



## FINDINGS OF FACT

1. In August 2015, the Postal Service issued a solicitation for paving upgrades to a parking lot at a postal facility in Lake Charles, Louisiana (AF 1 at 1–2). The solicitation included a modified version of the Postal Service’s standard clause titled Payment (Construction)(Clause B-48)(March 2006). Paragraph f of that clause provided:

Upon completion and acceptance of all work, the amount due the contractor under this contract must be paid upon the presentation of a properly executed invoice, after the contractor has furnished the Postal Service with a release of all claims against the Postal Service arising by virtue of this contract, other than claims in stated amounts that must be specifically excepted by the contractor from the operation of the release. If the contractor’s claim to amounts payable under the contract has been assigned as provided in the Assignment of Claims clause, a release may also be required of the assignee.

(AF 1 at 37).

2. Interested offerors, including MBD, visited the project site during a pre-proposal conference on September 1, 2015 (AF 6).

3. The solicitation included reduced-size drawings for the project (AF 3). MBD was not, however, able to use those drawings to prepare its proposal because they were too small. MBD initially tried to enlarge the drawings, but the enlarged drawings were not readable, and MBD was not able to use them. MBD then asked the Postal Service’s architectural firm for a PDF version of the drawings, which MBD believed it could use to estimate the extent of the paving. Neither the architectural firm nor the Postal Service responded to that request. (AF 8, 16).

4. Despite not being able to read the drawings and not receiving a PDF version, MBD proceeded to estimate the extent of the work and submitted a proposal (AF 9). MBD was the low offeror and was awarded the contract on September 30, 2015 (AF 11, 31 at 367). As amended, the total contract price was \$218,156.50 (AF 33 at Block 3).

5. On October 28, 2015, MBD's Service Manager<sup>1</sup> sent an e-mail to the Postal Service stating that he had made a mistake when he prepared MBD's proposal. The Service Manager said he had underestimated the project area by over 20,000 square feet, resulting in over \$150,000 in labor and material costs that had not been included in the offer. He asked the Postal Service to help cover these costs, justifying his request on his belief that the Postal Service also knew, or should have known, about the mistake before it awarded the contract. (AF 16).

6. MDB reiterated its concerns in a letter to the Postal Service's architectural contractor on November 3, 2015 (AF 18). The architectural contractor forwarded the letter to the contracting officer (AF 23).

7. By early December 2015, MBD had not received a response from the Postal Service, so it contacted the contracting officer directly and stated its desire to resolve the miscalculation issue. In response, the contracting officer told MBD he could not provide compensation for the costs MBD was seeking. (AF 28). After further discussions, the contracting officer sent MBD an e-mail on January 3, 2016, reminding

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<sup>1</sup> This same person also submitted an affidavit as MBD's Project Manager. Because he signed correspondence during performance of the contract as MBD's Service Manager, we will refer to him by that title in this decision. Neither party has suggested that the possible difference in titles has any bearing on the pending motion.

MBD that the contract was subject to the Contract Disputes Act and referring MBD to the Claims and Disputes clause (AF 30).

8. On March 3, 2016, MBD filed an appeal with the Board, which was docketed as PSBCA No. 6625.

9. By March 2016, the Postal Service had paid MBD a total of \$190,935 under the contract. On March 24, 2016, MBD requested a final payment of \$27,221.50, which would bring the total payments under the contract to the full contract amount of \$218,156.50. (AF 33).

10. On the same day it asked for final payment, MBD signed a Contractor's Release (PS Form 7307). The release stated that upon payment of \$218,156.50 by the Postal Service, MBD would "remise, release, and discharge the Postal Service . . . of and from all liabilities, obligations, claims, and demands whatsoever under or arising" from the contract. Immediately following this language, the release included a block designated for exceptions to the release for claims against the Postal Service. MBD left that block blank and did not except any claims from the release. (AF 32).

11. The Postal Service approved the final payment on April 11, 2016 (AF 33).

12. The Postal Service moved to dismiss PSBCA No. 6625 because MBD had not filed a claim with the contracting officer. In response, MBD's attorney filed a claim with the contracting officer on April 15, 2016. The claim was certified by MBD's attorney. (AF 34).

13. Thereafter, MBD refiled its claim with the contracting officer—this time with a certification signed by MBD's president (AF 35).

14. The contracting officer denied the claim in a final decision dated June 9, 2016 (AF 36). MBD appealed that final decision to the Board, and the appeal was docketed as PSBCA No. 6642.

### **DECISION**

The Board will grant a motion for summary judgment if there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A material fact is one that may affect the outcome of the decision. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986). The moving party has the burden of establishing the absence of any genuine issue of material fact, and all significant doubt over factual issues must be resolved in favor of the party opposing summary judgment. *Mingus Constructors, Inc. v. United States*, 812 F.2d 1387, 1390 (Fed. Cir. 1987). The non-moving party may not rest on its conclusory pleadings, but it must set out specific evidence that could be offered at trial. *Anderson*, 477 U.S. at 249. A non-movant runs the risk of a grant of summary judgment if it fails to disclose the evidentiary basis for its claim. *Pure Gold, Inc. v. Syntex (U.S.A.), Inc.*, 739 F.2d 624, 627 (Fed. Cir. 1984).

