

# **Board of Contract Appeals**

General Services Administration  
Washington, D.C. 20405

---

DENIED: September 1, 2004

---

GSBCA 16376

CITICORP VENDOR FINANCE, INC.,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

David R. Dubord and Jessica L. Maher of Gosselin, Dubord & Rabasco, P.A.,  
Lewiston, ME, counsel for Appellant.

Michael J. Noble, Office of General Counsel, General Services Administration,  
Washington, DC, counsel for Respondent.

**DeGRAFF**, Board Judge.

Appellant, Citicorp Vendor Finance, Inc., challenges a contracting officer's final decision denying a claim for rent due from the General Services Administration (GSA) for the lease of a copier. Because appellant elected to have this claim processed under the small claims procedure, this decision has been issued on an expedited basis, is final and conclusive, and has no value as precedent. 48 CFR 6102.2 (2003). We conclude GSA was not in default of its contractual obligations and deny the appeal.

### Findings of Fact

On March 13, 2000, GSA's contracting officer signed a document labeled, "Major Account Rental Agreement." According to the rental agreement, GSA agreed to lease a copier from Copelco Credit Corporation for \$195 per month for sixty months, paid in advance. The rental agreement said Copelco Credit owned the copier, which was going to be supplied to a GSA office in Maine, where the contracting officer was located. The agreement provided if GSA failed to pay rent when due, GSA would be in default and Copelco Credit could repossess the copier, sell it, apply the sales proceeds to the balance due on the lease, and recover the remaining balance due from GSA. Exhibit 1.<sup>1</sup>

On March 14, 2000, the contracting officer issued a purchase order for supplies and services to Copelco Capital Corporation. The order was for the rental of a copier, plus service and supplies for 15,000 copies per year, including all parts, labor, and toner. The term of the rental was sixty months and the rental rate was \$195 per month. The purchase order provided GSA would pay Copelco Capital upon the submission of proper invoices for supplies and services delivered and accepted. The purchase order said a proper invoice had to include the name and address of the contractor official to whom payment was supposed to be sent, and this had to be the same as in the contract or in a proper notice of assignment. Exhibit 2.

Several Federal Acquisition Regulation provisions were applicable to the purchase order, including the Disputes clause found at 48 CFR 52.233-1 (1992), Disputes (Dec 91). Exhibit 2. The Disputes clause said all disputes arising under or related to the contract would be resolved according to the clause, and required the contractor to proceed diligently with performance pending final resolution of any dispute.

On March 15, 2000, the contracting officer signed a receipt acknowledging the delivery and installation of the copier "leased from Copelco Capital, Inc." Complaint, Exhibit B.

A November 13, 2000 letter addressed to "GSA Company of Maine, Inc." and sent to GSA's finance office in Texas said Copelco Capital had been acquired by Citigroup and "integrated with" Citicorp Global Equipment Finance on May 16, 2000. The letter stated, "[W]e are proud to announce our new brand name, CitiCapital." The letter also said Copelco Capital would be changing its name to Citicorp Vendor Finance, Inc. on November 13, 2000, and all "invoices, agreements and/or remittances should be changed" to reflect the new name. The letter concluded, "We look forward to working with you as CitiCapital." The copy of the letter contained in our record has no letterhead and no signature and does not refer to any specific contract. Exhibit 3.

On January 30, 2001, an employee in GSA's finance office told an assistant to the contracting officer he had returned two invoices submitted by Citicorp Vendor Finance. He also said a novation agreement appeared to be required. Exhibit 4. According to the contracting officer, immediately upon being advised of the "merger between Copelco and

---

<sup>1</sup>All exhibits are found in the appeal file, unless otherwise noted.

Citibank," she provided her contacts at Copelco with information regarding how to accomplish a change of name agreement so GSA would be able to pay the new corporation. She says she continued to provide this information for "quite a period of time." Exhibit 19.

As of May 2001, GSA had not been able to resolve the name change issue. Exhibit 7. On or before May 10, 2001, the assistant to the contracting officer sent "Citicorp aka Copelco" a copy of a section of the Federal Acquisition Regulation regarding name changes by contractors, including a sample change of name agreement. Exhibit 5.

