



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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DISMISSED WITH PREJUDICE: June 25, 2010

CBCA 923

GLOBAL SHIP SYSTEMS, LLC.,

Appellant,

v.

DEPARTMENT OF HOMELAND SECURITY,

Respondent.

C. James McCallar, Jr., of McCallar Law Firm, Savannah, GA, counsel for Appellant.

Isaac Johnson, Jr., Office of Procurement Law, United States Coast Guard, Department of Homeland Security, Washington, DC, counsel for Respondent.

Before Board Judges **SOMERS**, **BORWICK**, and **HYATT**.

**HYATT**, Board Judge.

Respondent, the United States Coast Guard (Coast Guard), has moved to dismiss this appeal with prejudice on the ground that it has been settled. Under the settlement agreement, appellant, Global Ship Systems, LLC (Global), agreed to the withdrawal and dismissal of the appeal with prejudice upon being paid the settlement amount. Global opposes the motion.

Background

Global had a contract with the Coast Guard to perform dry-docking, repairs, and maintenance work needed by the Coast Guard's cutter, USCGC Barbara Mabrity (Mabrity

or vessel). After routine dry-docking to complete repairs and maintenance, while the Mabrity was being prepared for refloating, it fell off its rollers and onto the deck and sustained damage. Global repaired the damage and filed a certified claim seeking compensation for the cost of the repairs in the amount of \$160,998. The contracting officer denied the claim and Global appealed.

The parties agreed to mediate the claim pursuant to Board Rule 54 (48 CFR 6101.54 (2009)). The mediation was successful, and the parties entered into a bilateral settlement agreement which was executed in early May 2009. Pursuant to the settlement agreement, the contracting officer issued a unilateral modification to the contract authorizing an upward adjustment to the contract price of \$80,000, the amount the agency agreed to pay Global. Also under the terms of the settlement agreement, the contracting officer requested that the Coast Guard payment center make the payment by electronic transfer of funds directly to Global's designated account. Within thirty days after receipt of the sum of \$80,000, Global was obligated by the settlement agreement to "agree to the withdrawal and dismissal with prejudice" of its appeal docketed as CBCA 923.

Upon receipt of the Mabrity contracting officer's request for payment to Global, the Coast Guard Finance Center applied the full amount as an offset against amounts owing under a separate contract that had been terminated for cause.<sup>1</sup> When Global protested the failure to deposit funds to its account, the Coast Guard attorney who had advised the Finance Center to apply these funds to offset amounts due and owing under the other contract wrote to Global, confirming that an offset had been taken and that Global had received full credit on its debt to the extent of this amount.

### Discussion

The Coast Guard, after attempting to secure Global's cooperation in the dismissal of its appeal, filed this motion unilaterally, arguing that the settlement agreement has been fully performed and that the Board should therefore dismiss the appeal with prejudice. Global opposes the motion to dismiss, asserting that the Government has not satisfied the terms of the settlement agreement because it failed to deposit the payment amount in Global's designated account as specified in that agreement.

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<sup>1</sup> In a decision dated September 2, 2008, another Coast Guard contracting officer assessed procurement costs of \$465,563.49 for repairs and maintenance to the USCGC Smilax.

Global relies on paragraph 8 of the settlement agreement to support its contention. This paragraph states in pertinent part that “[t]he contracting officer will request that the Coast Guard payment center make the payment by way of electronic transfer directly to Global’s designated account.” Global points out that there were “no exceptions” in the settlement agreement, and that had it known that the “provisions of the Settlement Agreement would not be followed and that a setoff would be claimed in an unrelated matter,” Global would never have settled the appeal for the amount of \$80,000. Global urges that the Board should deny the motion to dismiss and instead order the Coast Guard to deposit \$80,000 in an account designated by Global.

It is settled law that the Government, like every other creditor, has the right “to apply the unappropriated moneys of [its] debtor, in [its] hands, in extinguishment of the debts due to [it].” *United States v. Munsey Trust Co.*, 332 U.S. 234, 239 (1947); *accord DKW Construction, Inc. v. General Services Administration*, CBCA 438, 08-1 BCA ¶ 33,755 (2007). This right extends to offsets between separate contracts which a contractor may have with the Government. *Cecile Industries, Inc. v. Cheney*, 995 F.2d 1052, 1054 (Fed. Cir. 1993); *Project Map, Inc. v. United States*, 486 F.2d 1375, 1376 (Ct. Cl. 1973). The Government’s right of setoff is preserved unless there is some explicit statutory or contractual provision that bars its exercise. *Applied Companies v. United States*, 144 F.3d 1470, 1475 (Fed. Cir. 1998); *accord Johnson v. All-State Construction, Inc.*, 329 F.3d 848, 853 (Fed. Cir. 2003). The Government’s setoff rights extend to debts owed to contractors as a result of a settlement agreement. *East Coast Security Services, Inc. v. Department of Homeland Security*, DOT BCA 4469R, et al., 06-1 BCA ¶ 33,290. Had Global wanted to ensure that the settlement would not be subject to the right of setoff it should have sought a provision in the settlement agreement explicitly exempting this payment from the right of setoff.

The analysis in *East Coast Security Services* is closely on point. In that case, the parties negotiated a settlement agreement under which the Government agreed to pay the contractor \$312,000 in exchange for dismissing its appeal with prejudice. The settlement agreement provided that payment would be made to the contractor’s attorney’s trust fund. Prior to the Government’s attempt to pay this amount, the Internal Revenue Service captured \$46,800 to offset outstanding tax debts. The contractor argued this was a breach of the settlement agreement that invalidated the agreement. The board rejected this argument, reasoning that the breach was not material and that the contract’s primary purpose, to resolve the disputes before the board, had been achieved. In essence, using the settlement amount to pay down another of the contractor’s debts to the Government sufficiently effectuated the intent of the agreement.

In this case, the settlement agreement stipulated that the contracting officer would request that the Coast Guard payment center deposit the monies in a designated account. The contracting officer made such a request. The request that payment be made to a designated account does not serve to explicitly invalidate the Government's right to offset the settlement amount to pay the larger debt owed under another contract. Thus, the Coast Guard was free to satisfy the terms of the settlement agreement by exercising its right of setoff.

This brings us to the Coast Guard's motion to dismiss. The Board has the authority to determine whether the appeal before it continues to be a "present, live controversy." *Kato Corp.*, ASBCA 51462, 06-2 BCA ¶ 33,293, at 165,085 (citing *Exigent Technology, Inc. v. Atrana Solutions, Inc.*, 442 F.3d 1301, 1311-12 (Fed. Cir. 2006)). As such, the Board may also determine whether the appeal has been settled. *Voices R Us*, ASBCA 49818, et al., 97-2 BCA ¶ 29,135, at 144,960; *Leadermar, Inc.*, ASBCA 40575, et al., 92-2 BCA ¶ 24,919, at 124,247; *River City Contractors, Inc.*, DOT BCA 2073, 91-1 BCA ¶ 23,531, at 117,977 (1990). As discussed above, the Coast Guard has compensated Global the amount of \$80,000, which achieves the goal of the settlement agreement. There is nothing further for the Board to adjudicate. Global's opposition to the Cost Guard's motion lacks merit. Accordingly, the Coast Guard's motion to dismiss is granted.

### Decision

This appeal is **DISMISSED WITH PREJUDICE**.

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CATHERINE B. HYATT  
Board Judge

We concur:

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JERI KAYLENE SOMERS  
Board Judge

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ANTHONY S. BORWICK  
Board Judge