

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -- )  
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Broadway Consolidated Companies, Inc. ) ASBCA No. 56905  
 )  
Under Contract No. N68950-02-D-0052 )

APPEARANCE FOR THE APPELLANT: Scott Berends, Esq.  
The Patterson Law Firm, LLC  
Chicago, IL

APPEARANCES FOR THE GOVERNMENT: Ronald J. Borro, Esq.  
Navy Chief Trial Attorney  
Mark R. Wiener, Esq.  
Senior Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE MELNICK  
ON MOTION TO DISMISS THE APPEAL FOR LACK OF JURISDICTION

Broadway Consolidated Companies, Inc. (Broadway) seeks costs it claims to have incurred upon a task order terminated for the convenience of the government. The government has moved to dismiss the appeal due to Broadway's liquidation in a Chapter 7 bankruptcy. We grant the government's motion.

STATEMENT OF FACTS FOR PURPOSES OF THE MOTION

1. On 30 September 2003, the Department of the Navy (Navy) awarded Task Order (TO) No. 5 under the above-referenced contract to Broadway. The TO was for the repair of the Sampson Street Bridge at the Naval Training Center, Great Lakes, Illinois. (R4, tab 1) After amendments, the total contract amount was \$1,385,994 (R4, tab 3 at 9).
2. By letter dated 22 December 2005, the Navy terminated TO 5 for the convenience of the government, effective 1 January 2006 (R4, tab 13).
3. By letter dated 14 December 2006, Broadway submitted a request for equitable adjustment, with itemized data, on an accompanying, certified, Standard Form 1436, seeking a balance of \$578,331.40 (R4, tab 22).
4. On 25 June 2009, the contracting officer issued a final decision, determining that no additional payment was due to Broadway beyond the progress billing that had already been paid (R4, tab 28).

5. Broadway filed its notice of appeal from the final decision by letter dated 13 August 2009.

6. Broadway filed a voluntary Chapter 7 bankruptcy petition on 8 December 2010 in the United States Bankruptcy Court, Northern District of Illinois (Bd. corr. ltr. dtd. 10 May 2011, attached PACER docket report).

7. In the schedule of personal property Broadway filed with the Bankruptcy Court, it listed its claim in this appeal under Item 16, accounts receivable, in the amount of \$350,000 (gov't mot., attach.).

8. On 8 February 2011, the Chapter 7 trustee filed a report, repeated in the Bankruptcy Court docket in pertinent part as follows:

Chapter 7 Trustee's Report of No Distribution: I, Allan J DeMars, having been appointed trustee of the estate of the above-named debtor(s), report that I have neither received any property nor paid any money on account of this estate; that I have made a diligent inquiry into the financial affairs of the debtor(s) and the location of the property belonging to the estate; and that there is no property available for distribution from the estate over and above that exempted by law. Pursuant to Fed R Bank P 5009, I hereby certify that the estate of the above-named debtor(s) has been fully administered. I request that I be discharged from any further duties as trustee.

(Bd. corr. ltr. dtd. 10 May 2011, attached PACER docket report #17)

9. On 9 February 2011, Broadway's bankruptcy case was closed and the trustee discharged (Bd. corr. ltr. dtd. 10 May 2011, attached PACER docket report #19).

### DECISION

The government contends that Broadway has no standing to pursue this appeal because of its Chapter 7 bankruptcy. The appellant bears the burden to establish its standing, which is a requirement of jurisdiction. *See Hackney Group and Credit General Insurance Co.*, ASBCA No. 51453, 00-2 BCA ¶ 30,931 at 152,682.

