Government contends that the contract

*did* require ISSI to install the accessories prior to delivery; that ISSI's actions during contract performance are inconsistent with the interpretation ISSI now ascribes to the agreement; that the parties communicated verbally and in writing prior to performance so as to clarify the meaning of the disputed language; and that any ambiguity in the specification was patent, thereby imposing upon ISSI a duty either to seek clarification or else assume the risk of an incorrect interpretation.

In our view, this dispute is not amenable to summary judgment at this time. As is evident from our above discussion, the instant case primarily involves a disagreement over the *meaning* of contractual language, particularly the meaning of the specification requiring chillers to be "completely assembled and ready for immediate use." Thus, the resolution of these appeals ultimately turns upon the Board's interpretation of disputed contract language. Of course, we do not interpret contractual terms in a vacuum; rather, our goal is to arrive at an interpretation that accurately reflects the intentions of the parties. *See, e.g., Alvin, Ltd. v. United States Postal Service*, 816 F.2d 1562, 1565 (Fed. Cir. 1987) ("[I]n the case of contracts, the avowed purpose and primary function of the court is the ascertainment of the intent of the parties") (quoting S. Williston, A TREATISE ON THE LAW OF CONTRACTS § 601 (3d Ed. 1961)).

In the instant case, it is clear that the parties vigorously contest the intended meaning of material contract terms. Indeed, the parties have offered us drastically differing readings of the language in question. (Findings 2-4) Moreover, both parties have represented that they will, in the event of trial, adduce evidence to clarify the intended meaning of the disputed language. We conclude that it will be necessary for the Board to consider extrinsic evidence in order to ascertain the intent of the parties. Summary judgment therefore is inappropriate. *See, e.g., The Ryan Co.*, ASBCA No. 50466, 99-2 BCA ¶ 30,445 at 150,434 (denying summary judgment because contractual language "is not clear on its face and requires consideration of extrinsic evidence to determine its true meaning"); *American Gulf Companies*, ASBCA No. 49919, 98-2 BCA ¶ 29,766 at 147,506 (denying summary judgment on grounds that "[a] genuine issue remains to be decided as to the intended meaning" of disputed, non-standard contract language); *Ronald Hsu Construction Co., Inc.*, ASBCA Nos. 48682, 49441, 97-1 BCA ¶ 28,739 (summary judgment inappropriate when there exists a genuine, material dispute over intended meaning of contract specifications).

Appellant reminds us that contract interpretation is, fundamentally, a legal matter, which can be decided on summary judgment. *See, e.g., P.J. Maffei Bldg. Wrecking Corp. v. United States*, 732 F.2d 913, 916 (Fed. Cir. 1984). Since the outcome of this case primarily involves issues of contract interpretation, appellant urges us to dispense with trial and proceed to summarily adjudicate these appeals.

We must decline to do so. While it is true that contract interpretation is a matter of law, the Board has recognized that material disputes of fact nevertheless may arise concerning the meaning intended by the parties. For instance, in *Fairchild Industries, Inc.*, ASBCA No. 46197, 98-2 BCA ¶ 29,767, we explained:

It is true that [the interpretation of contract terms] is, ultimately, a matter of law. But our analysis must, of necessity, be grounded in the factual matter of the parties' intent. Here, the issue of intent is controverted and, thus, cannot be the subject of a successful dispositive motion.

*Fairchild*, 98-2 BCA at 147,508. Similarly, the instant case presents a dispute of fact as to the intended meaning of contractual language that is material to the resolution of the appeals. Since we are not able to resolve the factual disputes concerning the meaning of the contract language at this stage of the proceedings, summary judgment is inappropriate.

#### CONCLUSION

The motion is denied. The parties are directed to proceed with discovery.

Dated: 13 April 2000

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PAUL WILLIAMS  
Administrative Judge  
Chairman  
Armed Services Board  
of Contract Appeals

(Signatures continued)

I concur

I concur

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

ALLAN F. ELMORE  
Administrative Judge  
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 Nos. 52318 and 52446, Appeals of International Source and Supply, Inc., rendered in conformance with the Board's Charter.

Dated:

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