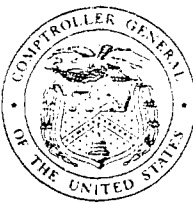


DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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T. ...*

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FILE: B-173348

DATE: February 27, 1979

MATTER OF: Baker and Ford Co.

DIGEST:

1. The term "claim" contemplates in general usage a demand for payment or relief.
2. Language in 31 U.S.C. 71a refers to every claim or demand and includes an original claim for money not received.
3. Contractor could have executed conditional release specifically excepting unresolved tax dispute under terms of the contract and it would have been paid its remaining balance due.
4. GAO is precluded by provisions of 28 U.S.C. 2517(b) (1976), and 28 U.S.C. 2519 (1976) from considering claim where final judgment is issued by Court of Claims.

The General Counsel of the General Services Administration (GSA) sent here for settlement a claim for \$11,292.65 arising under GSA contract No. GS-10B-E-00065-00 with Baker and Ford Co. (Baker).

The contract, awarded on May 2, 1963, was for the construction of a United States Post Office and Court House in Juneau, Alaska. After work under the contract was completed, GSA on December 28, 1967, offered to process a payment of \$11,292.65 for what it considered to be the balance due under the contract. Payment was conditioned upon receipt of an executed request for payment and release forms. The release was required before payment could be made under the provisions of paragraph 7(e) and paragraph 1-14(d) of the contract's General Provisions.

On February 8, 1968, the attorney for the liquidating trustee of Baker advised GSA of the contractor's assignment dated September 21, 1967, to a bonding company of all Baker's "right, title and interest

[Settlement of a CLAIM Arising Under
~~B-173348~~ GSA Contract]

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in and to any and all sums due or to become due" under the contract. The attorney said he was checking GSA's computation and that there remained the question of an unresolved sales tax dispute with the City of Juneau, Alaska.

The city sued the contractor for use and sales taxes due for materials and supplies incorporated in the construction project and obtained a \$97,434.50 judgment against Baker on November 27, 1968.

On January 31, 1969, the contractor sought reimbursement of the tax liability as an increase in the contract price under the terms of the contract. The contracting officer denied relief on March 6, 1969, and the GSA Board of Contract Appeals affirmed the contracting officer's decision on October 16, 1969. 69-2 BCA 7928.

Baker filed a petition in the Court of Claims on January 20, 1970, to recover as an increase in the contract price the \$97,434.50 tax liability. Pursuant to stipulation of the parties, a judgment for Baker for \$75,775 was entered by the Court on August 21, 1971.

On March 7, 1977, Baker's Trustee-in-Dissolution referred to GSA's December 28, 1967, offer to process a payment of \$11,292.65 and stated that Baker was no longer liable to the bonding company and was in a position to process the payment.

GSA advised the trustee that funds to pay were still available, but that the claim appeared to be barred by 31 U.S.C. 71a (1976), and that GSA would not consider the claim unless it was approved as timely by this Office.

The applicable statute of limitations on claims or demands against the United States cognizable by our Office is contained in 31 U.S.C. 71a and 237 (1976) and provides in pertinent part, as follows:

"(1) Every claim or demand * * * against the United States cognizable by the General Accounting Office under sections 71 and 236 of this title shall be forever barred unless such claim * * * shall be received in said office within 6 years after the date such claim first accrued * * *"

Counsel for Baker, in its letter of May 24, 1977, states that its request for payment is not a claim or demand within the meaning of this statute because the term "claims and demands" refers to a dispute or issue concerning the amount due, and that here there is no dispute or factual issue involving the \$11,292.65; the contractor has simply requested payment of the amount GSA agrees that it is owed.

In addition, Counsel for Baker states that the date of accrual was not more than 6 years ago because a claim is normally said to accrue when an adverse decision relative to the claim is made or when a request for payment of the claim is denied.

We do not agree with these contentions. The term "claim" contemplates in general usage a demand for payment or relief. Avril v. United States, 461 F.2d 1090, 1091 (9th Cir. 1972); United States v. Tieger, 138 F. Supp. 709, 710 (D. N.J. 1954). Further, the language of the statute refers to "every claim or demand," and includes an original claim for money not received. See Carver Aircraft Industries, B-189816, August 29, 1977, 77-2 CPD 158; B-163547, October 20, 1970.

Counsel for Baker states that its claim accrued when the payment of money was first denied on March 9, 1977. We disagree. The contractor could have obtained the money after the work under the contract was completed because of the conditional release clause in the contract. Paragraph 7(e) of the contract's General Provisions provides that:

"Upon completion and acceptance of all work, the amount due the Contractor under this contract shall be paid upon the presentation of a properly executed voucher and after the Contractor shall have furnished the Government with a release, if required, of all claims against the Government arising by virtue of this contract, other than claims in stated amounts as may be specifically excepted by the Contractor from the operation of the release. * * *"
(Emphasis ours)

On February 8, 1968, counsel for Baker advised GSA that he was checking GSA's computation of the amount due under the contract and that there remained the question of an unresolved sales tax dispute with the City of Juneau, Alaska. Baker could have executed a conditional release specifically excepting the unresolved sales

tax dispute and it would have been paid the remaining balance due under the contract.

However, Baker elected to seek relief as to the tax matter under the disputes procedure. A judgment involving Baker's contract was issued by the Court of Claims on August 21, 1971. Thus, this Office is precluded from any consideration of the claim in view of the provision in 28 U.S.C. 2517(b) (1976), that payment of any judgment of the Court of Claims shall be a full discharge to the United States of all claims and demands arising out of the matter involved in the case, and of the provision in 28 U.S.C. 2519 (1976), that a final judgment of the Court of Claims shall forever bar any further claim, suit, or demand against the United States arising out of the matters involved in the case. 53 Comp. Gen. 813 (1974). See also Nager Electric Company, Inc. v. United States, 368 F.2d 847 (Ct. Cl. 1966) at p. 855, where the court states that no more than one judicial claim should flow from one indivisible Government contract since separate suits on individual items are wasteful and burdensome, and that as a general rule, a cause of action or claim under a Government contract does not accrue piecemeal.

The fact that Baker is no longer liable to the bonding company under the assignment is immaterial since the one claim arising from the contract was satisfied by the judgment of the Court of Claims.

Accordingly, this Office is barred from considering the merits of the claim.


Deputy Comptroller General
of the United States