Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

DENIED: June 29, 2005

GSBCA 16447

PARCEL 49C LIMITED PARTNERSHIP,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Richard J. Conway and Robert J. Moss of Dickstein Shapiro Morin & Oshinsky LLP, Washington, DC, counsel for Appellant.

Jeremy Becker-Welts and Catherine Crow, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

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

DANIELS, Board Judge.

Parcel 49C Limited Partnership (Parcel 49C), which leases to the General Services Administration (GSA) space in a building in the District of Columbia, asserts that it is entitled to additional rent pursuant to the lease's Tax Adjustment clause. The claim is for the difference between the real estate taxes assessed and paid for District of Columbia tax year 2003, and the real estate taxes assessed and paid for District of Columbia tax year 2000, multiplied by the percentage of the building's space which is leased by GSA.

Pivotal to Parcel 49C's claim is a determination that tax year 2000 is the "base year" for the purpose of calculating changes in rental amounts under the Tax Adjustment clause. The parties have filed cross-motions for summary relief as to this matter.

Summary relief is appropriate when the moving party is entitled to judgment as a matter of law, based on undisputed material facts. The moving party bears the burden of demonstrating the absence of genuine issues of material facts. All justifiable inferences must be drawn in favor of the nonmovant. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). We consider the matter at issue under these standards. Our conclusion is that the base year for tax adjustments to rental amounts is District of Columbia tax year 2003, as contended by GSA, and not District of Columbia tax year 2000, as contended by Parcel 49C. Because the base year is not tax year 2000, the claim is not valid. We therefore deny the appeal.

Uncontested Facts

On September 26, 1991, GSA issued a solicitation for offers in which it sought to lease a specified amount of space within a delineated area of Washington, D.C. Respondent's Statement of Uncontested Facts (Respondent's Facts) ¶ 1.

Parcel 49C submitted an offer in response to the solicitation. GSA accepted this offer. On August 12, 1994, the parties entered into a lease for space in, around, and on top of the Portals II Building. Respondent's Facts ¶¶ 2, 4.

The lease contains a Tax Adjustment clause, which reads in pertinent part as follows:

> A. The Government shall pay additional rent for its share of increases in real estate taxes over taxes paid for the calendar year in which its lease commences (base year). . . . If no full tax assessment is made during the calendar year in which the Government lease commences, the base year will be the first year of a full assessment.
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> . . . .
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> D. In the event of any decreases in real estate taxes occurring during the term of occupancy under the lease, the rental amount will be reduced accordingly. The amount of any such reductions will be determined in the same manner as increases in rent provided under this clause.

Respondent's Facts ¶ 5; *see also* Appellant's Statement of Uncontested Facts (Appellant's Facts) ¶¶ 1-2.

At the time of lease execution, the Portals II Building had not yet been constructed. After lease execution, construction began. Respondent's Facts ¶ 6.

The parties agreed, in Supplemental Lease Agreement (SLA) No. 10, that the date of commencement of the lease was October 17, 1997. They agreed additionally that the lease would expire twenty years later – on October 16, 2017. Appeal File (GSBCA 16377), Exhibit 11.

The building is within the assessment jurisdiction of the Assessor of the District of Columbia. Respondent's Facts ¶ 8. In 1998, the Assessor's office attempted to appraise the building for the purpose of an assessment, and Parcel 49C appealed the assessment. On April 14, 1998, representatives of Parcel 49C and the Assessor's office reached a stipulation that the assessed value of the building for tax year 1998 would be $60,300,940. The stipulation provided that "[t]he subject property is a new construction that wil[l] not be completed until approximately September of 1998." It explained that the stipulated assessed value represented the value of the land on which the building sits plus costs for improvements which had been incurred by Parcel 49C through December 31, 1997. Respondent's Facts ¶ 9; Respondent's Exhibit 1.

This stipulated assessed value of $60,300,940 was used for all subsequent assessments until 2003. Respondent's Facts ¶ 10.

Annual tax bills for the building were $1,236,169.27 for tax year 2000 (October 1, 1999, through September 30, 2000), $1,175,868.33 for tax year 2001 (October 1, 2000, through September 30, 2001), and $1,115,567.39 for tax year 2002 (October 1, 2001, through September 30, 2002). All of these bills were based on an assessed property valuation of $60,300,940. Respondent's Facts ¶ 11.

