



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION TO AMEND COMPLAINT GRANTED: December 17, 2010

CBCA 1804

6TH AND E ASSOCIATES, LLC,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Brett D. Orlove of Grossberg, Yochelson, Fox & Beyda, LLP, Washington, DC, counsel for Appellant.

Lesley M. Busch, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

SOMERS, Board Judge.

ORDER

Appellant has filed a motion for leave to file an amended complaint pursuant to CBCA Rule 6(e). 48 CFR 6101.6(e) (2010). Appellant wishes to amend the complaint to reference a lease that had not been included in the original complaint. Respondent opposes the motion, contending that, by adding reference to a lease, appellant is presenting a claim that had not been presented to the contracting officer. Because appellant did not present a claim under this lease agreement to the contracting officer, respondent asserts that appellant could not meet the jurisdictional prerequisites of the Contract Disputes Act, 41 U.S.C. § 605(a) (2006). We grant the motion to amend the complaint, for the reasons set forth below.

Background

The General Services Administration (GSA, the Government, or respondent) leased office space from 6th and E Associates, LLC (6th and E or appellant). The parties entered into the first lease agreement, GS-11B-20687 (Lease 20687), on December 28, 1992. Under this lease, the Government leased the first two floors in the Bicentennial Building, located at 600 E Street in Washington, D.C. Under the second lease agreement, GS-11B-20769 (Lease 20769), dated April 28, 1993, the Government leased the remaining floors of the building, with the exception of a portion of the 6th floor.

It appears that the two lease agreements, Lease 20687 and Lease 20769, ended when the Government leased the entire building through lease agreement GS-11B-01864 (Lease 01864). Although the lease is dated March 3, 2006, the terms of the lease began on February 22, 2004, and will end on February 21, 2014.

On June 6, 2008, 6th and E filed a claim with the contracting officer. The claim identified (inaccurately) Lease 01864 as the “prior lease” and Lease 20687 as the “existing lease.” The claim did not reference Lease 20769.

The claim identified several invoices that had been submitted but not paid. At issue here is the first invoice, identified as Invoice 529. The invoice seeks overtime heating, ventilating, and air conditioning (HVAC) charges that occurred from August 18, 2003, through September 17, 2003. It categorizes the charges in two columns. One column identifies charges for floors 3-10. The second column identifies charges for floors 1-2. The invoice itself does not connect the charges to the lease agreements. However, the lease agreements in existence during the time period were the two separate lease agreements, Lease 20687 and Lease 20769. The consolidated lease did not commence until after these charges occurred.

When the contracting officer failed to issue a decision within the time period required, appellant filed its appeal with this Board on November 20, 2009. After the filing of the appeal, by letter dated December 16, 2009, the contracting officer wrote a formal response to the claim. As to Invoice 529, the contracting officer stated that “[t]he Government never received notification of this charge and it never went through the proper approval procedure. The Government cannot reimburse expenses that were not authorized.”

Discussion

Appellant wishes to amend the complaint to reference Lease 20769 in its claim for payment of Invoice 529. It asserts that CBCA Rule 6(e) allows the Board to permit amendments to pleadings on conditions fair to both parties. Appellant contends that respondent is not prejudiced by the amendment because (1) respondent was a party to Lease 20769 and has knowledge of its key terms; (2) inclusion of Lease 20769 does not add any new claims or causes of action; (3) the claim for payment of Invoice 529 arose under Lease 20687 and Lease 20769; and (4) the amended complaint provides more accurate data regarding the operative facts and circumstances underlying the claim for payment of Invoice 529.

Respondent opposes, contending that the contracting officer's response was premised upon the fact that appellant's claim only referenced Lease 20687 for support. Amending the claim to include an additional lease, says respondent, is a jurisdictional issue. In order for the Board to have jurisdiction over the claim, the claim must be submitted to the contracting officer first. Because the claim did not reference Lease 20769, respondent contends that the contracting officer did not have an opportunity to evaluate and determine the merits of the claim in the context of the second lease.

Respondent's position is curious. First, the contracting officer did not issue a final decision – this case came before the Board on a “deemed denial” basis. Second, Invoice 529 does not reference either lease. However, the costs claimed in the first column, identified as overtime HVAC for floors 3-10, could not have arisen from Lease 20687, which only governed floors 1-2. Lease 20769 covered the costs identified in the first column. The other lease referenced in the actual claim letter, *i.e.*, Lease 01864, did not exist at the time the alleged additional costs arose.

Appellant's claim that the Government had failed to pay for services identified in Invoice 529 provided enough information to place the contracting officer on notice that appellant sought payment for costs arising under Lease 20769, as well as costs arising under Lease 20687. Thus, the contracting officer had sufficient information concerning the contractor's claim, the leases involved (based upon the information contained on the actual invoice which identified the floors covered by the claim), and the sum certain amounts at issue, notwithstanding the omission of proper citation to Lease 20769. Accordingly, the Board possesses jurisdiction to entertain appellant's claim. *See, e.g., Holmes & Narver, Inc.*, ASBCA 51430, 99-1 BCA ¶ 30,131 (1998); *Systems & Electronics, Inc.*, ASBCA 47811, 96-2 BCA ¶ 28,501; *Bath Iron Works*, ASBCA 32770, 88-1 BCA ¶ 20,438 (1987).

Decision

We **GRANT** appellant's motion for leave to file an amended complaint. Appellant's amended complaint, identified as Exhibit A to appellant's motion, is hereby filed. Respondent may file an amended answer in accordance with CBCA Rule 6(f) no later than thirty calendar days from today.

JERI KAYLENE SOMERS
Board Judge