ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of)	
	ASBCA No. 61065
Under Contract No. W91JA4-12-C-7131	
APPEARANCE FOR THE APPELLANT:	Managing Director
APPEARANCES FOR THE GOVERNMENT:	Raymond M. Saunders, Esq. Army Chief Trial Attorney CPT Harry M. Parent III, JA Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE OSTERHOUT ON THE GOVERNMENT'S MOTION FOR SUMMARY JUDGMENT

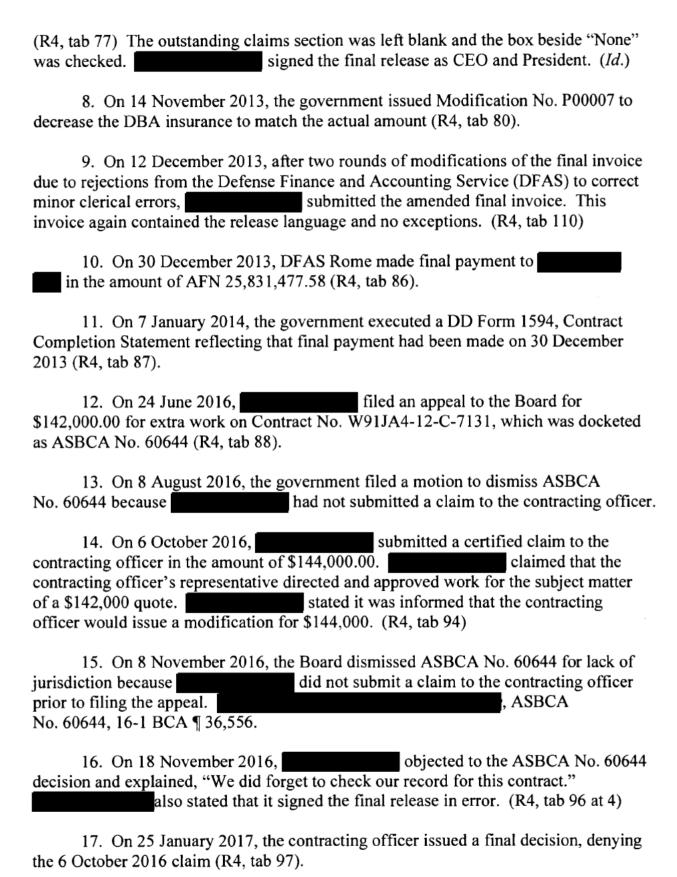
This is an appeal of a contracting officer's denial of a claim by
or appellant), alleging that it is owed \$142,000.00
for extra work performed on construction Contract No. W91JA4-12-C-7131 in Kabul,
Afghanistan. In its complaint, appellant states that it presented a quote for \$142,000.00 to
the contracting officer's representative, received verbal direction from the contracting
officer's representative to perform the work and a promise that the contracting officer would
issue a modification for \$144,000.00 but appellant never received the modification or funds.
The government moves for summary judgment because appellant signed a final release and
received final payment after executing a final release. We grant the government's motion
and deny the appeal.

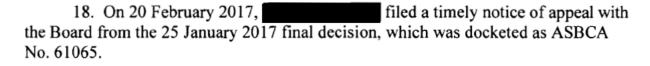
STATEMENT OF FACTS (SOF) FOR PURPOSES OF THE MOTION

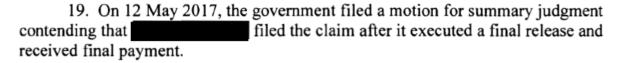
- 1. On 5 July 2012, the Phoenix Regional Contracting Center, Camp Phoenix, Afghanistan (the government) executed Contract No. W91JA4-12-C-7131, to construct and provide building upgrades for the Afghan National Police and Central Unit Headquarters, for \$1,897,160.17 to (R4, tabs 1-4).
- 2. Federal Acquisition Regulation (FAR) 52.232-5, PAYMENTS UNDER FIXED –PRICE CONSTRUCTION CONTRACTS (SEPT 2002), was incorporated by reference in the contract (R4, tab 1 at 23). Regarding final payments, FAR 52.232-5 states:
 - (h) Final payment. The Government shall pay the amount due the Contractor under this contract after—

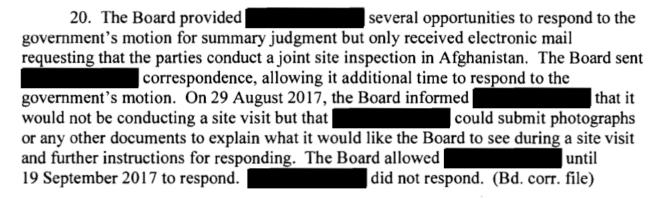
- (1) Completion and acceptance of all work;
- (2) Presentation of a properly executed voucher; and
- (3) Presentation of release of all claims against the Government arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release.
- 3. On 14 July 2012, the government issued the notice to proceed to commence work within 10 days and complete the project within 210 calendar days (R4, tab 13).
- 4. Over the next several months, the government administered the contract. The parties executed modifications to extend the contract or to add additional work. billed for partial payments and the government paid appellant for work performed. (R4, tabs 15-72)
- 5. On 4 November 2013, the government signed a material inspection and receiving report, documenting that Contract No. W91JA4-12-C-7131 was complete and accepted, and that was owed the amount of AFN 25,831,477.58 (R4, tab 75).
- 6. Also on 4 November 2013, completed a new Electronic Funds Transfer form to update banking and payment information (R4, tab 76).
- 7. Also on 4 November 2013, submitted Invoice No. WSCC0003 for Contract No. W91JA4-12-C-7131. This invoice was marked as a final payment and contained release of claims language:

Release of Claims: Know all men by these presents, in consideration of the premise and sum of AFN 94,966,372.58 of which AFN 69,134,895.00 has been paid, and a balance due of AFN 25,831,477.58 is to be paid by the United States Government under the above noted contract, the undersigned contractor does release and discharge the Government, its officers, agents and employees, of and from all liabilities, obligations and claims whatsoever in law and equity arising out of or by virtue of said contract, except specified claims in stated amounts, or in estimated amounts when the amounts are not susceptible of exact statement by the contractor, as follows.







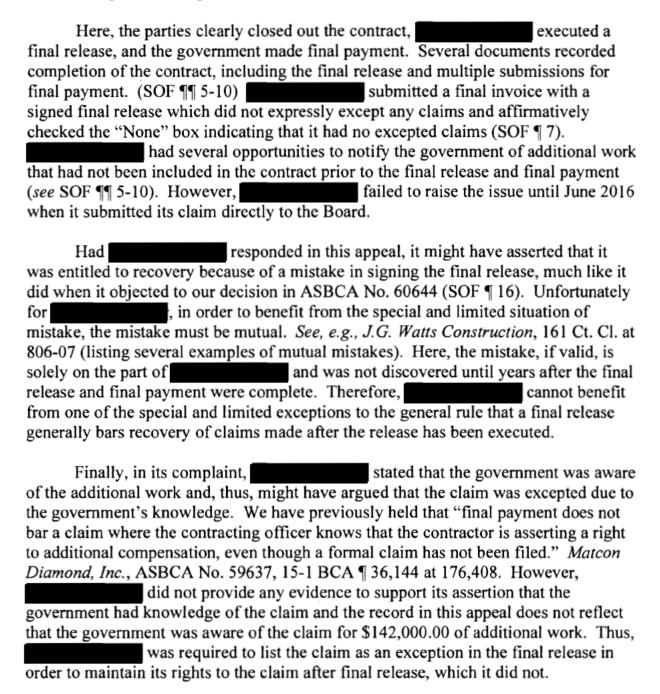


DECISION

It is well settled that summary judgment is appropriate where the moving party establishes that there are no disputed material facts, and the moving party is entitled to judgment as a matter of law. Riley & Ephriam Constr. Co. v. United States, 408 F.3d 1369, 1371-72 (Fed. Cir. 2005); Mingus Constructors, Inc. v. United States, 812 F.2d 1387, 1390 (Fed. Cir. 1987). When considering summary judgment motions, "the evidence of the non-moving party is to be believed, and all justifiable inferences are to be drawn in his favor." Tri-County Contractors, Inc., ASBCA No. 58167, 13 BCA ¶ 35,310 at 173,346 (citing FED. R. Civ. P. 56(a); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986)). There is no genuine dispute as to any of the material facts set forth in our SOF.

The government's motion for summary judgment is based on executing a final release and receiving final payment. "A final release followed by a final payment to a contractor generally bars recovery of the contractor's claims under the contract except for those excepted on the release." *Tri-County Contractors*, 13 BCA ¶ 35,310 at 173,346 (citing *Mingus Constructors*, 812 F.2d at 1394). "It is well settled, however, that there are special and limited situations in which a claim may be prosecuted despite the execution of a general release." *Bender Shipbuilding and Repair Co.*, ASBCA No. 41459, 91-3 BCA ¶ 24,230 at 121,186. These special and limited situations include mutual mistake, continued consideration of a claim after the execution of the release, fraud, or duress. *Id.* (citing *J.G. Watts Construction Co.*

v. United States, 161 Ct. Cl. 801, 806-07 (1963)). None of the exceptions apply in this case so the general rule governs.



CONCLUSION

The government's motion for summary judgment is granted. The appeal is den	rne appear is demed.
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Dated: 14 November 2017

HEIDI L. OSTERHOUT Administrative Judge Armed Services Board of Contract Appeals

I concur

RICHARD SHACKLEFORD Administrative Judge

Acting Chairman
Armed Services Board
of Contract Appeals

I concur

OWEN C. WILSON 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. 61065, Appeal of prediction, rendered in conformance with the Board's Charter.

Dated:

JEFFREY D. GARDIN Recorder, Armed Services Board of Contract Appeals