For tax year 2003 (October 1, 2002, through September 30, 2003), the tax bill for the building was $3,079,547, based on an assessed property valuation of $166,462,000. Respondent's Facts ¶ 12. The record does not contain any evidence that the Assessor's office reassessed the property between 1998 and the date of the assessment on which the tax year 2003 tax bill was based. Respondent's Memorandum in Support of Its Motion for Summary Relief at 10 n.5.

Until 2003, Parcel 49C had not submitted to GSA any tax bills for the property. Respondent's Facts ¶ 13; Appellant's Statement of Genuine Issues (Appellant's Issues) ¶ 13.

In a letter dated March 3, 2003, GSA informed Parcel 49C that it could not process reimbursement under the Tax Adjustment clause because it had not received tax bills. GSA asked for "necessary documentation in order to expedite the processing of the tax reimbursement." Parcel 49C did not respond to this request. Respondent's Facts ¶ 14; Appeal File (GSBCA 16447), Exhibit 5.

On or about April 28, 2003, at the request of the GSA contracting officer, a GSA program analyst telephoned the office of the Assessor to determine the amounts of Parcel 49C's tax bills. The program analyst documented her conversation in a note to the contracting officer. Respondent's Facts ¶ 15. The contracting officer saw this note on or about April 28. *Id.* ¶ 16; Appellant's Issues ¶ 16.

Before May 7, 2003, the parties had not discussed establishment of the base year for purposes of the Tax Adjustment clause and had not calculated any adjustments to the rental amount consequent to application of that clause. Appellant's Facts ¶ 3. By letter bearing that date, GSA notified Parcel 49C that its "records indicate that the first full year tax assessment was year 2000" and that it had calculated tax adjustments for tax years 2001 and 2002 by comparing the Government's share of taxes paid for those two tax years to the Government's share of taxes paid for tax year 2000. The letter stated, "If you feel we are incorrect in our calculations, please provide the actual (paid) tax bills to support your disagreement with our calculations. If we do not hear from you by May 12, 2003, we will assume our calculations to be correct and we will make a lump sum deduction from your May 2003 rent." Respondent's Facts ¶ 17; Appeal File (GSBCA 16447), Exhibit 8; *see also* Appellant's Facts ¶¶ 4-6.

Despite the fact that Parcel 49C knew that the assessment for tax year 2000 was based on a stipulated assessment, Parcel 49C responded by letter dated May 12, 2003, "We concur in the establishment of Tax Year 2000 as the base year and your calculation of the amounts due for Tax Year 2001 and Tax Year 2002 pursuant to the [Tax Adjustment clause] of the Lease." Parcel 49C also requested that GSA issue a SLA establishing tax year 2000 as the base year. Respondent's Facts ¶ 18; *see also* Appellant's Facts ¶¶ 7-8.

The contracting officer has testified at a deposition that, around this time, he decided that his original calculations were incorrect for reasons other than the base year. Respondent's Facts ¶ 19. He also had concerns about using 2000 as the base year, and he asked a senior GSA appraiser to investigate the base year determination. Appellant's Facts ¶¶ 10, 16. Nevertheless, even before the appraiser reported back to him, he had someone in his office prepare SLAs to make tax adjustments to the rent for 2001 and 2002. Respondent's Facts ¶ 19; Appellant's Issues ¶ 19; Appellant's Facts ¶ 11. These SLAs, numbered 21 and 22, were issued by him under the date of July 11, 2003. Both specifically

state that the base year is 2000. Respondent's Facts ¶ 20; Appellant's Issues ¶ 20; Appellant's Facts ¶ 12. The total amount of the tax adjustments provided for in SLA Nos. 21 and 22 ($58,801.70) is only about one-third of the total amount stated in the contracting officer's letter of May 7, 2003. Appeal File (GSBCA 16447), Exhibits 1, 2, 8.

By letter dated September 24, 2003, Parcel 49C submitted to GSA the tax bill for tax year 2003 and the lessor's calculation of the tax adjustment to the rent. The tax bill for tax year 2003 was based on a valuation of $166,462,000 and was significantly higher than the tax bills of prior years. Using tax year 2000 as the base year, the adjustment calculated was $1,858,452.96.[1] Respondent's Facts ¶ 24.

