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**DECISION**



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

FILE: B-196566

DATE: June 16, 1980

MATTER OF: Ring Fabricators, Inc.

DIGEST: Ring Fabricators' [claim for rent for storage of United States Forest Service personal property in buildings leased by Ring is denied. Since Ring Fabricators was obligated by its sublease with New Mexico to maintain the Forest Service property, and in fulfilling that responsibility stored the property in the vacant buildings which it rented, we find no basis for implying a separate bailment contract between Ring and the Forest Service. For similar reasons Ring's due process and constructive eviction arguments are untenable.]

This is a reconsideration of our Claims Division's settlement denying Ring Fabricators' (Ring) claim of \$111,659.47 for rent charged the United States Forest Service (Forest Service) for using and occupying various buildings for storage of its personal property. For the reasons given below, we affirm the Claims Division's ruling.

Facts

At the outset, we note that the facts in this case are quite complicated. From the record presented to us, we understand them to be as follows.

On March 1, 1965, a Job Corps Center was opened on National Forest land within the Cibola National Forest, New Mexico. The facilities were constructed and operated by the Forest Service for the Office of Economic Opportunity and were known as the Mountainair Civilian Conservation Center (Center). The Job Corps program was deactivated on June 30, 1969. At that time, the Department of Labor (DOL) acquired control over the personal property at the Center which had been used for the Job Corps program.

On September 15, 1971, under the authority of the Granger-Thye Act, 16 U.S.C. § 580d (1976), the Forest Service issued a Special Use Permit (Permit) to the State of New Mexico for use of the facility as a rehabilitation center.

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A new permit was issued to New Mexico on May 11, 1973, allowing additional uses. Soon thereafter, New Mexico subleased the Center to the claimant, Ring, who has since used it for manufacturing operations. Ring's letter of intent to sublease the Center included a statement that it would assume maintenance and repair responsibility for the entire facility. Ring was approved by the Federal Government as a sublessee on January 29, 1974.

A provision of the sublease between Ring and New Mexico provided that Ring be responsible for a list of personal property referred to in Exhibit D. When the sublease was entered into, the property items on that list belonged to DOL. Subsequently, on July 26, 1974, the property items were transferred to the Forest Service. Pursuant to the Permit and property transfer documents, New Mexico accepted custody and maintenance responsibility for those items. Moreover, the provisions of the Permit were incorporated into the sublease between Ring and New Mexico.

Soon after the commencement of Ring's lease with New Mexico, problems between Ring and the Forest Service arose about control and custody of the personal property. Ring's major concern was that Forest Service personnel were allegedly removing property in Ring's custody from the Center without proper authorization and without releasing Ring from responsibility for that property.

At a June 9, 1975, meeting attended by representatives of Ring, the Forest Service and New Mexico, it was agreed that the Forest Service could move its personal property to vacant buildings at the Center and place its locks on those buildings. At that meeting, no mention was made of a service charge for storing the property in the buildings. After the meeting the property was moved to the buildings and Forest Service locks were placed on the buildings. Soon after, because of its continued concern over accountability for the property, Ring placed its own locks over the Forest Service's locks. It appears that the property stored in the vacant buildings consisted of most of the Forest Service personal property received from DOL. Several months later, Ring informed the Forest Service it was charging it equipment storage rent for every month from the beginning of Ring's lease with New Mexico.

On October 1, 1975, Ring filed suit in the United States District Court for the District of New Mexico against the Forest Service. The complaint alleged that Ring had assumed custodial responsibility for certain Forest Service personal property stored at the Center and that this responsibility had exposed Ring to potential liability. Among other things, Ring sought as relief not less than \$65,665.36

rent from the Forest Service for use of the storage facilities. On January 28, 1976, the District Court dismissed the complaint for want of jurisdiction. That determination, was based in part on plaintiff's failure to exhaust administrative remedies. Subsequently, Ring's claim was denied by the Department of Agriculture. Ring has continued to press its claim and the Forest Service consistently has denied it owes Ring rent. It does not appear that storage of the personal property interfered with Ring's manufacturing operations.

In its letter seeking reconsideration, Ring asserts the following arguments in support of its claim:

(1) The Forest Service's continuous exclusive use and possession of certain buildings for more than 16 months after receiving fee invoices was an implied contract that the Forest Service was intending to pay the fee invoices;

(2) The Forest Service's use of space at the Mountainair Job Corps site was a taking of property without due process; and

(3) The Forest Service's taking, use and possession of space at the Mountainair Job Corps site was a constructive eviction.

#### Discussion

Ring has asserted various grounds in support of its claim for \$111,659.47 in rent. We understand Ring's implied contract contention, in effect, to be a claim for bailment charges for storage of the Forest Service's personal property for more than 16 months. Although the facts suggest the Forest Service may have impeded Ring's storage of the property, we cannot grant its claim for rent payments.

To recover in implied contract the reasonable value of services performed, a claimant must show both that the Government received a benefit and that the unauthorized action by the claimant was, ratified by the authorized officials. See, B-189431, July 18, 1977. Although the Forest Service did receive the benefit of having Ring maintain its property in vacant buildings at the Center, the maintenance was not an independent benefit but rather a responsibility agreed to by Ring in its sublease with New Mexico. Clause II(c) of that sublease imposed on Ring maintenance and repair responsibility for the entire facility. Clause II(i) specifically obligated Ring to maintain the

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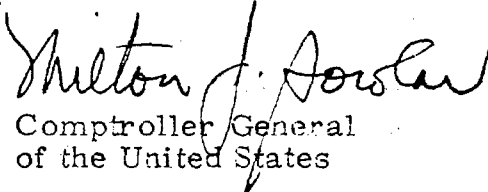
Forest Service personal property and replace any of that property which was lost, destroyed or broken. The maintenance responsibility was acknowledged by Ring in its complaint against the Forest Service. Ring Fabricators, Inc. v. United States Forest Service, Civ. No. 75-582 (D.N. Mex. Oct. 1, 1975). Moreover, the obligations in the Permit, which included custodial responsibility for the personal property at the Center, were incorporated into the sublease.

The facts show that Ring not only assented to and performed its maintenance responsibility for a number of months without charging the Forest Service rent, but also at the June 9, 1975, meeting described above, agreed to permit the Forest Service to move its property into buildings at the Center and to place Forest Service locks on those buildings. The rent charges were assessed only when the continuing dispute about Forest Service personnel removing property without giving Ring releases was not resolved.

In this situation, we find no basis for implying a bailment contract between Ring and the Forest Service. Ring was obligated by the sublease to maintain the Forest Service property, and in fulfilling that responsibility stored the property in the vacant buildings at the Center. Further, the Forest Service never assented to Ring's rent charges. Thus, the Forest Service neither received a benefit independent of Ring's sublease obligations nor ratified Ring's rent charges for that service. At the same time, we note that if, as Ring suggests, the Forest Service interfered with Ring's performance of its obligation, Ring might have a good defense against Forest Service claims for lost or damaged property.

Ring's constructive eviction and due process arguments similarly are untenable. Ring was obligated by the sublease to maintain the Forest Service property. Pursuant to that obligation it stored the property in vacant buildings subleased by it from New Mexico. Accordingly, there was neither property taken from Ring without due process nor property from which Ring was evicted.

For the reasons discussed above, we must affirm our Claims Division's denial of Ring's claim.

  
Acting Comptroller General  
of the United States