On June 29, 2001, "Citicorp Vendor Finance, Inc. - Lessor" sent GSA's finance office a notice stating GSA was in default of its contractual obligations and also stating Citicorp Vendor Finance had the right to repossess the copier. Exhibit 10.

A July 2, 2001 letter addressed to the contracting officer said Copelco Capital had been acquired by Citigroup and "integrated with Citicorp Global Equipment Finance creating a new leader in asset and equipment finance." The letter also said, "[W]e are proud to announce our new name, CitiCapital." It continued, "We . . . look forward to working with you as CitiCapital." Like the November 13 letter, the copy of the July 2 letter contained in our record has no letterhead and does not refer to any particular contract. The signature block of the letter contained a name and the title "portfolio manager," without identifying the company for which the portfolio manager worked. The letter did not contain a signature. Exhibit 11.

On August 23, 2001, "Citicorp Vendor Finance, Inc. - Lessor" sent GSA's finance office another notice stating GSA was in default of its contractual obligations and also stating Citicorp Vendor Finance had the right to repossess the copier. Exhibit 12.

On November 12, 2001, Citicorp Vendor Finance repossessed the copier. Brief of Appellant, Exhibit A.

On November 15, 2001, an attorney representing "Citicapital, formerly Copelco Credit Corporation" sent a letter to GSA at the contracting officer's address. The attorney said GSA was in default of its obligations under the lease and asked GSA to make arrangements to return the copier. The attorney said if he did not hear from GSA within ten days, he would begin legal action to recover the copier. Exhibit 13.

On November 19, 2001, Citicorp Vendor Finance sold the copier for \$3200. Brief of Appellant, Exhibit A.

On March 19, 2003, an attorney for "Citicorp Vendor Finance, formerly Copelco Capital, Inc." sent a claim to the GSA contracting officer. The attorney said GSA was in default of its obligations under the lease and asked GSA to pay \$7135 plus late charges. The attorney said if she did not hear from GSA within sixty days, she would begin legal action to recover the amount due. Exhibit 16.

The GSA contracting officer and an assistant manager for Citicorp Vendor Finance signed a change of name agreement which said GSA and Copelco Capital, Inc. had entered

into two contracts, the rental agreement and the purchase order.<sup>2</sup> It also said Copelco Capital, by an amendment to its certificate of incorporation dated October 18, 2000, changed its name to Citicorp Vendor Finance, Inc. The agreement also said the rights and obligations of the parties were not affected by the name change, and concluded by saying the parties entered into the change of name agreement and executed it as of November 13, 2000. Exhibit 17.

On November 26, 2003, an attorney for Citicorp Vendor Finance wrote to the contracting officer. The attorney said, "I am now in receipt of the executed Change-of-Name Agreement. . . . In reviewing your letter dated May 13, 2003, you stated that you were not making a Final Decision regarding this matter until the Change-of-Name Agreement was completed." Exhibit 18. Our record does not contain a copy of the May 13, 2003 letter referred to by the attorney in her letter.

We find the change of name agreement was not executed on November 13, 2000, and was most likely executed in November 2003. This finding is supported by these facts: The contracting officer provided Copelco with information regarding how to effect a name change immediately upon learning of the change, and received nothing for quite some time. In January 2001, the finance office returned invoices because no name change agreement or novation agreement was in place. As of May 2001, GSA had not been able to resolve the name change issue. According to the November 26, 2003 letter from Citicorp Vendor Finance's attorney, the contracting officer said in May 2003, she would not issue a final decision until she received a change of name agreement. This finding is also supported by statements contained in the contracting officer's January 5, 2004 decision, discussed in the following paragraph.

On January 5, 2004, the contracting officer issued a final decision in response to the March 19, 2003 claim. She thanked Citicorp Vendor Finance's attorney for encouraging her client to comply with GSA's request for a change of name agreement. The contracting officer explained she could render payment only to a company with which GSA had a contractual relationship. She summarized her efforts to obtain a change of name agreement and said "it was only very recently" she received the agreement. She said GSA's records showed GSA made its last lease payment on December 19, 2000, following which she told Copelco she would not be able to make any payments until she received a proper change of name agreement. In her final decision, she said she could make a payment because the change of name agreement was in place, and she enclosed a check for \$1950, which represented the rent GSA owed for the months it used the copier without paying rent before Citicorp Vendor Finance repossessed the copier. Exhibit 19.

