

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Santa Fe Builders, Inc.) ASBCA No. 52021
)
Under Contract No. F04605-95-C-0014)

APPEARANCES FOR THE APPELLANT: Daniel R. Sullivan, Esq.
Kermit D. Marsh, Esq.
Beam, Brobeck & West
Santa Ana, CA

APPEARANCES FOR THE GOVERNMENT: COL John M. Abbott, USAF
Chief Trial Attorney
Diana S. Dickinson, Esq.
Senior Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE YOUNGER
ON RESPONDENT'S MOTION TO DISMISS

Respondent has moved to dismiss this appeal on the ground that appellant lacks standing because it was liquidated under Chapter 7 of the Bankruptcy Code. Appellant has opposed the motion. We thereafter questioned our jurisdiction over the appeal in view of the stay imposed by 11 U.S.C. § 362. Both parties have filed supplemental briefs regarding that issue. We dismiss the appeal without prejudice for lack of jurisdiction.

FINDINGS OF FACT FOR PURPOSES OF THIS MOTION

1. In 1995, respondent awarded Contract No. F04605-95-C-0014 to appellant in the amount of \$309,204 for the renovation of the Fitness Center at March Air Force Base, California. The contract contained various standard clauses, including PERMITS AND RESPONSIBILITIES (NOV 1991), as prescribed in FAR 52.236-7. (R4, tab 1 at 1, 3, 4, 19)

2. In January of 1996, one of appellant's subcontractors welded a steel beam to a metal plate which was less than 1 inch from a wooden beam. This caused a smoldering fire which destroyed the Fitness Center. (R4, tab 18) Thereafter, by date of 12 November 1997, respondent issued unilateral Modification No. P00006 which terminated the contract for convenience and reserved respondent's right to assert a claim for the cost of the Fitness Center and its contents (R4, tab 16).

3. By letter dated 28 September 1998, the contracting officer demanded payment in the amount of \$3,013,286.29 from appellant under the PERMITS AND RESPONSIBILITIES clause for the fire-related damages. By its terms, the 28 September letter purported to be a demand letter, was not intended to assert a claim under the Contract Disputes Act, 41 U.S.C. §§ 601-613, asserted that a contracting officer's decision would be issued in the event of nonresponse or unsatisfactory response, and did not include a statement of the contractor's appeal rights. (R4, tab 18) The record does not appear to contain a separate debt determination.

4. On 30 October 1998, appellant filed a petition under Chapter 7 of the Bankruptcy Code (R4, tab 19). Thereafter, by date of 10 November 1998, the contracting officer issued a final decision asserting a Government claim against appellant in the amount of \$3,013,286.29 (R4, tab 20). Thereafter, on 5 February 1999, appellant brought this appeal of the contracting officer's 10 November 1998 decision.

DECISION

Respondent has filed a motion to dismiss for lack of standing which appellant opposes. *See, e.g., Sheppard's Interior Construction Co., Inc.*, ASBCA No. 45902, 97-1 BCA ¶ 28,744, *aff'd*, 152 F.3d 947 (Fed. Cir. 1998) (table). We raised the issue of jurisdiction *sua sponte* since the Government's claim appeared to have been asserted after appellant had filed a Chapter 7 bankruptcy petition. Both parties have filed briefs regarding this latter issue.

Addressing the jurisdictional question, appellant contends that the automatic stay applies to all entities and prohibits the commencement or continuation of any action against the debtor to recover a claim that arose before the bankruptcy filing. Appellant contends that actions taken in violation of the automatic stay are void. Appellant filed its petition in bankruptcy on 30 October 1998, prior to the contracting officer's issuance of his decision asserting the Government claim. Appellant argues that the decision was an attempt to recover a debt which arose before the bankruptcy filing. Therefore, appellant concludes, the decision was a prohibited act which squarely falls within 11 U.S.C. § 362, and was accordingly rendered void and a legal nullity.

Respondent argues that we have jurisdiction over the Government claim because a debt determination was made under FAR 32.606 which required appellant to liquidate the debt upon receipt. Respondent contends that both the debt determination and the 28 September 1998 demand for payment preceded the bankruptcy. And according to respondent, since the filing and closing of a Chapter 7 case do not extinguish or discharge corporate debt under 11 U.S.C. § 727(a)(1), neither the contracting officer's decision nor the debt to the Government are legal nullities.

We do not agree. It is well settled that, under the Contract Disputes Act, a final decision by a contracting officer on a Government claim, such as the one before us in the subject appeal, is a prerequisite for our jurisdiction. *See* 41 U.S.C. § 605(a); *Reflectone, Inc. v. Dalton*, 60 F.3d 1572, 1575 (Fed. Cir. 1995) (en banc) (citing *Sharman Co. v. United States*, 2 F.3d 1564, 1568-69 (Fed. Cir. 1993)). A contracting officer’s decision must connote a sense of finality in the administrative resolution of a pending dispute. *See Melcon Systems, Inc.*, ASBCA No. 40825, 90-3 BCA ¶ 23,139 at 116,184.

While a separate determination does not appear to be in the record (finding 3), it nonetheless could not serve as the linchpin of our jurisdiction. FAR 32.606 (b) provides that a debt determination “does not constitute a settlement of . . . claims, nor is it a contracting officer’s final determination under the Contract Disputes Act of 1978.” In addition, respondent’s 28 September 1998 demand letter cannot qualify because it expressly stated that a contracting officer’s decision would be issued at a future date (finding 4).

When it did come, respondent’s claim was asserted by decision dated 10 November 1998, some eleven days after appellant’s bankruptcy filing (finding 4). The automatic stay provisions of the Bankruptcy Code, 11 U.S.C. § 362, become effective the moment a bankruptcy petition is filed. The automatic stay provisions provide as follows:

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title . . . operates as a stay, applicable to all entities, of –

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title or to recover a claim against the debtor that arose before the commencement of the case under this title;

....

(3) any act to obtain possession of property of the estate or of property from the estate or exercise control over property of the estate;

....

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title:

....

11 U.S.C. § 362(a). We have repeatedly held that terminations for default issued after imposition of an automatic stay were “null and void” under 11 U.S.C. § 362. *E.g.*, *Apex International Management Services, Inc.*, ASBCA Nos. 38087 *et al.*, 94-2 BCA ¶ 26,842 at 133,549; *Harris Products, Inc.*, ASBCA No. 30426, 87-2 BCA ¶ 19,807 at 100,183. In this case, inasmuch as the automatic stay was in effect prior to the issuance of the contracting officer’s decision, the decision was null and void. There accordingly is no predicate for our jurisdiction. *See Reflectone, supra*, 60 F.3d at 1575.

Respondent’s argument that 11 U.S.C. § 727(a)(1) does not discharge corporate debt does nothing to help its position in this appeal. For purposes of our jurisdiction, it is the claim, not the debt, that is dispositive. By waiting to issue the decision until after the bankruptcy filing and the imposition of the automatic stay, respondent is precluded from asserting a claim over which we have jurisdiction as long as the stay is applicable.

In light of our holding that we lack jurisdiction, we do not reach the standing issue.

CONCLUSION

The appeal is dismissed for lack of jurisdiction.

Dated: 16 June 2000

ALEXANDER YOUNGER
Administrative Judge
Armed Services Board
of Contract Appeals

(Signatures continued)

I concur

I concur

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

EUNICE W. THOMAS
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 in ASBCA No. 52021, Appeal of Santa Fe Builders, Inc., rendered in conformance with the Board's Charter.

Dated:

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