This appeal is governed by *Terrace Apartments, Ltd.*, ASBCA No. 40125R, 95-1 BCA ¶ 27,458. As is the case here, in *Terrace Apartments*, the appellant filed a Chapter 7 bankruptcy petition after noticing an appeal here. The appellant's claim was disclosed to the trustee but not pursued by him. Instead, the trustee reported to the bankruptcy

court that he had not received any property or paid any money on account of the estate. The trustee also reported that he had made diligent inquiry into the whereabouts of estate property and that there was none available for distribution over and above exempt property. The bankruptcy court approved the report, discharged the trustee, and closed the estate. Accordingly, the government moved to dismiss the appeal for lack of standing. The Board granted the motion, ruling:

Under 11 U.S.C. § 727(a), a corporation or partnership filing for liquidation under Chapter 7 is not entitled to a discharge. Only individuals are eligible for discharge. The legislative intent in denying discharge to corporate and partnership debtors was to “avoid the trafficking in corporate shells and in bankruptcy partnerships.” *In Re Liberty Trust Co.*, 130 Bankr. 467 (W.D. Tex. 1991). A corporation or partnership liquidated under Chapter 7 may remain a legal entity until dissolved pursuant to state law. See *Montpelier v. Riche, Chenevert and Andress Constr. Co.*, 43 Bankr. 736 (M.D. La. 1984). But it is otherwise treated as “defunct” and has no legal right to conduct business, including the prosecution or defense of claims, outside the bankruptcy estate. Such activity is inconsistent with liquidation under Chapter 7 and the intent of 11 U.S.C. § 727(a) as interpreted by the courts. *In Re Liberty Trust Co.*, *supra*.

*Terrace Apartments*, 95-1 BCA ¶ 27,458 at 136,805. Thus, *Terrace Apartments* held that a corporation liquidated through Chapter 7 proceedings, such as Broadway, is deprived of the right to pursue claims outside the bankruptcy estate, even after the trustee abandons the claim without pursuing it. *Terrace Apartments* has been consistently followed by the Board. *Triad Microsystems, Inc.*, ASBCA No. 52723 *et al.*, 01-2 BCA ¶ 31,429 at 155,218 (ruling that a corporation liquidated under Chapter 7 is defunct, ceasing to operate, own assets, or to possess standing to pursue abandoned claims, regardless of the fact that it may continue to exist under state law as an empty shell); *Microscience, Inc.*, ASBCA No. 45264, 98-1 BCA ¶ 29,480 at 146,302 (following *Terrace Apartments* to bar prosecution of an abandoned claim by a corporation undergoing Chapter 7 liquidation, despite the fact that state law appeared to allow corporations to pursue claims up to three years after termination of their existence); *Sheppard's Interior Construction Co.*, ASBCA No. 45902, 97-1 BCA ¶ 28,744 at 143,470 (relying upon *Terrace Apartments* to bar pursuit of an abandoned claim by a liquidated corporation), *aff'd*, 152 F.3d 947 (Fed. Cir. 1998) (table); *Caesar Construction Co.*, ASBCA No. 46023, 97-1 BCA ¶ 28,665 (same), *aff'd*, 132 F.3d 51 (Fed. Cir. 1997) (table).

In its response to the government's motion, Broadway fails to acknowledge *Terrace Apartments* and its progeny. Instead, Broadway attacks the validity of *In re*

*Liberty Trust Co.*, 130 B.R. 467 (Bankr. W.D. Tex. 1991), the primary precedent relied upon by *Terrace Apartments*. In particular, Broadway challenges *In re Liberty Trust's* conclusion that a corporation liquidated under Chapter 7 cannot pursue claims abandoned by the bankruptcy trustee. Broadway is essentially seeking us to overrule *Terrace Apartments'* adoption of *In re Liberty Trust's* reasoning. However, *Terrace Apartments* is binding precedent that we are not free to disregard.

CONCLUSION

Under *Terrace Apartments*, Broadway lacks standing to pursue this appeal. Accordingly, the appeal is dismissed without prejudice for lack of jurisdiction.

Dated: 14 November 2011



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MARK A. MELNICK  
Administrative Judge  
Armed Services Board  
of Contract Appeals

I concur



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

I concur



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EUNICE W. THOMAS  
Administrative Judge  
Vice 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. 56905, Appeal of Broadway Consolidated Companies, Inc., rendered in conformance with the Board's Charter.

Dated:

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CATHERINE A. STANTON  
Recorder, Armed Services  
Board of Contract Appeals