Here, the Postal Service's motion (which we now treat as a motion for summary judgment) is based solely on the release MBD signed when it requested final payment. A release is a contract whereby a party abandons a claim or relinquishes a right that could be asserted against another, and the release must be interpreted in the same manner as any other contract term or provision. *Bell BCI Co. v. United States*, 570 F.3d 1337, 1341 (Fed. Cir. 2009). We thus begin our analysis by examining the release's plain language, *McAbee Constr., Inc. v. United States*, 97 F.3d 1431, 1435 (Fed. Cir.

1996), and will look to extrinsic or parol evidence only if the release is ambiguous. *Bell BCI*, 570 F.3d at 1341.

The undisputed facts establish that MBD signed the release in March 2016 when it requested final payment under the contract. As early as October 2015, MBD knew about its proposal mistake and had asked for monetary relief from the Postal Service. Nonetheless, by signing the release, MBD unambiguously released the Postal Service from all claims under or arising from the Lake Charles contract. *Id.* (holding that an unambiguous release covers claims that could have, but were not, mentioned by the release). Although MBD could have listed any exceptions to the release in the block designated for that purpose, it did not do so.

In similar circumstances, we have held that a contractor is barred from maintaining an appeal for damages or for additional compensation based on events occurring before it executed a general release. *Sierra Constr., Inc.*, PSBCA Nos. 4950, *et al.*, 05-2 BCA ¶ 33,068 (citing *B. D. Click Co. v. United States*, 614 F.2d 748, 756 (Ct. Cl. 1980)). MBD argues against the applicability of that decision here because it reasonably believed it could continue to pursue its claim based on conversations between the parties from November 2015 through January 2016. MBD further asserts that no one from the Postal Service told it that it would give up the right to pursue the claim by signing the release. According to MBD, it would not have signed the release if it had known that doing so would preclude it from pursuing its claim. In support of these arguments, MBD submitted affidavits from its President and Service Manager.

There are, of course, special and limited situations in which a claim may be prosecuted despite the execution of a general release. For example, we may consider

a claim despite a release if the facts indicate economic duress, fraud, mutual mistake, or post-release consideration of the claim by the Postal Service. *Mingus Constructors, Inc. v. United States*, 812 F.2d 1387, 1394 (Fed. Cir. 1987); *J.G. Watts Constr. Co. v. United States*, 161 Ct. Cl. 801, 806–07 (1963). None of these situations applies here, however.

MBD argues that the contracting officer's reference to the Contract Disputes Act and the Claims and Disputes clause in a January 2016 e-mail somehow overrides the unambiguous release it signed months later (Finding 7). Whatever MBD's subjective understanding of these references may have been, there is no objective basis to conclude that the contracting officer's e-mail, or the other conversations between the parties leading up to that e-mail, suggested MBD could pursue a claim despite later signing an unconditional release.

The Service Manager's affidavit also states that he relied on representations of Postal Service officials when he discussed the release with MBD's senior officials, including the official who signed the release. The affidavit does not, however, reference any conversations with the Postal Service after the contracting officer's January 3, 2016 e-mail, nor does it identify the representations on which he relied. Any suggestion about later conversations between the parties about the release are unsupported speculation, and thus are insufficient to defeat the motion for summary judgment. *T & M Distribs., Inc. v. United States*, 185 F.3d. 1279, 1285 (Fed. Cir. 1999).

Finally, MBD argues that the Postal Service's knowledge of the mistake in MBD's offer should be considered as a factor in denying the Postal Service's motion. This argument also fails because that fact is not material to our decision on the motion for

summary judgment. Even if the Postal Service knew about MBD's proposal mistake, and even if MBD may have had a basis for recovery as a result, MBD waived its right to pursue a claim based on that mistake when it signed the unambiguous and unconditional release. *Sierra Constr., Inc.*, 05-2 BCA ¶ 33,068. We thus hold that the release bars MBD's claim because it was signed after the claim arose and was known to MBD when it signed the release. *Id.*

**ORDER**

There is no genuine dispute as to any material fact, and the Postal Service is entitled to judgment as a matter of law. The release bars MBD's claim because it was signed after the claim arose and was known to MBD when it signed the release. Accordingly, the Postal Service's motion for summary judgment is granted, and the appeal in PSBCA No. 6642 is denied. PSBCA No. 6625 is dismissed.



Alan R. Caramella  
Administrative Judge  
Vice Chairman

I concur:



Gary E. Shapiro  
Administrative Judge  
Chairman

I concur:



Peter F. Pontzer  
Administrative Judge  
Board Member