



Comptroller General
of the United States

Washington, D.C. 20548

8351611

Decision

Matter of: Sanco Leasing Corp.

File: B-244992.2

Date: November 16, 1993

DIGEST

Assignment of government contract payments to a company to which a state court ordered them assigned by a trustee appointed to act for the performing contractor does not fall within the "operation of law" exception to the Assignment of Claims Act.

DECISION

We have been asked to consider whether the Navy properly declined to accept an assignment of proceeds to Sanco Leasing Corp. under a Navy contract with Superior Services. We see no legal basis to object to the Navy's decision.

The contract was for solid waste collection and disposal at the Naval Surface Warfare Center, White Oak Laboratory, Silver Spring, Maryland, and was awarded under the Small Business Administration's 8(a) program. Superior Services leased equipment needed for performance of the contract from Sanco. Sanco claimed it was not being paid for the equipment, and in the spring and summer of 1991 asked the Naval Facilities Engineering Command to accept an assignment of the contract proceeds from Superior Services to Sanco.

The Navy decided not to recognize the assignment because Sanco was not a financing institution under the Assignment of Claims Act of 1940, as amended, 31 U.S.C. § 3727 and 41 U.S.C. § 15. The Act generally bars the voluntary assignment of a claim against the United States unless the assignment is to a bank, trust company, or financing institution. We agreed with the Navy's determination in our decision Sanco Leasing Corp., B-244992, Oct. 25, 1991.

Subsequently, Sanco instituted a lawsuit against Superior Services in the North Carolina State courts seeking more than \$300,000 from Superior Services for not paying Sanco for the leased equipment. On April 8, 1992, a North Carolina court entered a default judgment in favor of Sanco for the amount demanded.

On May 1, 1992, the North Carolina judgment was enrolled in the Maryland Circuit Court for Prince George's County. By orders of December 16, 1992, and February 10, 1993, the Maryland court appointed an individual to act as a trustee for Superior Services "for the purpose of assigning to Sanco any proceeds" of any and all contracts with the Navy, and ordered the trustee to execute the documents to effectuate the assignment immediately. The trustee then executed an assignment, on behalf of Superior Services, of the contractor's "right, title and interest in all money due or to become due" under the Navy contract, and appointed Sanco, again on behalf of Superior Services, to receive the money due under the contract. The Navy declined to accept the assignment.

Sanco argues that the Navy should have recognized the assignment of Superior Services' contract proceeds pursuant to the "operation of law" exception to the Assignment of Claims Act. Sanco asserts that Superior Services properly was served in connection with the North Carolina litigation, and contested the Maryland litigation. Sanco, citing Keydata Corp. v. U.S., 504 F.2d 1115, 1118-1119 (Ct. Cl. 1974), as a leading case on the exception, argues that the operation of law exception contemplates assignments ordered by state courts.

The Assignment of Claims Act's bar against voluntary assignments to other than financing institutions¹ is intended to prevent the government from having to deal with multiple parties; prevent the possible multiple payment of claims; make unnecessary the investigation of alleged assignments; enable the government to deal exclusively with the original contractor; and preserve for the government those defenses against claims that might not apply against an assignee. B-194029, June 18, 1979.

In interpreting the Assignment of Claims Act, the courts have created exceptions to the assignment bar, the largest category of which are those assignments that occur by "operation of law." In Price v. Forrest, 173 U.S. 410 (1898), the Supreme Court held that a court order to assign a claim against the government to a court-appointed receiver, to be held subject to the order of the court for the benefit of the claimant's creditors, is not prohibited by the Act. We also held in 36 Comp. Gen. 157 (1956) that the operation of law exception applied where a U.S. District

¹The exception was designed to make it easier for government contractors to secure financing to carry out their obligations to the government.