On December 1, 2003, GSA received for the first time (from the Assessor's office) records that indicated the amount of Parcel 49C's tax bills from tax years 2000, 2001, and 2002. At about this time, Parcel 49C also provided the 2000 through 2002 tax bills to GSA. When the contracting officer received these tax bills, he saw for the first time that the assessments for tax years 2000 through 2002 were all based on the same value, $60,309,040. Respondent's Facts ¶¶ 25-27.

On December 2, 2003, the contracting officer contacted a GSA senior appraiser to ask him about the reason for the increase in assessed valuation from $60,309,040 (for tax years 2000 through 2002) to $166,462,000 (for tax year 2003). The GSA appraiser contacted a senior appraiser in the Assessor's office, who told him that the assessments for tax years 2000 through 2002 were based on a stipulation between Parcel 49C and the District of Columbia Government and that the foundation for this value was an estimated market value based on the construction costs given by Parcel 49C to the Assessor's office. Respondent's Facts ¶¶ 28-29.

By letter dated December 19, 2003, the contracting officer "corrected" the establishment of the base year for the purpose of the Tax Adjustment clause. He stated that the base year would be established as calendar year 2003. Respondent's Facts ¶ 30; Appeal File (GSBCA 16447), Exhibit 20. On February 11, 2004, he unilaterally executed SLA No. 25, in which he purported to reverse the tax adjustments made in SLAs Nos. 21 and 22. Respondent's Facts ¶ 31; Appellant's Issues ¶ 31.

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[1] Although Parcel 49C's letter uses this figure, an attachment shows that multiplying the figure by the "Tenant[']s Proportionate Share of Increase," 98.37%, yields "Real Estate Tax Escalation Due" of $1,828,160.18. Appeal File (GSBCA 16447), Exhibit 13 at 1, 3.

Parcel 49C objected to the contracting officer's attempts to establish the base year as calendar year 2003, rather than tax year 2000. By letter dated February 11, 2004, the lessor submitted to the contracting officer a certified claim for a tax adjustment in the amount of $1,828,160.16 (plus interest), which it called "the Government's share of the increase of real estate taxes paid on the Building in Calendar Year 2003 over the real estate taxes paid in the Base Year [2000]." Respondent's Facts ¶ 32; Appeal File (GSBCA 16447), Exhibit 23. The contracting officer denied the claim. Respondent's Facts ¶ 33.

Discussion

The lease's Tax Adjustment clause provides that if real estate taxes on the subject property increase from what they were in the base year, the Government will pay its share of the increase – the part of the rise proportionate to the percentage of the building which it occupies. Similarly, if these taxes decrease from what they were in the base year, the Government will receive a proportionate reduction in rent. The issue in this case is the identity of that base year.

The clause says that the base year is "the calendar year in which [the] lease commences" or, "[i]f no full tax assessment is made during [that year], the base year will be the first year of a full assessment."

The calendar year in which the lease commenced was 1997. In that year, the building was under construction. The property received a stipulated assessed valuation as of December 31, 1997, but the stipulation recited that it was based on a value of the building in its incomplete state. Thus, as both parties recognize, no full tax assessment was made during 1997, so 1997 cannot be the base year for the purpose of the Tax Adjustment clause. Pursuant to the clause, the base year must instead be "the first year of a full assessment."

The Board and the Court of Appeals for the Federal Circuit have both had occasion to consider the meaning of the term "first year of a full assessment." The Board has defined the term as meaning "the first tax year in which all contemplated improvements to the assessed property had been included in the appraisal base." *W. David & Janet M. Kimbrell v. General Services Administration*, GSBCA 11325, 93-2 BCA ¶ 25,665, at 127,684 (1992) (quoting *Otto K. Wetzel*, GSBCA 7466, 85-2 BCA ¶ 18,099, at 90,858). On appeal, the Court approved that definition and added, "Thus, 'full' means an assessment on the improved property," "only after all improvements contemplated in the lease have been made." *Kimbrell v. Fischer*, 15 F.3d 175, 177, 178 (Fed. Cir. 1994).

It is clear from the uncontested facts presented by the parties that the first tax year in which all contemplated improvements to the assessed property were included in the appraisal

base was tax year 2003. In all tax years subsequent to the commencement of the lease and prior to tax year 2003, the assessed value of the property was the value while the building was under construction.

