



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED: January 28, 2021

CBCA 6696

HUDSON GENERAL CONTRACTOR, INC.,

Appellant,

v.

DEPARTMENT OF THE INTERIOR,

Respondent.

Charles R. Hudson, IV, Chief Operations Officer of Hudson General Contractor, Inc., Springfield, VA, appearing for Appellant.

Lisa Buechler, Office of the Solicitor, Department of the Interior, Lakewood, CO, counsel for Respondent.

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

DRUMMOND, Board Judge.

The Department of the Interior (respondent or Interior) voided the contract with Hudson General Contractor, Inc. (appellant or HGCI) after determining that HGCI lacked the ability to contract, and moved for summary judgment to dismiss with prejudice because HGCI lacked standing to bring this appeal. Interior's motion is granted. The appeal is dismissed.

Background

In September 2019, HGCI, acting through Charles R. Hudson, IV, as chief operations officer, entered into a fixed-price contract with the National Park Service (NPS), an agency within Interior. The contract was for construction work at a national park in Ohio. In November 2019, NPS terminated HGCI's contract for default for reasons not relevant to Interior's motion. HGCI filed this appeal in December 2019.

Interior discovered that HGCI was no longer a viable Virginia corporation. On August 31, 2013, HGCI had been administratively terminated by the state for failure to file an annual report and pay the annual registration fee. Five years later, in August 2018, HGCI was permanently dissolved with no right of reinstatement.¹ Mr. Hudson acknowledges that HGCI's corporate existence was not renewed due to a decision by HGCI's president. The record contains no evidence that HGCI was licensed to operate in any state as a corporation or in any other legal capacity or name after August 31, 2018.

Discussion

Interior has moved for summary judgment. Resolving a dispute on such a motion is appropriate when the moving party is entitled to judgment as a matter of law, based on undisputed material facts. *See Board Rule 8(f) (48 CFR 6101.8(f) (2020)); Marine Metal, Inc. v. Department of Transportation*, CBCA 537, 07-1 BCA ¶ 33,554. The moving party bears the burden of demonstrating the absence of genuine issues of material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). “Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no ‘genuine issue for trial.’” *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

After examining the record, we conclude that the material facts are undisputed. The issue presented here is a legal issue and appropriate for resolution through summary judgment. The capacity of a corporation to maintain an action before the Board is determined by the law of the state under which that entity was organized. *See TAS Group, Inc. v. Department of Justice*, CBCA 52, 07-2 BCA ¶ 33,630. In support of its motion,

¹ Both Va. Code § 13.1-754 and Va. Code § 13.1-916 establish an identical five-year timeframe for reinstatement. *See Appeal File, Exhibit 23* (sworn statement from the Virginia State Corporation Commission dated January 14, 2020, confirming HGCI's termination in 2013 and ineligibility for reinstatement after August 31, 2018). Va. Code § 13.1-614, “Hearing and finality of Commission action; injunctions,” provides in part, that only the Supreme Court has jurisdiction to review, reverse, correct, or annul Commission actions.

Interior provided documentary evidence that HGCI had been incorporated under the laws of the State of Virginia, but became permanently dissolved and ineligible for reinstatement.

HGCI filed an opposition, but failed to identify any genuine issue of material fact despite Board orders directing HGCI to do so. HGCI made only vague, conclusory, and unsupported arguments to the effect that it was reinstated as a Virginia corporation in May 2020. Alternatively, HGCI argues that it never represented itself as a corporation prior to contracting with Interior and suggests that it was reorganized as a different entity. We reject these arguments as they are not supported by any documentary evidence that HGCI was licensed to operate in Virginia after August 31, 2018, or that it was eligible to be reinstated as a Virginia corporation.

A necessary element of a contract is that the parties entering into it both possessed capacity to do so. Restatement (Second) of Contracts § 12(1) (Am. Law Inst.1981). Thus, where there is no capacity to contract, there is no contract. *Systems Integration & Management, Inc. v. General Services Administration*, CBCA 1512, et al., 13 BCA ¶ 35,417; *West Point Research, Inc.*, ASBCA 27185, 83-2 BCA ¶ 16,845. State law determines whether a contractor has the capacity to enter into contracts or the ability to bring an action when the contractor is a corporation. *Systems Integration & Management, Inc.*(citing *TAS Group, Inc.*; *Micro Tool Engineering, Inc.*, ASBCA 31136, et al., 86-1 BCA ¶ 18,680 (1985)).

Virginia law further establishes that “non-entities” lack capacity to bring suits or to prosecute claims arising after the termination of the corporate existence. Va. Code Ann. § 13.1-755; *Harris v. T.I., Inc.*, 243 Va. 63, 68 (1992) (finding that “only a ‘claim existing’ or a ‘liability incurred’ will survive the termination of a corporation’s existence”); *Lorcom House Condominium v. Wells*, 3 Va. Cir. 226 (1984), *aff’d*, 237 Va. 247 (finding that a juridical non-entity does not have capacity to bring suit). The plain language of the Virginia Code supports this conclusion:

It shall be unlawful for any person to transact business in the Commonwealth as a corporation or to offer or advertise to transact business in the Commonwealth as a corporation unless the alleged corporation is either a domestic corporation or a foreign corporation authorized to transact business in the Commonwealth. Any person who violates this section shall be guilty of a Class 1 misdemeanor.

Va. Code Ann. § 13.1-812 (2007). HGCI therefore lacked the ability to contract and its appeal must be dismissed.

Decision

For these reasons, Interior's motion for summary judgment is granted. The appeal is **DISMISSED.**

Jerome M. Drummond
JEROME M. DRUMMOND
Board Judge

We concur:

Erica S. Beardsley
ERICA S. BEARDSLEY
Board Judge

Kyle Chadwick
KYLE CHADWICK
Board Judge