

**DECISION**



19364 Boyle  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-201451

**DATE:** September 4, 1981

**MATTER OF:** Payment of Proceeds under Magna  
Cool Corporation Contracts

**DIGEST:**

1. GAO concludes that claimant, as alleged assignee of contractor, has not presented sufficient evidence to establish entitlement to proceeds of two contracts because (1) contracts could not be legally transferred to assignee, (2) evidence does not indicate valid assignment of the contracts' proceeds, and (3) in the circumstances, requirements of Assignment of Claims Act should not be waived.
2. GAO concludes that the contractor's actions give rise to substantial doubt concerning its entitlement to proceeds of two contracts. Accordingly, GAO recommends that payment be withheld pending agreement of the parties or judgment of a court of competent jurisdiction.

The Associate Deputy Assistant for Pay, Travel and Disbursing Systems, Navy Accounting and Finance Center, a disbursing officer, requests our decision on the propriety of payment of the claim of Southern Equipment, Inc. (Southern), in the amount of \$24,287.13, representing the unpaid balance under two Navy contracts. Southern contends that it is entitled to the money as the assignee of the proceeds of the two Navy contracts with Magna Cool Corporation (Magna Cool). Magna Cool contends that it is entitled to the money because the proceeds of one contract were not assigned to Southern and, under the other contract, only the proceeds for the first year of the contract, which are not involved here, were assigned to Southern.

We conclude that Southern has not sufficiently established its entitlement to the unpaid balance and that there is enough doubt concerning Magna Cool's

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entitlement to recommend withholding payment on either claim pending an agreement of the parties or a judgment from a court of competent jurisdiction.

On April 26, 1978, the Navy entered into contract No. N00612-78-C-T222 for rental of one 75-ton portable heat pump from Magna Cool. On June 29, 1978, the Navy entered into contract No. N00612-78-C-T286 for rental of another 75-ton portable heat pump from Magna Cool. By modifications, the terms of the contracts were extended from earlier ending dates to August 31 and October 31, 1979, respectively. These extensions cost \$7,737.13 and \$16,550, respectively, for a total of \$24,287.13. Payment for the rental through the earlier ending dates was made to the order of Magna Cool and, pursuant to Magna Cool's instructions, sent to an address which was subsequently determined to be Southern's office. Southern received Magna Cool's payments, stamped them with Magna Cool's bank stamp, and deposited the proceeds into Southern's bank account. On October 10, 1979, Southern contacted the Navy regarding late payments under the Magna Cool contracts; this was the Navy's first notice that Southern was involved in the matter.

Southern's inquiry resulted in a Navy investigation revealing that Southern and Magna Cool had made some agreement regarding the proceeds of the two Navy contracts possibly involving the sale of the two heat pumps by Magna Cool to Southern. Southern contends that the proceeds of both contracts were assigned to it, thus it is entitled to the balance of the unpaid account. Documentation supporting the assignments consists of an agreement regarding only one contract covering a period for which payment has already been made. The file contains no written agreement involving the other contract. In addition to the documentation, Southern argues that oral assignments are valid between the parties under applicable state law and Southern has offered to post a bond to protect the Government against the possibility that a payment to Southern might later be determined to be erroneous.

Magna Cool demands payment because in essence Magna Cool is the contractor and there has been no valid assignment of the proceeds of the contracts.

The Navy notes that if it is determined that the now defunct Magna Cool is entitled to the proceeds, the Internal Revenue Service and a judgment creditor of Magna Cool contend that they should receive Magna Cool's entitlement.

The Navy reports that, under applicable state law, the oral assignment may be binding between Southern and Magna Cool; however, the Magna Cool contracts permit assignment of the proceeds to a bank, trust company or other financial institution, if certain conditions were met including notice to the contracting officer. Here, it was on October 10, 1979, when the Navy first learned that Southern and Magna Cool had some type of arrangement--that was after one contract had ended and 3 weeks before the other one was scheduled to end. To date, the precise details of that arrangement are not certain. No notice of assignment or true copy of the assignment was filed with the Navy at any time during performance of the contracts and, there is some doubt about Southern's ability to be considered a bank, trust company or financial institution within the meaning of the contracts' provisions regarding assignments. In the Navy's view, the requirements of the Assignment of Claims Act should not be waived.

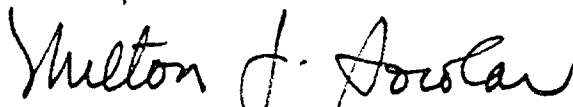
Further, the Navy reports that there is some evidence that Magna Cool sold the two heat pumps to Southern, raising the possibility that Southern may have a valid equitable claim for rental payments flowing from the Navy's use of Southern's equipment.

First, as the Navy points out, there is precedent holding that the Assignment of Claims Act does not bar payment of lease payments to the new owner of real property. Freedman's Savings and Trust Co. v. Shepherd, 127 U.S. 494 (1888); 4 Comp. Gen. 193 (1924). We are not aware, however, of any authority holding that the act does not bar payment of rental payments to the new owner of personal property. Second, it is not clear from the record that Magna Cool's rental contracts were meant to be sold to Southern along with the heat pumps. Third, documentation is not adequate to establish the precise Magna Cool and Southern arrangement.

In our view, therefore, Southern has not presented sufficient evidence to establish its entitlement to the proceeds. Magna Cool's contracts could not be legally transferred to Southern and no novation occurred. We are not persuaded that Magna Cool validly assigned the proceeds of its contract to Southern in accord with the terms of the contracts and the Assignment of Claims Act. While the requirements of the Assignment of Claims Act may be waived (Maffia v. United States, 163 F. Supp. 859 (Ct. Cl. 1958)), we concur with the Navy that it should not be waived here.

Further, in our view, Magna Cool's actions--in at least attempting to assign certain contracts proceeds, permitting Southern to deposit contract payments into Southern's bank account, and purportedly selling the heat pumps to Southern, all without proper notice to the Navy--gives rise to (1) substantial doubts concerning Magna Cool's entitlement and (2) possibility that the Navy would be required to reimburse Southern for rental value of its equipment.

Accordingly, we recommend that payment of the proceeds be withheld pending an agreement of the parties or a judgment of a court of competent jurisdiction. See B-155504, July 8, 1966; 20 Op. Atty. Gen. 578 (1893).



Acting Comptroller General  
of the United States