



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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MOTION FOR RECONSIDERATION DENIED:  
July 9, 2018

CBCA 5506, 5715, 5849

JBG/FEDERAL CENTER, L.L.C.,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent in CBCA 5506, 5849,

and

DEPARTMENT OF TRANSPORTATION,

Respondent in CBCA 5715.

Vincent Mark J. Policy and William C. Casano of Greenstein DeLorme & Luchs, P.C., Washington, DC, counsel for Appellant.

Lesley Busch Uhr and Bradley Boettcher, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent in CBCA 5506, 5849.

Lynn M. Deavers and Michael A. Smith, Office of the General Counsel, Department of Transportation, Washington, DC, counsel for Respondent in CBCA 5715.

Before Board Judges **DRUMMOND**, **SULLIVAN**, and **CHADWICK**.

**SULLIVAN**, Board Judge.

JBG/Federal Center, L.L.C. (JBG), seeks partial reconsideration of the Board's prior decision on its motion for summary relief, *JBG/Federal Center, L.L.C. v. General Services Administration*, CBCA 5506, et al., 18-1 BCA ¶ 37,019, asserting that the Board erred in its application of the continuing claims doctrine to the General Services Administration (GSA) demand for repayment of property taxes paid for the parking spaces not included in the lease between GSA and JBG. We deny the motion.

### Background

We presume familiarity with the Board's previous decision. We restate the contract provisions and undisputed facts that underlie our analysis regarding whether GSA's claim survives the statute of limitations pursuant to the continuing claims doctrine.

Lease section 2.6.1, as amended by supplemental lease agreement (SLA) no. 5, provided that, "[f]rom the Lease Commencement Date, throughout the Lease Term, the Government will reimburse Lessor as additional Rent 100% of the real estate taxes (excluding any notary fees, penalties, or interest on a late payment by the Lessor) applicable to the Leased Premises." Exhibit 5 at 4.<sup>1</sup> Under this provision, JBG was permitted to claim reimbursement of payments it made in lieu of taxes that were assessed by the District of Columbia to fund neighborhood improvements. *Id.* Section 2.6.1 further provided that the Government would reimburse JBG for real estate taxes on no more than 145 leased spaces in the parking garage:

No portion of the Government's tax payments shall reflect tax assessments attributable (i) to any Site Improvements not directly benefitting the Government, or (ii) to parking areas or structures, except for the 145 parking spaces directly leased by the Government.

Exhibit 2 at 67.

When seeking reimbursement, JBG was to submit "a proper invoice, . . . a calculation demonstrating Lessor's entitlement to the amount claimed, and evidence of payment by Lessor of real estate taxes related to the Facility and/or Site within which the Leased Premises is located." Exhibit 2 at 67. JBG also was required to provide to the contracting

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<sup>1</sup> All exhibits are found in the CBCA 5506 appeal file.

officer copies of “all notices that may affect the valuation of the Facility and/or the Site upon which the Facility is located, as well as all notices of tax credits (or refunds or abatements), all tax bills, and all paid tax receipts.” *Id.* If JBG received any tax credits, refunds, or abatements, the Government retained the right to receive “100% of the tax credit attributable to the Government’s occupancy of the Leased Premises.” *Id.* at 67-68.

In April 2007, JBG submitted its first request to GSA for reimbursement of real estate taxes for October 20, 2006, to March 31, 2007. Exhibit 9 at 4. JBG attached the property tax bill issued by the District of Columbia for the lot that included the buildings and the parking lot. *Id.* GSA paid the full amount JBG sought for October 20, 2006, through March 31, 2007. Exhibit 9 at 1. Biannually thereafter until June 2015, JBG sought and GSA paid the full amount of the taxes levied by the District of Columbia on the lot that included both the buildings and the parking lot. Exhibits 13, 14, 16, 17, 19, 21, 25, 26, 29, 31, 35, 38, 43, 50, 54; GSA’s Statement of Uncontested Facts ¶¶ 11, 12.

## Discussion

### I. Standard of Review

To obtain reconsideration of the Board’s decision, JBG must identify newly acquired evidence or an error of law. *Yates-Desbuild Joint Venture v. Department of State*, CBCA 3350-R, et al., 18-1 BCA ¶ 36,959, at 180,083 (2017). JBG asserts that the Board erred in its application of the continuing claim doctrine and urges the Board to reconsider this decision and find GSA’s claim for repayment to be barred in its entirety by application of the six-year statute of limitations.

### II. JBG Has Not Identified A Basis for Reconsideration

Based upon the plain language of the tax provision, we found that GSA was not obligated to pay the property tax for the parking spaces in excess of the 145 spaces required by the lease. *JBG/Federal Center*, 18-1 BCA at 180,275. Because JBG attached the property tax bill to each of its requests for reimbursement, as required by the lease, and the amount of the bill matched the amount sought by JBG, we held that GSA knew or should have known that JBG was seeking reimbursement of taxes in excess of those permitted by the lease with the submission of the first property tax bill in 2007. *Id.* at 180,277. The statute of limitations ran from that date. However, because the terms of the lease required JBG to submit reimbursement requests for the property taxes as those taxes were paid to the District of Columbia, we further held that GSA’s claim was a continuing claim and not barred in its entirety by the statute of limitations. *Id.* Instead, GSA could pursue its claim

for repayment of amounts paid in the six-year period preceding the contracting officer's decision in September 2016.

JBG seeks reconsideration of this last portion of our decision. According to JBG, we erred in our analysis by not deciding that GSA's claims arose only once, in 2007, when GSA first reimbursed JBG the entire amount of property tax sought. JBG describes this action as a "decision" by GSA to ignore the language of the contract and pay the full amount. Having made this decision, JBG argues, GSA knew of its right to reimburse less than the full amount of the bill in 2007 and its claims for overpayment are barred by the statute of limitations.

