UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION TO STRIKE DENIED: September 2, 2026

CBCA 8448

SANALIL CONSTRUCTION, INC.,

Appellant,

v.

DEPARTMENT OF THE INTERIOR,

Respondent.

Timothy J. Turner and Jonathan Perrone of Centre Law & Consulting, Tysons, VA, counsel for Appellant.

Brian A. Quint, Office of the Solicitor, Department of the Interior, Washington, DC; and Paul Sax, Office of the Solicitor, Department of the Interior, Lakewood, CO, counsel for Respondent.

Before Board Judges **KULLBERG**, **ZISCHKAU**, and **O'ROURKE**.

KULLBERG, Board Judge.

Respondent, the Department of the Interior (DOI), has filed a motion to strike paragraphs 18, 34(a), 35, 44, and 49 from appellant's amended complaint. Appellant, Sanalil Construction, Inc. (SCI), opposes DOI's motion. For the reasons stated below, the Board denies the motion to strike.

Background

On January 2, 2025, SCI submitted to the National Park Service (NPS) its request for a contracting officer's final decision (COFD) regarding its claim in the amount of $610,186.54. Exhibit 3 at 1. SCI alleged that its costs increased "such that it was commercially impracticable to continue work." *Id*. at 5. After advising NPS of those cost increases, SCI alleges "NPS personnel . . . falsely promised a modification to the Contract price." *Id*. at 6. SCI's various grounds for recovery included bad faith, breach of the duty of good faith and fair dealing, and constructive change. *Id*. at 5, 6, 8. After the docketing of SCI's appeal of the COFD that denied its appeal, SCI filed its amended complaint that alleged, in pertinent part:

> 18. Thus, where the materials market for metal and lumber products was largely stable in the three years preceding the pandemic, after Contract award, the market for those products rose exponentially because of COVID-19 which rendered the Contract commercially impracticable to perform. *See Raytheon Co. v. White*, 305 F.3d 1354, 1367 (Fed. Cir. 2002) (a contract is commercially impracticable "when, because of unforeseen events, it can be performed only at an excessive and unreasonable cost,[". . .] or ["]when all means of performance are commercially senseless." [citations omitted]).
>
> . . . .
>
> 34. More specifically, NPS acted in bad faith by taking the following actions, among others: (a) falsely promising a modification to the Contract price on multiple occasions to induce commercially impracticable performance.
>
> 35. After [SCI] expressed that the Contract was commercially impracticable to perform following the COVID-19-caused increases in labor and material costs, NPS, including its employees and agents, induced [SCI] to continue performance under the promise of future compensation.
>
> . . . .
>
> 44. NPS knew of the cost implications associated with [SCI's] continued performance in the face of commercially impracticable conditions.
>
> 49. NPS changed the Contract when [an NPS employee] ordered [SCI] to perform work when it was commercially impracticable for [SCI] to do so.

> Upon information and belief, NPS acknowledged the changes needed by verbal and written correspondence.

Appellant's Amended Complaint at 4, 6, 7, 8. In lieu of filing an answer, DOI filed its motion to dismiss this appeal as untimely on the grounds that SCI had failed to appeal the COFD that denied SCI's first claim. The Board denied DOI's motion to dismiss, finding that "SCI has asserted materially different facts and legal theories in its second claim insofar as it has alleged that it was induced to continue contract performance with promises of compensation for its increased costs." *Sanalil Construction, Inc. v. Department of the Interior*, CBCA 8448, 26-1 BCA ¶ 39,057, at 190,244. DOI then filed its motion to strike "all allegations asserting or implying that contract performance was commercially impracticable, including at least [paragraphs] 18, 34(a), 44, and 49." Respondent's Motion to Strike at 11.

Discussion

At issue is whether DOI has established any grounds for its motion to strike certain paragraphs of SCI's amended complaint. The Contract Disputes Act (CDA), 41 U.S.C. §§ 7101-7109 (2024), establishes the Board's authority to decide federal contractors' claims and its jurisdiction over such claims. *Id*. § 7105(b) The Board's rules do not address motions to strike pleadings, but "[t]he Board may apply principles of the Federal Rules of Civil Procedure (28 U.S.C. App.) to resolve issues not covered by [these rules]." Rule 1(c) (48 CFR 6101.1(c) (published in eCFR)). The Federal Rules of Civil Procedure provide that a "court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). The Board has recognized the following:

> However, because federal judges have made it clear, in numerous opinions they have rendered in many substantive contexts, that Rule 12(f) motions to strike on any of these grounds are not favored, often being considered purely cosmetic or "time wasters," there appears to be general judicial agreement, as reflected in the extensive case law on the subject, that they should be denied unless the challenged allegations have no possible relation or logical connection to the subject matter of the controversy.

Mission Support Alliance, LLC v. Department of Energy, CBCA 4985, 16-1 BCA ¶ 36,210, at 176,683 (quoting 5C Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1382, at 433-36 (3d ed. 2004)). "[B]ecause striking a portion of a pleading is a drastic remedy and because it often is sought by the movant simply as a dilatory or harassing tactic, numerous judicial decisions make it clear that motions under Rule 12(f) are

. . . infrequently granted." *Id*. (quoting *System Fuels, Inc. v. United States*, 73 Fed. Cl. 206, 216 (2006) (quoting 2 James W. Moore, *Moore's Federal Practice* § 12.37[4], at 12-100.5 (3d ed. 2006))).

The Board finds no merit in DOI's motion to strike paragraphs 18, 34(a), 35, 44, and 49 or any other language from SCI's amended complaint. In its denial of DOI's motion to dismiss this appeal, the Board found that SCI's claim alleged that NPS employees "induced . . . contract performance with promises of compensation for . . . increased costs." *Sanalil Construction, Inc.*, 26-1 BCA at 190,244. With the issue of jurisdiction resolved in this appeal, the Board finds no basis on which DOI may now object to SCI's use of the phrase commercially impracticable in its pleadings. The Board's rules only require that an appellant file "a complaint with a simple, concise, and direct statement of the factual basis for each claim and the amount in controversy." Rule 6(a). SCI's amended complaint, including the paragraphs at issue, complied with that requirement. While DOI may object to SCI's use of the phrase commercial impracticability, which has a legal definition,[1] SCI uses the phrase only to describe the circumstances in which it claims to have been induced to continue performance. Consequently, DOI has not shown that its motion to strike complies with Fed. R. Civ. P. 12(f), which requires a showing that a pleading is either "redundant, immaterial, impertinent, or scandalous."

Decision

DOI's motion to strike portions of SCI's amended complaint is **DENIED**.

H. Chuck Kullberg
H. CHUCK KULLBERG
Board Judge

We concur:

Jonathan D. Zischkau
JONATHAN D. ZISCHKAU
Board Judge

Kathleen J. O'Rourke
KATHLEEN J. O'ROURKE
Board Judge

[1] "The occurrence of a contingency whose nonoccurrence was an assumption in the contract, as a result of which one party cannot perform." *Commercial Impracticability*, Black's Law Dictionary 903 (12th ed. 2024).