In the United States Court of Federal Claims

No. 98-323 C

(Filed: March 24, 2000)

COCONUT GROVE ENTERTAINMENT, INC.,	)	
Plaintiff,	)	Motion for Reconsideration; 39 U.S.C. § 409(a); jurisdiction of non-CDA claim against the Postal Service
v.	)	
THE UNITED STATES,	)	
Defendant.	)	

OPINION AND ORDER

Pursuant to Rule 59 of the Court of Federal Claims (RCFC), defendant has moved for reconsideration of this court's Opinion and Order dated February 29, 2000. Defendant alleges that the opinion is premised upon three errors of law. After careful review and consideration of defendant's motion, the court DENIES the Motion for Reconsideration.

I. Standard of Review

Rule 59, which addresses motions for reconsideration, states:

> A new trial or rehearing or reconsideration may be granted to all or any of the parties and on all or part of the issues, for any of the reasons established by the rules of common law or equity applicable as between private parties in the courts of the United States. On motion under this rule, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

RCFC 59(a). The decision to grant a motion for reconsideration lies within the sound

discretion of the court. Yuba Natural Resources, Inc. v. United States, 904 F.2d 1577, 1583 (Fed. Cir. 1990). The court must consider such motion with "exceptional care." Fru-Con Constr. Corp. v. United States, 44 Fed. Cl. 298, 300 (1999).

To prevail on a motion for reconsideration, the movant must point to a manifest error of law or mistake of fact. Franconia Assocs. v. United States, 44 Fed. Cl. 315, 316 (1999). The movant does not persuade the court to grant such motion by merely reasserting arguments which were previously made and were carefully considered by the court. Principal Mut. Life Ins. Co. v. United States, 29 Fed. Cl. 157, 164 (1993). A motion for reconsideration "is not intended to give an unhappy litigant an additional chance to sway the court." Fru-Con Constr. Corp. v. United States, 44 Fed. Cl. at 300 (quoting Bishop v. United States, 26 Cl. Ct. 281, 286 (1992)). Rather, the movant must show: (1) that an intervening change in the controlling law has occurred; (2) that previously unavailable evidence is now available; or (3) that the motion is necessary to prevent manifest injustice. Id.

Here, defendant alleges three errors of law. Defendant's Motion for Reconsideration (Def's. Mot.) at 1. Specifically, defendant alleges: (1) that the court improperly focused upon the procurement contract by which defendant originally acquired the lease rather than upon the lease; (2) that the court improperly interpreted the Federal Circuit's decision in Forman v. United States, 767 F.2d 875 (1985); and (3) that the court failed to entertain the case pursuant to its jurisdiction under the Tucker Act, 28 U.S.C. § 1491 (1994). Id.

II. The Alleged Legal Errors

Defendant's first two allegations of legal error turn on the court's interpretation of the Forman case. The court's analysis of the Federal Circuit's opinion, which was detailed in the Opinion and Order of February 29, 2000, carefully considered the arguments that defendant now advances as legal errors. Because defendant has merely reasserted the arguments put forth in its Motion to Dismiss, the court need not address the first two alleged errors any further and directs its attention to the third allegation of legal error. See Principal Mut. Life Ins. Co., 29 Fed. Cl. at 164.

Defendant asserts that the court erroneously transferred this case back to the United States District Court for the Southern District of Florida (District Court of Florida) upon determining that the instant action did not fall within the purview of the Contract Disputes Act (CDA). Defendant claims that the court failed to consider this case pursuant to its jurisdiction under the Tucker Act.

Contrary to defendant's assertions, however, the court is not bound to hear the transferred case. Plaintiff originally filed the action against the United States Postal Service (Postal Service) in the District Court of Florida pursuant to section 409(a) of the Postal Reorganization Act of 1970 (PRA), 39 U.S.C. §§ 101-5605 (1994). Section 409(a), which governs suits by and against the Postal Service, provides:

> Except as provided in section 3628 of this title, the United States district courts shall have original but not exclusive jurisdiction over all actions brought by or against the Postal Service.