Court ordered a prime contractor to assign a claim for work performed under a government contract to a subcontractor that had actually performed the work in question. The Court of Claims (now the Court of Federal Claims) subsequently made it clear, however, that a court-ordered assignment will be considered a valid exception to the Assignment of Claims Act only if the assignment is ordered for the benefit of all creditors rather than an individual creditor.²

Patterson v. U.S., 354 F.2d 327 (Ct. Cl. 1965), concerned an employee of a company's defunct Maryland branch office who had obtained a judgment in a Maryland state court against the company for back wages. The employee then successfully petitioned the court to appoint a receiver to collect anticipated government contract payments to satisfy the judgment.

The Court, after reviewing the statutory prohibition on voluntary assignments and the development of the operation of law exception, concluded that the plaintiff, as only a "limited receiver," lacked standing to maintain the action. The Court held that a receiver has standing only if he is appointed a "general receiver" to collect all amounts due the contractor on government contracts and to hold them in trust for the benefit of all the company's creditors, as opposed to the benefit of a single creditor to the exclusion of other creditors. The Court noted that this distinction, under which the general receiver is analogous to a bankruptcy trustee, is consistent with the purpose of the Assignment of Claims Act: "preventing fraud and immunizing the United States from the inconvenience and uncertainty of having to deal with several parties."

On the record before us, it appears that Sanco is in much the same position as the employee in Patterson. Essentially, in securing the Maryland court order Sanco has attempted to give effect to a voluntary assignment under the operation of law exception to the prohibition against assignments to non-financing institutions. The court-ordered assignment, however, is for the benefit of an individual creditor, as opposed to all creditors. We see little difference between this arrangement and the one the Court of Claims would not accept in Patterson.

²Other examples of the exception are the passage of claims to heirs by intestate succession or by will, and transfers by statutory provision to a bankruptcy trustee. See George Howes & Co. v. U.S., 24 Ct. Cl. 170 (1889).

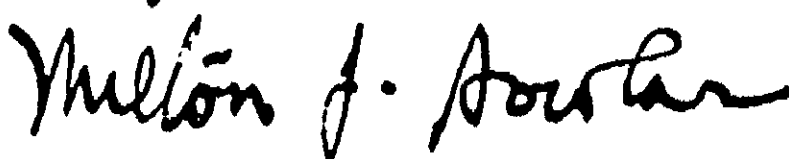
Sanco argues that Keydata, decided 9 years after Patterson, has modified the general receiver requirement. Keydata dealt with a Massachusetts court order that a landlord to both the government and Keydata assign to the latter the landlord's right to \$39,000 allegedly owed the landlord by the government. The Court of Claims allowed Keydata to sue the government for the money, because the facts established that Keydata, and not the landlord, was the real party in interest with respect to the \$39,000. The government's lease earlier had been amended to provide that the government would pay the landlord \$39,000 for air conditioning equipment that Keydata had installed in space the government was to take over, and Keydata's lease had been amended to state that the landlord would pay the same amount to Keydata. Keydata brought suit in the Court of Claims because the government decided not to take over the company's space, and therefore not to pay the \$39,000.

The Court of Claims noted that the lease amendments made it clear that the landlord was simply meant to be a "conduit" through which the government would pay Keydata for the equipment, and found that "transferring the cause of action from the nominal owner to the beneficial owner, does not go counter to the legislative objectives of the Assignment of Claims Act." The Court of Claims thus allowed the real party in interest--the "beneficial owner"--to pursue a claim for money only nominally owed to another party by the government, notwithstanding the fact that there was only a limited assignment.

In our view the exception to Patterson's general-receiver requirement created by Keydata is limited to its special circumstances, which are not present here. The government had a valid contract with Superior Services binding the company to perform, and obligating the government to pay in return. Superior Services' status clearly was more than that of a "conduit," and Sanco is not the beneficial owner of any claims against the government.

More fundamentally, unlike Keydata, the record here does not establish that recognizing Sanco's assignment would not expose the government to the burdens from which the Assignment of Claims Act is intended to protect it, including the risk of multiple payment of claims and the need to investigate the validity of asserted assignments. In particular, because of the nature of the state court proceedings in this matter, the record of those proceedings sheds little light on these issues.

In sum, we see no basis to object to the Navy's conclusion that the state court litigation did not require it to accept the assignment, and that it should to pay Superior Services.

for 
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