As we found in our decision, GSA knew or should have known in 2007, when JBG submitted the first tax bill for reimbursement, that it did not owe JBG the full amount and the payment of the full amount gave rise to its claim. We did not find that GSA made a decision to disregard the language of the contract and overpay this amount. In fact, as we noted, the reason why GSA reimbursed JBG the full amount remains something that we expect will be explained at hearing. Instead, GSA knew or should have known of its claim based upon the language of the contract and the fact that JBG sought reimbursement of the entire property tax bill, despite this language.

A claim accrues on "the date when all events, that fix the alleged liability on either the Government or the contractor and permit assertion of the claim, were known or should have been known." 48 CFR 33.201 (2017). "[W]here a claim is based upon a contractual obligation of the Government to pay money, the claim first accrues on the date when the payment becomes due and is wrongfully withheld in breach of the contract." *Oceanic Steamship Co. v. United States*, 165 Ct. Cl 217, 225 (1964). "The prerequisite acts necessary for a claim to accrue, then, are entirely dependent upon the *language* of the government contract at issue." *Systems Management & Research Technologies Corp. v. Department of Energy*, CBCA 4068, 15-1 BCA ¶ 35,976, at 175,790.

The language of the lease dictates that GSA is not obligated to pay real estate taxes until JBG timely submits an invoice with evidence that it has paid the property taxes for which reimbursement is sought. GSA's liability for property taxes and claim for overpayment of these taxes does not arise until these events occur. "[A] cause of action accrues when all the events have occurred that fix the defendant's alleged liability and entitle the plaintiff to institute an action." *Ariadne Financial Services Pty. Ltd. v. United States*, 133 F.3d 874, 879 (Fed. Cir. 1998) (quoting *Fallini v. United States*, 56 F.3d 1378, 1380 (Fed. Cir. 1995)). Contrary to JBG's insistence, GSA's claim for the repayment of property taxes could not be fixed in 2007. JBG had not incurred those real estate taxes (despite being sure that they would be levied), had not presented the tax bills to GSA as required by the lease and

had not obtained reimbursement. Instead, GSA had a new claim each time JBG presented the bills for reimbursement and it mistakenly paid the full amount.

JBG also argues that the obligation to pay the real estate taxes was fixed with the execution of the lease and that its bi-annual reimbursement requests were just a formality. Again, JBG's argument is contrary to the terms of the lease. JBG did not have the right to seek reimbursement of the real estate taxes until it paid the property taxes levied by the District of Columbia. It paid these taxes when they were levied bi-annually and sought reimbursement pursuant to the terms of the lease. If JBG receives no tax bill, albeit an unlikely scenario, or fails to submit a claim for reimbursement, GSA has no obligation to reimburse JBG for real estate taxes for that period. Moreover, the amount of the tax payments varies, which creates a distinct claim each time a request for reimbursement is presented. *See Burich v. United States*, 366 F.2d 984, 988 (Ct. Cl. 1966) (claim for variable amounts of overtime pay deemed a continuing claim).

JBG relies upon *Raytheon Co. v. United States*, 104 Fed. Cl. 327 (2012), as support for its assertion that GSA's claim for repayment stems from a single agreement. In that case, the Court of Federal Claims found the continuing claim doctrine not to be applicable because the contractor's entitlement arose from a single agreement between the contractor and government agency regarding the future allowability of costs to be submitted for payment. As noted, pursuant to the lease terms, JBG's entitlement to recover its tax payments and GSA's claim for repayment arise with the periodic requests for reimbursement. Those requests must be made before GSA is obligated to reimburse JBG for the property taxes.

JBG also relies upon a string of disability or retirement pay cases in which courts have found the continuing claim doctrine not to apply. In each of these cases, beginning with *Hart v. United States*, 910 F.2d 815 (Fed. Cir. 1990), the Court has found that the obligation to pay arose from a single event, determination, or legal obligation. *Bias v. United States*, 722 Fed. Appx. 1009 (Fed. Cir. 2018); *Davis v. United States*, 550 Fed. Appx. 864 (Fed. Cir. 2013). In these cases, the determination of benefits was made once based upon statute or regulation. The periodic payments thereafter did not give rise to a new claim or right to challenge the original determination. Again, the lease dictates that JBG cannot seek reimbursement and GSA cannot seek repayment until JBG is taxed on the property. Moreover, the tax amounts vary. This situation is more akin to that outlined in *Burich*, which involved claims for overtime pay. Because the claims arose only when overtime was worked and the amounts of overtime pay varied, the court found that the claimant could pursue claims for pay earned in the six years prior to the suit. 366 F.2d at 988; *see also Gray Personnel, Inc.*, ASBCA 54652, 06-2 BCA ¶ 33,378, at 165,477 (continuing claim doctrine applies with the issuance of each delivery order under the contract).

If the claims were reversed, the same reasoning would apply. Assume that JBG, pursuant to the lease terms, was entitled to be reimbursed all of the property taxes for the property but GSA, beginning in 2007, failed to reimburse JBG the full amount. This failure to reimburse the full amount continued with every property tax reimbursement request until 2016, when JBG made a claim for the amounts it was owed. JBG would be permitted to seek the amounts owed for six years preceding its claim. The only decision that would be binding upon JBG would be the decision to forego filing a claim until 2016, thereby relinquishing a claim to monies owed for reimbursement requests submitted more than six years before the date of its claim.

Decision

JBG's motion for partial reconsideration is **DENIED**.

Marian E. Sullivan  
MARIAN E. SULLIVAN  
Board Judge

We concur:

Jerome M. Drummond  
JEROME M. DRUMMOND  
Board Judge

Kyle Chadwick  
KYLE CHADWICK  
Board Judge