Before May 7, 2003, the parties had not discussed establishment of the base year. On that date, the contracting officer told Parcel 49C that GSA's "records indicate that the first full year tax assessment was year 2000" and that the agency had calculated adjustments to the rent, pursuant to the Tax Adjustment clause, for tax years 2001 and 2002 in relation to the lessor's tax bills for tax year 2000. He asked the lessor whether it believed that those calculations were correct. Parcel 49C responded, "We concur in the establishment of Tax Year 2000 as the base year" and in the calculations of adjustments to the rent. It asked the contracting officer to issue a supplemental lease agreement establishing tax year 2000 as the base year. The contracting officer complied with the request, issuing two separate SLAs.

According to Parcel 49C, the issuance of the SLAs, with what the lessor calls their "clear and unambiguous language," is proof that the parties agreed to establish tax year 2000 as the base year. And if the Board were to look beyond the four corners of the SLAs, as it should not, Parcel 49C continues, it should hold that the exchange of correspondence between the parties shows an agreement to make tax year 2000 the base year. (This is so, says the lessor, whether GSA's May 7 letter was an offer which was accepted by Parcel 49C's May 12 letter, or whether Parcel 49C's May 12 letter was a counter-offer which was accepted by GSA's issuance of the SLAs.) Parcel 49C finds support for its position in *D & H Distributing Co. v. United States*, 102 F.3d 542 (Fed. Cir. 1996), in which the Court of Appeals explained:

> Since the contractor had submitted a signed request for precisely the change that was embodied in the modification, both the contractor and the contracting officer had agreed to the modification in writing; under these circumstances, the absence of the contractor's signature on the designated form is no basis for holding that the modification is not binding on the government.

Id. at 546.

According to GSA, neither the SLAs nor the exchange of correspondence demonstrates that the parties intended to modify the Tax Adjustment clause's definition of "base year." To the contrary, no offer and acceptance regarding a change ever took place.

Because, under the lease's Tax Adjustment clause, tax year 2003 is the base year, tax year 2000 can be the base year only if the parties agreed to change the lease to so provide. We agree with GSA that the parties did not do this. Instead, they merely attempted to fulfill

a mutual responsibility of the lease as written by identifying "the first year of a full assessment." Parcel 49C's reliance on *D & H Distributing* is inapposite because that case involved a change in the contract and this one does not.[2]

The issuance of the SLAs themselves does not prove that the parties ever intended to modify the lease as to the base year. The SLAs did not delete from the lease, or modify, the sentence in the Tax Adjustment clause which makes the base year "the first year of a full assessment." Their insertion of the SLAs into the lease consequently created an inconsistency in the document: in accordance with the clause, the base year was tax year 2003, but in accordance with the SLAs, it was 2000. How to reconcile the two provisions is not "clear and unambiguous," as Parcel 49C would have us believe. [3]

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[2] Parcel 49C believes that the SLAs were bilateral in nature – a theory which GSA contests. The lessor notes that each SLA states that it is "made and entered into this date by and between Parcel 49C . . . and the United States of America" and also states that "the parties hereto desire to amend the above Lease." The lessor also asserts that the SLAs were signed by both parties. GSA maintains that the SLAs were unilateral in nature because they were issued in a manner which the contracting officer follows when issuing unilateral lease modifications, making the lessor's signature on the documents immaterial.

The parties have devoted a great deal of attention to this matter. We cannot resolve it here, for whether the SLAs were bilateral or unilateral is a mixed question of fact and law, and on cross-motions for summary relief, we are unable to resolve the factual aspects of the question. This is of no import, however, for as we explain below, whether the SLAs were bilateral or unilateral in nature, they cannot be understood to vary the Tax Adjustment clause's definition of "base year."

[3] GSA maintains that the issuance of the SLAs cannot modify the lease for another reason, as well: Parcel 49C gave GSA nothing in exchange for the latter's making 2000 rather than 2003 the base year. If this assertion is correct, and the Board were to have found that the parties intended to modify the lease to change the base year, the argument would be important. It is hornbook law that "[t]he requirement for consideration flowing to the Government is supported not only by the common-law rules but also by the rule that Government officials generally do not have the authority to give up vested rights of the Government without receiving consideration." John Cibinic, Jr. & Ralph C. Nash, Jr., *Formation of Government Contracts* 248 (3d ed. 1998).

As Parcel 49C points out, however, it did give consideration in the form of acceptance of a reduction in rent for tax years 2001 and 2002. This reduction, in the amount of

(continued...)

