

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Certified Abatement Technologies, Inc.) ASBCA No. 39852
(former appellant), now)
Profit From Computing, Inc.)
(substituted appellant))
)
Under Contract No. N62477-87-D-1554)

APPEARANCE FOR THE APPELLANT: Sam Zalman Gdanski, Esq.
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APPEARANCES FOR THE GOVERNMENT: Arthur H. Hildebrandt, Esq.
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OPINION BY ADMINISTRATIVE JUDGE LANE
ON GOVERNMENT'S MOTION FOR RECONSIDERATION
OF DECISION DENYING MOTION TO DISMISS
FOR LACK OF STANDING

The Government has timely moved for reconsideration of our 18 May 1999 decision in *Certified Abatement Technologies, Inc.*, ASBCA No. 39852, 99-1 BCA ¶ 30,389, which (1) granted appellant's motion for substitution of Profit From Computing, Inc. (PFC) for Certified Abatement Technologies, Inc. (Certified) as the appellant, and (2) denied the Government's motion to dismiss for lack of standing (a) on its merits with respect to PFC and (b) as moot with respect to Certified.

In that decision, we held that Certified transferred its assets, including its equitable adjustment claim against the Government, to PFC for the consideration of \$132,610 to be paid in monthly installments and distributed to the Internal Revenue Service and the State of New Jersey; that the transfer was incident to Certified's bankruptcy and was made with the approval of the Bankruptcy Court and so was a valid transfer by operation of law, outside the prohibitions of the Assignment of Claims Act, notwithstanding that

Certified's charter was void under state law at the time of the transfer; and that the transfer conferred upon PFC privity of contract with the Government and standing sufficient to permit PFC to pursue the claim in the present appeal.

I. The Government's Argument

The Government essentially argues that the transfer of the claim from Certified to PFC in this case was conditioned upon six years of installment payments by PFC to the IRS and the State of New Jersey (Certified's major creditors) starting in November 1995, and so was not the kind of transfer by operation of law incident to bankruptcy that the Supreme Court and other courts have recognized as an exception to the prohibition of the Assignment of Claims Act. It asserts that transfers by operation of law were found to be exceptions to the Act only because they did not present the dangers Congress was trying to avoid, namely, fraud and multiple litigation; that in this case there is at least the danger of multiple litigation in the event PFC does not carry through on making the required payments for six years; and that giving standing to PFC here would impose an unreasonable burden upon the Government.

II. Discussion

The Government has presented a new argument based on two premises, both of which we find to be without any merit.

A. Transfer of Assets Not Factually or Legally Contingent

First, contrary to the Government's assertion, the transfer of the present claim and other assets from Certified to PFC was not factually or legally conditioned upon completion of PFC's installment payments.

Factually, nothing in the agreement of sale or the liquidation plan or the Bankruptcy Court's Confirmation Order suggests that ownership of the claim would not pass until completion of payments. On the contrary, we expressly found:

that in April 1995, during the period of bankruptcy, Certified (debtor in possession) agreed to sell and PFC agreed to buy the assets of Certified, including specifically the claim before us here, *subject only to the condition of approval by the IRS, the State of New Jersey, and the Bankruptcy Court*, and that Certified and PFC *intended the transfer of assets to become effective upon and by virtue of the Bankruptcy Court's confirmation order.*

Finding 8(c) (emphasis added).

Legally, the Government has cited no authority and we are aware of none holding that title to property does not pass until completion of installment payments notwithstanding the seller's and buyer's express agreement upon earlier passage of title.

B. Transfer of Claim by Operation of law Is Outside
Prohibitions of Assignment of Claims Act

Second, even if we agreed that the transfer of the claim in the present case presents the danger of multiple litigation or fraud that Congress was seeking to avoid in enacting the Assignment of Claims Act, which we do not, the Government's argument completely ignores the categorical nature of the exception to the Assignment of Claims Act for transfers by operation of law as established by the United States Supreme Court. In *United States v. Aetna Casualty & Surety Co.*, 338 U.S. 366, 370-76, 70 S. Ct. 207, 210-13, 94 L. Ed. 171, 179-83 (1949), in rejecting a similar argument, the Supreme Court said that "the Court has always stated the flat exception of *all* transfers by operation of law, as distinguished from voluntary transfers," *id.* at 375, 70 S. Ct. at 213, 94 L. Ed. at 182 (emphasis in original). The Court further said:

The fact that some administrative problems may be the unintended byproducts of an involuntary assignment was not thought to be an evil within the scope of a statute aimed at fraud and harassment. That interpretation has, for nearly a century, exempted all transfers by operation of law from the prohibition of Rev Stat 3477 [predecessor to the Assignment of Claims Act].

Id. at 376, 70 S. Ct. at 213, 94 L. Ed. at 183.

The categorical nature of the "operation of law" exception likewise renders irrelevant the Government's professed concerns over the undue burden of monitoring PFC's payment obligation, the danger of PFC defaulting on its payment obligation if it were to receive a Board award and payment thereon, and the potential need for a collection action by the Department of the Treasury.

III. Conclusion

We have concluded that transfer of the present claim from Certified to PFC incident to Certified's bankruptcy was not contingent, and that the "operation of law" exception to the prohibition of the Assignment of Claims Act is absolute. The possibility of default by PFC on its obligation to pay the IRS pursuant to the terms of its agreement to purchase the claim and of the Bankruptcy Court's order has no bearing on the effectiveness or completeness of PFC's acquisition of title to the claim or on its standing to pursue the claim before this Board.

The Government's motion for reconsideration is denied.

Dated: 10 March 2000

JOHN LANE
Administrative Judge
Armed Services Board
of Contract Appeals

I concur

I concur

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

MARTIN J. HARTY
Administrative Judge
Acting 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 on the Government's Motion for Reconsideration in

ASBCA No. 39852, Appeal of Certified Abatement Technologies, Inc. (former appellant), now Profit From Computing, Inc. (substituted appellant), rendered in conformance with the Board's Charter.

Dated:

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