Citicorp Vendor Finance filed its notice of appeal on March 17, 2004. Notice of Appeal. The parties submitted this case for a decision based upon the written record.

---

<sup>2</sup>Actually, GSA entered into the rental agreement with Copelco Credit and entered into the purchase order with Copelco Capital. In its reply brief, Citicorp Vendor Finance says Copelco Credit changed its name to Copelco Capital in 1994. Appellant's Reply Brief at 1. Although there is no evidence in the record to support the statement contained in the brief, we accept it as true for the purpose of resolving this appeal.

### Discussion

In order for us to consider this appeal, we must be sure there is a contractual relationship between Citicorp Vendor Finance and GSA. The Contract Disputes Act, which provides us with jurisdiction, provides an appeal can be filed by "the contractor." 41 U.S.C. § 606 (2000). The term "contractor" means a party to a Government contract other than the Government. 41 U.S.C. § 601(4). The Act's provisions express a fundamental principle of government contract law: "The government consents to be sued only by those with whom it has privity of contract." Erickson Air Crane v. United States, 731 F.2d 810, 813 (Fed. Cir. 1984).

Citicorp Vendor Finance claims to have acquired its contractual interest from Copelco Capital. Brief of Appellant at 2. Citicorp Vendor Finance bears the burden of proving how it acquired its interest in order for us to determine whether we possess jurisdiction to entertain this appeal. Dalton Foundries, Inc. v. United States, 56 F.2d 483, 487 (Ct. Cl. 1932). By statute, 41 U.S.C. § 15, if Copelco Capital transferred its contract to Citicorp Vendor Finance, the transfer resulted in the annulment of the contract so far as GSA is concerned unless the transfer fell outside the reach of the statute or unless GSA consented to the transfer by signing a novation agreement or by taking action to show it waived the statute. A similar statute, 31 U.S.C. § 3727, prohibits the assignment of claims against the Government. Tuftco Corp. v. United States, 614 F.2d 740 (Ct. Cl. 1980); Westinghouse Electric Co. v. United States, 56 Fed. Cl. 564 (2003), aff'd, 97 Fed. Appx. 931 (Fed. Cir. 2004) (table); Mancon Liquidating Corp., ASBCA 18304, 74-1 BCA ¶ 10,470. Although the statutes do not require GSA's consent to a contractor's change of name, the Federal Acquisition Regulation states if a contractor wants the Government to recognize a name change, the contractor must submit a written request for a change to the Government and the parties will then execute an agreement to reflect the name change. The change of name agreement must be accompanied by a document which evidences the name change and which is authenticated by the appropriate state official, an opinion from the contractor's legal counsel showing the effective date of the name change and stating the change of name was properly effected in accordance with state law, and a list of all affected contracts and certain details regarding each contract. When the contracting officer has received the necessary documentation from the contractor, the contracting officer will modify the contract to reflect the name change. 48 CFR subpt. 42.12 (2003); Dickman Builders, Inc., ASBCA 32612, 89-3 BCA ¶ 22,206.

The change of name agreement signed by the parties in late 2003 establishes Citicorp Vendor Finance acquired its interest in the contract from Copelco Capital. The agreement was signed by the GSA contracting officer and an assistant manager for Citicorp Vendor Finance, and GSA does not contend the agreement was deficient in any respect. Nothing more is needed in order for Citicorp Vendor Finance to pursue this appeal.

Turning to the merits, Citicorp Vendor Finance contends GSA was in default of its contractual obligations when it did not remit rent payments to Citicorp Vendor Finance, and asserts this default entitled Citicorp Vendor Finance to repossess the copier and to collect breach damages equal to the rent that accrued after it repossessed the copier in November 2001, until the end of the sixty-month lease term, less the \$3200 it received when it sold the copier. Brief of Appellant at 3. GSA contends it was not in default because its contractual

obligation was to pay in accordance with the terms of the contract and Citicorp Vendor Finance had no right to any payments unless it established it had an interest in the contract. GSA also says Citicorp Vendor Finance's repossession of the copier constituted a material breach of contract that relieved GSA from its obligation to make rent payments. Respondent's Opening Brief at 8-10.