Nor does the exchange of correspondence between the parties indicate an agreement to modify the lease as to the base year for making changes in rental amounts pursuant to the Tax Adjustment clause. GSA's May 7 letter said merely that records "indicate[d] that the first full year tax assessment was year 2000." It did not ask Parcel 49C to assent to making tax year 2000 the base year; instead, it asked whether the lessor agreed with its calculations which were based on the belief that it had correctly identified the base year. Parcel 49C neither accepted an offer to make tax year 2000 the base year nor made a counter-offer as to the base year; it simply agreed that if GSA wanted to make that the base year, it would accept the determination. The characterization of the exchange of correspondence we can make which would be most favorable to Parcel 49C is that the exchange demonstrates that in May of 2003, both parties believed that tax year 2000 was the "first year of a full assessment," as that phrase is used in the Tax Adjustment clause. As we now know, that belief was not correct.

If SLAs Nos. 21 and 22, which stated that tax year 2000 would be the base year for purposes of the Tax Adjustment clause, were properly issued unilaterally, the contracting officer has already remedied the errors of those SLAs in part by unilaterally issuing SLA No. 25, which reversed the adjustments in rent made in the earlier SLAs. He may remedy the remaining portion of the error by unilaterally issuing another SLA designating tax year 2003 – not calendar year 2003, as stated in his letter dated December 19, 2003 – as the base year.[4]

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[3] (...continued)
$58,801.70, is not much more than a peppercorn compared to the benefit the lessor would derive from making tax year 2000 rather than tax year 2003 the base year: increased rent in the amount of $1,828,160.16 (by the lessor's calculation) for 2003 – and for each subsequent year of the more than a decade yet to run on the lease. But the law does not require that consideration be of value equal to that for which it is exchanged; any consideration is adequate to make a contract or a contract modification enforceable. *Restatement (Second) of Contracts* §§ 17, 71, 79 (1981); *United States v. Stump Home Specialties Manufacturing, Inc.*, 905 F.2d 1117, 1121-22 (7th Cir. 1990). Thus, GSA's argument, while compelling in showing the gross disparity between the values the parties would receive if the lease were modified to change the base year, would not suffice to invalidate an otherwise valid modification.

[4] The contracting officer is evidently uncertain as to the method for calculating increases and decreases to rental amounts under the Tax Adjustment clause. Not only has he interjected the concept of calendar year here, as opposed to tax year elsewhere, but also his first calculation, assuming that tax year 2000 was the base year, resulted in an amount three times as large as his second calculation. The Board has already explained how to make (continued...)

If SLA Nos. 21 and 22 were issued bilaterally, the error in the designation of base year can be remedied by reforming the lease amendments in accordance with basic principles of contract law. Two alternative rationales for doing so are available.

One alternative rationale is premised on section 155 of the *Restatement (Second) of Contracts* (1981). Section 155 states:

> Where a writing that evidences or embodies an agreement in whole or in part fails to express the agreement because of a mistake of both parties as to the contents or effect of the writing, the court may at the request of a party reform the writing to express the agreement, except to the extent that rights of third parties such as good faith purchasers for value will be unfairly affected.

Here, the parties intended, in accordance with the lease's Tax Adjustment clause, to establish as the base year the first year of a full assessment of the property. They thought that that year was tax year 2000, and the SLAs' terms reflect that mistaken belief. GSA has urged that the base year be considered to be the one intended by the parties – the first year of a full assessment – not tax year 2000. No rights of third parties are affected. Therefore, reformation to establish as the base year the first year of a full assessment – tax year 2003 – is appropriate. *Atlas Corp. v. United States*, 895 F.2d 745, 750 (Fed. Cir. 1990), *cert. denied*, 498 U.S. 811 (1990) (citing 3 *Corbin on Contracts* § 614 at 725 (1960)); *American Employers Insurance Co. v. United States*, 812 F.2d 700, 705 (Fed. Cir. 1987); *Gresham Sand & Gravel Co.*, GSBCA 6858, 84-1 BCA ¶ 17,019, at 84,757-58 (1983), *aff'd on reconsideration*, 84-2 BCA ¶ 17,359, *aff'd*, 776 F.2d 1061 (Fed. Cir. 1985) (table).

