

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

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**FILE:** B-206356**DATE:** May 17, 1983**MATTER OF:** Spectrum**DIGEST:**

First assignee's (computer leasing company/financing institution) claim for sums paid to second assignee (also computer leasing company/financing institution) under modification of the same contract is denied because (1) the first assignee has only a qualified interest in the assigned payment, commensurate with the amount of equipment which it financed, and (2) it appears that the first assignee has received all payments it is entitled to for the equipment which it financed. Therefore, first assignee has no basis for its claim.

Spectrum, a self-described "financing institution," claims payment of \$54,632.80 by virtue of an assignment of proceeds which it received from Harris Corporation (Harris) under Army lease contract No. DAAG-36-77-C-0022 issued by the New Cumberland Army Depot for computer equipment. The claimed \$54,632.80 was paid by the Army to SMS Leasing, Inc. (SMS), a subsequent assignee of proceeds under the same contract. Spectrum's assignment was absolute on its face and Spectrum never released the assignment. For these and other reasons, Spectrum contends that the Army's payments to SMS were improper and that Spectrum should now receive the payments made to SMS.

We deny the claim.

In Alanthus Peripherals, Incorporated, 54 Comp. Gen. 80 (1974), 74-2 CPD 71, the company which requested our opinion described the method of financing customarily employed in the computer industry. The company explained that in the computer industry, original equipment manufacturers (OEM's), such as Harris, lease their goods to customers instead of selling them. According to Alanthus, there were two

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principal reasons for this practice: (1) it was the method of marketing traditionally used by International Business Machines Corporation, and (2) in the face of rapid rates of technological innovation (and concurrent obsolescence), customers demanded short-term arrangements for fear of being saddled with out-of-date equipment. However, leasing slows the OEM's recovery of manufacturing costs and threatens "positive cash flow." To overcome these problems, OEM's sell both the rental property and the accounts receivable (lease payments) to companies like Spectrum and SMS. Given the unique circumstances of this industry, we held in Alanthus, supra, that "lease-financing" companies qualify as "financing institutions" for purposes of the Assignment of Claims Act.

In this case, Harris leased two separate lots of equipment to the Government under the same contract; the first lot was financed by Spectrum, while the second lot (under modification P0009) was financed by SMS. According to the Army, Spectrum "bid against SMS for the rights to finance the equipment purchased under Mod. P0009," but was not successful.

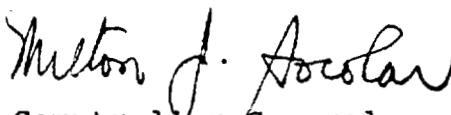
Spectrum argues that it had the only legally valid assignment since it was prior in time to SMS's assignment and since Spectrum's assignment conveyed: "all rights, title and interest to all lease rental payments \* \* \* accruing under [the lease]." Further, the lease provides that "[a]ny \* \* \* assignment \* \* \* shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party." Moreover, Spectrum contends that payments to SMS contravene Defense Acquisition Regulation (DAR) § 7-103.8 (1976 ed.), which requires the contractor, following the assignee's release of an assignment, to notify certain parties of the release by furnishing them with a true copy of the instrument of release as a condition precedent to the contractor's receipt of the balance due under the contract. As has been noted, Spectrum did not release its assignment. Finally, Spectrum argues that when it purchased the Harris equipment and accepted the assignment, it "assumed a qualified risk of contract termination or expiration prior to the end of systems life," but it "did not assume the risk of being replaced by another assignee shopped by [Harris] \* \* \* while \* \* \* [the lease] was still in force."

The Army takes the position that the equipment leased from Harris under modification P0009 was a separate transaction neither included nor contemplated under the initial assignment to Spectrum. For this reason, Harris was not under an obligation to obtain a release from Spectrum prior to assigning the proceeds of modification P0009 to SMS. Moreover, the Army has noted and Spectrum has not denied that "[t]here is no allegation that Spectrum did not receive the payments due them under the basic contract but only that they did not receive the monthly payments 'made to another party' [i.e., SMS]." In this regard, the Army cites Beaconwear Clothing Company v. United States, 355 F. 2d 583 (Ct. Cl. 1966), where the court stated:

\* \* \* Generally, an assignment made as collateral security for a debt gives the assignee only a qualified interest in the assigned chose, commensurate with the debt or liabilities secured, even though the assignment appears to be absolute on its face. \* \* \*

We have held that an assignment of "all amounts payable" under a Government contract includes amounts payable as a result of modifications or change orders until such time as the Government receives a duly executed release of the initial assignment. 23 Comp. Gen. 943 (1944). This rule presupposes that there is an outstanding financial interest secured by the amounts payable under the modifications. In our view, Spectrum has no basis from which to advance its claim since it appears that Spectrum has received all payments commensurate with the amount of equipment which Spectrum financed under the contract. Since Spectrum has no basis for its claim, we need not consider the company's arguments about the lease provision and DAR § 7-103.8, above, which, in any event, were written for the protection of the Government, not the assignee.

Accordingly, the claim is denied.

*for*   
Comptroller General  
of the United States