

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -- )  
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Readiness Management Support, L.C. ) ASBCA No. 55880  
)  
Under Contract No. F08637-02-D-6999 )

APPEARANCES FOR THE APPELLANT: Michael R. Charness, Esq.  
Alexander O. Levine, Esq.  
Vinson & Elkins  
Washington, DC

APPEARANCES FOR THE GOVERNMENT: COL Neil S. Whiteman, USAF  
Chief Trial Attorney  
Warnecke Miller, Esq.  
Senior Trial Attorney  
MAJ Kevin J. Wilkinson, USAF  
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE YOUNGER  
ON RESPONDENT'S MOTION TO STAY OR, IN THE ALTERNATIVE,  
TO DISMISS WITHOUT PREJUDICE

In this sponsored appeal regarding a task order issued in 2002 and terminated for convenience in 2003 for the construction of a facility in Qatar, respondent has moved to stay or, in the alternative, to dismiss without prejudice under Rule 30. Respondent contends principally that state court litigation involving its subcontractor, as well as pending marine insurance litigation, require the relief requested. Appellant Readiness Management Support, L.C. (Readiness) opposes both motions.

Respondent asserts that the subcontractor litigation, which is styled as *International Building Systems, Inc. v. Fluor Intercontinental, Inc. v. Morgan Portable Building Contractors, Inc.*, Cause No. 2003-32566 (333<sup>rd</sup> Jud. Dist., Harris Cy., Tex.), has been pending “for many years, and motions for summary judgment were filed in January and March of 2006” (Respondent’s Motion to Stay Proceedings or, In the Alternative, to Dismiss Without Prejudice (mot.) at 2). Readiness alleges in its complaint that Fluor Intercontinental, Inc. (Fluor), the subcontractor on whose behalf it is sponsoring this appeal, “was assigned the construction and procurement scope” for the disputed task order, and that Fluor in turn awarded a purchase order to International Building Systems, Inc. (IBS) (complaint (compl.) ¶¶ 2, 16). Readiness also alleges that

Morgan Portable Building Contractors, Inc. (Morgan) was a subcontractor to IBS (compl. ¶ 58).

The marine insurance litigation appears from the motion papers to be styled *Global Container Lines, Ltd. v. International Building Systems, LLC*, Cause No. H-04-0456 (S.D. Tex.) (Opposition to Respondent’s Motion to Stay Proceedings Or, In the Alternative, to Dismiss Without Prejudice (app. opp’n) at 4 n.5). In its complaint, appellant appears to allege that this litigation relates solely to “Re-Stowing and Port of Refuge charges” that were not encompassed in a previous settlement between Fluor and its marine insurance carrier for damage to cargo in transit (compl. ¶ 61). Appellant further alleges that the proceeds of the previous settlement were offset against the claim in this appeal and that “any further sums received under [either] the marine insurance claim and/or the IBS litigation will at the time of recovery be set off against the amounts sought herein or reimbursed to the Government” (*id.*).

After considering the motion papers and the pleadings, we deny the motion for a stay. Respondent has not advanced a persuasive justification for holding this appeal in abeyance. While respondent relies chiefly upon cases involving parallel criminal or civil fraud proceedings, this appeal involves parallel civil litigation presenting no danger of compromising grand jury secrecy, *see* FED. R. CRIM. P. 6(e), or otherwise subverting an ongoing investigation. Even where a criminal investigation is pending, we have denied motions to stay or dismiss where there was an insufficient showing of need. *E.g.*, *Laumann Manufacturing Corp.*, ASBCA No. 50246, 01-1 BCA ¶ 31,414 at 155,147, *vacated upon a fuller showing*, 01-2 BCA ¶ 31,441. By its present motion, respondent has offered “assumptions and speculation which are not supported by evidence of any kind.” *Tyger Construction Co.*, ASBCA No. 34235, 88-3 BCA ¶ 21,148 at 106,777, regarding the course and outcome of *International Building Systems* and *Global Container Lines*, neither of which actions involve the government as a party. We cannot say on the showing that has been made that the resolution of either action “will moot the litigation before the ASBCA” (mot. at 2). In addition, the requested stay is of indefinite duration, *viz.*, “until after the resolution of *International Building Systems* . . . and the . . . litigation related to the ‘marine insurance cargo claim’” (mot. at 1). The task order was issued in 2002 and the termination for convenience was accomplished in 2003. While respondent asserts that Readiness “will not be prejudiced” by the requested stay (mot. at 5), Readiness underscores that it acts in dangerous areas of the world and lists three “key factual witnesses” who have either been killed or died of natural causes since 2003 (app. opp’n at 8).

We also conclude that a dismissal without prejudice under Rule 30 is unwarranted. Such a dismissal is discretionary with the Board. *Laumann Manufacturing Corp.*, *supra*, 01-1 BCA at 155,147. The same considerations that lead us to deny the requested stay counsel against exercising discretion in favor of a Rule 30 dismissal.

Respondent's motion for a stay or, in the alternative, to dismiss without prejudice, is denied.

Dated: 14 November 2007

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ALEXANDER YOUNGER  
Administrative Judge  
Armed Services Board  
of Contract Appeals

I concur

I concur

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

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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. 55880, Appeal of Readiness Management Support, L.C., rendered in conformance with the Board's Charter.

Dated:

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