Two notes on this analysis, both applying statements contained in the *Restatement*: First, even if the SLAs are "clear and unambiguous," it is appropriate to consider the parties' actions which led to them because, as comment a to section 155 states, "the parol evidence

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[4] (...continued)
the calculation under an identical Tax Adjustment clause in a lease in the same jurisdiction in which Parcel 49C's building is located (the District of Columbia). *9th and D Joint Venture v. General Services Administration*, GSBCA 14448, 98-2 BCA ¶ 29,834, *reconsideration denied*, 98-2 BCA ¶ 29,949, *aff'd*, 194 F.3d 1338 (Fed. Cir. 1999) (table); D.C. Code Ann. §§ 47-802, -820 (Westlaw 2005); *see also Greenwood Associates, L.P. v. Perry*, 399 F.3d 1317 (Fed. Cir. 2005) (similar issue as to lease in another jurisdiction). The contracting officer should follow this explanation in calculating changes in rental amounts in the lease at issue here.

rule does not preclude . . . a showing of mistake." Second, "Reformation is not precluded by the mere fact that the party who seeks it failed to exercise reasonable care in reading the writing"; only an extreme case involving a failure to act in good faith and in accordance with reasonable standards of fair dealing will preclude reformation. *Restatement (Second) of Contracts* § 157 & cmt. a. Although the contracting officer may have been misguided in issuing SLAs which established a base year at the same time that he had concerns about using that base year and was awaiting the results of an investigation of the matter, Parcel 49C has not suggested and we do not consider that his action was a failure to act in good faith and in accordance with reasonable standards of fair dealing.

A second alternative rationale for reformation is grounded on the following basic principle, which was quoted approvingly, with specific application to government contracts, by the Court of Appeals in *Roseburg Lumber Co. v. Madigan*, 978 F.2d 660 (Fed. Cir. 1992):

> [M]istake on one side and misrepresentation, whether willful or accidental, on the other constitute a ground for reformation where the party misled has relied on the misrepresentation of the party seeking to bind him. . . . Restitution in these circumstances may be obtained on the premise that it would be unjust to allow one who made the misrepresentation, though innocently, to retain the fruits of a bargain which was induced, in whole or in part, by such misrepresentation.

Id. at 665-66.

Parcel 49C's "concurrence" in establishing tax year 2000 as the base year may not have been an affirmative misrepresentation, but its legal effect is one of misrepresentation nonetheless. "One party cannot hold the other to a writing if he knew that the other was mistaken as to its contents or as to its legal effect. He is expected to correct such mistakes of the other party and his failure to do so is equivalent to a misrepresentation, which may be grounds . . . for reformation." *Restatement (Second) of Contracts* § 161, cmt. e. When Parcel 49C received GSA's letter asking whether rental adjustment calculations based on tax year 2000 being the base year were correct, the lessor knew that the assessment for that tax year was based on a stipulated assessment for the building in an incomplete state. Parcel 49C therefore knew that pursuant to the Tax Adjustment clause, tax year 2000 was not the first year of a full assessment and consequently could not be the base year. Its failure to correct GSA's mistaken impression was thus, in effect, a misrepresentation.

"A recipient's fault in not knowing or discovering the facts before making the contract does not make his reliance unjustified unless it amounts to a failure to act in good faith and in accordance with reasonable standards of fair dealing." *Restatement (Second) of Contracts*

§ 172. We do not consider that the contracting officer's failure to wait for the results of an investigation into the correct identity of the base year before issuing SLAs Nos. 21 and 22 was a failure to act in good faith or in accordance with reasonable standards of fair dealing. A contracting officer should be able to rely on a statement by a lessor as to an objective fact when the lessor is in a position to know that fact and the contracting officer is not – at least, not without engaging in considerable inquiry.

GSA clearly relied on Parcel 49C's misrepresentation in establishing tax year 2000 as the base year. The misrepresentation was material, and the agency would be damaged if the mistake in designation of the base year were allowed to stand, for GSA would have to pay a large of sum of money in additional rent for 2003 (and each of the successive years of the lease). Reformation to make the base year the first year of a full assessment, tax year 2003, is therefore justified. *Roseburg Lumber*, 978 F.2d at 667.

Decision

GSA's motion for summary relief is granted. Parcel 49C's cross-motion for summary relief is denied. The appeal is consequently **DENIED**.

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STEPHEN M. DANIELS
Board Judge

We concur:

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EDWIN B. NEILL
Board Judge

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CATHERINE B. HYATT
Board Judge