

**Board of Contract Appeals**  
General Services Administration  
Washington, D.C. 20405

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MOTION FOR SUMMARY RELIEF DENIED: February 7, 2001

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GSBCA 15259

BARCLAY PROPERTIES, L.L.C.,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Sigurd Rudholm of Barclay Properties, L.L.C., Muskegon, MI, appearing for Appellant.

Joel Malkin, Office of Regional Counsel, General Services Administration, Chicago, IL, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman), **NEILL**, and **DeGRAFF**.

**NEILL**, Board Judge.

The parties in this case are in dispute regarding a credit to be provided in the rent charged by appellant, Barclay Properties, L.L.C. (Barclay), for premises leased to the General Services Administration (GSA). GSA, with the consent of Barclay, arranged directly for certain electrical work to be done in Barclay's building. It was allegedly understood at the time that GSA would pay for the work but be later compensated for the expense by an appropriate reduction in the rent due under the lease.

Barclay now challenges the amount of the credit claimed by GSA. GSA has filed a motion for summary relief in which it contends that there is no dispute regarding the material facts in this case and that it is entitled, therefore, to the credit claimed as a matter of law. We disagree for the reasons stated below and, therefore, deny the motion.

Background

On October 5, 1999, the parties entered into Supplemental Lease Agreement (SLA) No. 1, which, among other provisions, states:

Lessor will reimburse the Government for IWS-LAN [intelligent work station-local area network] data and electrical work done by Government, which was originally to be done by Lessor. The reimbursement amount is presently being determined. Once that amount is determined, the Government will deduct a monthly amount from the rent paid to Lessor for a five (5) year period beginning on August 1, 1999 through July 31, 2004.

Appeal File, Exhibit 10.

During 1999, GSA did have improvements done to Barclay's property by an electrical contractor at a cost of \$68,845.49. Appeal File, Exhibit 6. According to the contracting officer, the cost of these improvements was to be credited back to GSA. Nevertheless, after Barclay challenged the amount of this credit, the contracting officer determined that a reimbursement of \$33,498.45 would be a fair and reasonable settlement amount. *Id.*, Exhibit 15.

In the face of continued objection from the lessor to the amount of the credit sought, the contracting officer, by letter dated February 22, 2000, rendered a final decision demanding that Barclay provide a credit of \$33,498.45. Appeal File, Exhibit 15. Barclay has appealed that decision. *Id.*, Exhibit 16.

#### Discussion

Resolving a dispute on a motion for summary relief is appropriate where no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Olympus Corp. v. United States*, 98 F.3d 1314, 1316 (Fed. Cir. 1996); *Copeland Enterprises, Inc. v. CNV, Inc.*, 945 F.2d 1563, 1565-66 (Fed. Cir. 1991); *Mingus Constructors, Inc. v. United States*, 812 F.2d 1387, 1390 (Fed. Cir. 1987); *Armco, Inc. v. Cyclops Corp.*, 791 F.2d 147, 149 (Fed. Cir. 1986).

Notwithstanding the Government's contention to the contrary, we find in reviewing the record presently before us fundamental material facts in issue. SLA No. 1 states that "[t]he reimbursement amount is presently being determined." We find nothing in the record which indicates that agreement was ever reached upon that point. Indeed, the documentation submitted thus far strongly suggests that the parties continue to disagree as to two significant matters -- the scope of the work to be done by the Government and the value of that work.

#### Decision

In the absence of certainty and agreement on these two material issues of fact, GSA's motion for summary relief is **DENIED**.

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EDWIN B. NEILL  
Board Judge

We concur:

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STEPHEN M. DANIELS  
Board Judge

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MARTHA H. DeGRAFF  
Board Judge