39 U.S.C. § 409(a). The principles of statutory interpretation require the court to construe the provision giving effect to every word and according the words their plain meaning. See 2A Sutherland Statutory Construction §§ 46.01, 46.06 (1992). Consistent with these interpretive guidelines, the court construes the broad language of section 409(a), particularly the phrase "jurisdiction over all actions," to include jurisdiction over contract actions. The breadth of this jurisdictional grant is limited only insofar as the contract claim falls within the purview of the CDA. See 28 U.S.C. § 1346(a)(2) (stating that "the district courts shall not have jurisdiction of any civil action or claim against the United States founded upon any express or implied contract with the United States . . . subject to . . . the Contract Disputes Act").

In transferring this case to the Court of Federal Claims, the District Court of Florida relied upon its earlier holding in Prefab Prods., Inc. v. United States Postal Service, 600 F. Supp. 89, 92 (S.D. Fla. 1984) and subsequent supporting authorities. In Prefab Prods., the District Court of Florida held "that the Contract Disputes Act pre-empts whatever jurisdiction the [federal courts] had in contract disputes with the Postal Service" and confers exclusive jurisdiction of such claims in the Court of Claims (now the Court of Federal Claims). But see Spodek v. United States, 26 F.Supp.2d 750, 753-54 (E.D. Pa. 1998) (discussion of split in circuit authority regarding whether the CDA confers exclusive jurisdiction of contract disputes with the Postal Service upon the Court of Federal Claims). This court, however, has determined that the subject action involves a non-CDA contract dispute and, under the terms of the Postal Reorganization Act, the district court has original jurisdiction over the dispute.

The court's decision to transfer this case back to the District Court of Florida is informed by the Federal Circuit's opinion in Benderson Dev. Co. v. United States Postal Serv., 998 F.2d 959 (Fed. Cir. 1993). Deciding whether plaintiff's claim belonged in the district court or in the Court of Federal Claims in the Benderson case, the Federal Circuit noted that "the jurisdictional problem posed in this appeal arises because the Postal Service, in contradistinction to other federal entities, may sue and be sued on contract

claims in courts other than the Court of Federal Claims." Id. at 962.

Citing the Benderson decision, the Third Circuit has stated that a contract dispute involving the Postal Service may be resolved by a district court in the exercise of its jurisdiction over matters affecting the Postal Service. Licata v. United States Postal Service, 33 F.3d 259, 263 (3d Cir. 1994). In Licata, the Third Circuit concluded that the Tucker Act does not deprive district courts of jurisdiction over suits against the Postal Service stating a claim in contract. Id. at 263-64. Citing Federal Circuit authority, the Third Circuit added that "a claim brought against the Postal Service in its own name is not a claim against the United States and thus is not governed by the Tucker Act." Licata, 33 F.3d at 263 (citing United States v. Connolly, 716 F.2d 882, 885 n. 4 (Fed. Cir. 1983) (in banc), cert. denied, 465 U.S. 1065 (1984)). In distinguishing between actions against the Postal Service and the United States, the Third Circuit specifically relied upon the Federal Circuit's opinion in Connolly, which stated:

> Congress made it clear in the Postal Reorganization Act of 1970 that the Postal Service was essentially to be separate from the government. Indeed, the Act provides that the Postal Service is empowered to sue and be sued in its own name, 39 U.S.C. § 401(1), and that the district courts have original jurisdiction over virtually all such actions, 39 U.S.C. § 409(a).

Connolly, 716 F.2d at 885 n. 4 (citations omitted).

In this case, plaintiff originally sued the Postal Service in the District Court of Florida and, upon transfer to this court, plaintiff filed a substantially similar complaint against the same defendants, the Postal Service, the City of Miami, and several individually named persons. See Plaintiff's Amended Complaint. Upon determining that the alleged contract claim is not a CDA claim, the court returned the matter, in accordance with the cited cases, to the district court which bears original jurisdiction over cases brought against the Postal Service in its own name. See Licata, 33 F.3d at 263.

III. Conclusion

For the foregoing reasons, defendant's Motion for Reconsideration is DENIED.

IT IS SO ORDERED.

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EMILY C. HEWITT
Judge