GSA was in default if it was contractually obligated to remit payments to Citicorp Vendor Finance and failed to do so. The first information GSA had regarding Citicorp Vendor Finance's interest in the contract was contained in the letter to GSA's finance office dated November 13, 2000. The letter said Copelco Capital had been acquired by Citigroup, integrated with Citicorp Global Equipment Finance in May 2000, adopted the brand name of CitiCapital, and was changing its name to Citicorp Vendor Finance. The letter was unsigned, was not on any company's letterhead, and did not refer to a specific contract. The finance office concluded a novation agreement was required, which is not surprising considering the way the letter described what had become of Copelco Capital. The July 2, 2001 letter said much the same thing as the November 13, 2000 letter. The July 2 letter contained a signature block for someone identified as a portfolio manager, with no company name in the signature block and no signature. Like the earlier letter, the July 2 letter was not on letterhead and did not refer to a specific contract. The contracting officer thought a change of name agreement, not a novation agreement, was required and she repeatedly asked Citicorp Vendor Finance for a change of name agreement. The assistant to the contracting officer went so far as to send Citicorp Vendor Finance a copy of the pertinent regulation and a sample change of name agreement. GSA received nothing in response to its requests.

Every contract contains an implied provision "that neither party to the contract will do anything to prevent performance thereof by the other party or that will hinder or delay him in its performance." George A. Fuller Co. v. United States, 69 F. Supp. 409, 411 (Ct. Cl. 1947). Although GSA explained to Citicorp Vendor Finance what was needed in order to receive payment, Citicorp Vendor Finance provided GSA with nothing more than flimsy documentation of its interest in the contract and it ignored GSA's requests for a change of name agreement. Because Citicorp Vendor Finance's actions prevented, hindered, and delayed GSA from determining whether Citicorp Vendor Finance had an interest in the contract, GSA had no contractual obligation to make payments to Citicorp Vendor Finance and was not in default when Citicorp Vendor Finance repossessed the copier.

Citicorp Vendor Finance repossessed the copier on November 12, 2001, approximately two years before it established it had an interest in the contract by responding to GSA's request for a change of name agreement. It repossessed the copier instead of abiding by the terms of the Disputes clause applicable to the March 14, 2000 purchase order, which required it to proceed diligently with performance pending the resolution of any dispute. By repossessing the copier, Citicorp Vendor Finance breached the contract's Disputes clause. Citicorp Vendor Finance says it was permitted to repossess the copier pursuant to the terms of the March 13, 2000 rental agreement. We cannot accept Citicorp Vendor Finance's position, for two reasons. First, the rental agreement allowed repossession of the copier only in the event of a default by GSA, and as explained above, GSA was not in default when Citicorp Vendor Finance repossessed the copier. Second, the Disputes clause required the contractor to continue to perform in the event of a dispute, which is clearly inconsistent with the provision of the rental agreement which allowed the contractor

to stop its performance by repossessing the copier. Because the purchase order postdates the rental agreement, the purchase order discharges by substitution any inconsistent provisions in the rental agreement. 13 Arthur L. Corbin, Corbin on Contracts § 1296 (Interim ed. 2002). Citicorp Vendor Finance's actions in repossessing the copier amounted to a material breach of contract which relieved GSA from its obligation to continue to perform.

According to the contracting officer, the \$1950 payment that accompanied her final decision constituted the balance due for rent owed by GSA through the date Citicorp Vendor Finance repossessed the copier. If there is evidence to show this amount is incorrect, it was up to Citicorp Vendor Finance, the party with the burden of proof, to place the evidence in the record. In the absence of any such evidence, we conclude nothing more is due from GSA to Citicorp Vendor Finance.

Decision

The appeal is **DENIED**.

---

MARTHA H. DeGRAFF  
Board Judge