



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: November 30, 2011

CBCA 2509

SYED Z. AHMED,

Appellant,

v.

DEPARTMENT OF AGRICULTURE,

Respondent.

Syed Z. Ahmed, pro se, Valparaiso, IN.

Steven G. Reed and Donald P. Fisher, Office of General Counsel, Department of Agriculture, Columbus, OH, counsel for Respondent.

HYATT, Board Judge.

This appeal is from a contracting officer's decision denying appellant's claim for damages to property leased to the Department of Agriculture (USDA). Appellant elected to proceed under the Board's expedited procedure for small claims. Rule 52 (48 CFR 6101.52 (2010)). This rule permits issuance of a decision in summary form. Decisions issued under the small claims procedure are final and conclusive and shall not be set aside except in cases of fraud affecting the Board's proceedings. 41 U.S.C.A. § 7106(b) (West Supp. 2011) (formerly 41 U.S.C.A. § 608 (2000)); *Palmer v. Barram*, 184 F.3d 1373 (Fed. Cir. 1999). This decision has no value as precedent.

Findings of Fact

On June 10, 2004, Syed Z. Ahmed and USDA entered into a five-year lease for real property located at the Remington Locker in Remington, Indiana. The property consisted of approximately 3000 square feet of laboratory and storage space to be used in conjunction

with USDA's Scrapie Slaughter Surveillance Program. The facilities were to be used as a laboratory to collect and process samples for testing. At the time the lease was executed, the building on the property was an unused slaughterhouse with adequate storage space for specimens and supplies, an animal holding area, a cooler, a freezer, and a processing room. On the grounds, there was a parking lot near a creek.

For a monthly rental of \$900, USDA was responsible for maintenance of the facility. Appellant was not required to complete any alterations to the property. Respondent made numerous improvements to the property at its expense.

The lease contained a restoration waiver under which the Government had no obligation to restore the property to its original condition upon termination of the lease:

The Lessor hereby waives and forever relinquishes any right to make a claim against the Government for waste, damages, or restoration arising from or related to any alteration or removal of any alteration by the Government during the term of this lease or any extension. At the end of the term, the Government shall surrender the premises to the Lessor in broom-clean condition and in good order and repair except ordinary wear and tear and damage for which the Government shall not be obligated to make repairs. At the Government's sole discretion, property remaining in leased space after the termination of the lease contract will become the property of the Lessor.

General clause number 2 of the lease also provided that "[i]f the building is partially or totally destroyed or damaged by fire or other casualty so that the leased space is untenable as determined by the Government, the Government may terminate the lease upon 15 calendar days written notice to the Lessor and no further rental will be due."

Sometime after occupying the premises, USDA moved four semitrailers onto the property. The semitrailers were used for storage of shipping material and equipment. The Government hauled in additional gravel to provide a stable, level surface for parking the semitrailers.

Beginning January 7, 2008, much of northern Indiana, including Remington, experienced severe rain storms. During these storms, the creek overflowed its bed, flooding and damaging the building. A semitrailer parked on the property settled into the creek bed in front of a viaduct under a bridge. Following the flooding, USDA cleaned up and made repairs necessary to continue use of the facility for its purposes. On January 30, 2008, the Federal Government declared the area a major disaster area. Several contemporary news

articles provided by the Government also confirm that extensive flooding was experienced in the entire area at this time.

USDA vacated the property when the lease expired at the end of May 2009. Thereafter, appellant initiated discussions with USDA seeking compensation for a variety of expenses it claimed in conjunction with the vacated property. On March 15, 2011, appellant submitted a formal Contract Disputes Act (CDA) claim to USDA's contracting officer. In this letter, appellant alleges that the semitrailers were not properly anchored and the parking area was not sufficiently improved to accommodate them. Appellant asserts that the flood damage caused to the building was a consequence of the semitrailer falling into the creek bed and blocking the viaduct, thus causing the creek waters to overflow and damage the building. His estimate to repair the flood damage to the building was \$60,600.

On April 26, 2011, the contracting officer denied the claim, stating that the property had flooded due to the severe weather conditions extant in January 2008, for which the Government was not liable under the lease. In addition, the Government rejected the argument that it had negligently maintained the property, thereby causing the semitrailer to block the viaduct.

Appellant filed an appeal at the Board, electing the small claims expedited process and limiting its claim to the amount of \$50,000.

Discussion

Appellant seeks an award of \$50,000 to compensate for flood damage occasioned to the Remington Locker during the Government's occupancy. He asserts that the Government's failure to anchor the semitrailers and properly maintain the grounds caused deterioration of the property. When the rainstorm occurred in January 2008, according to appellant a trailer fell into the creek, blocked the viaduct, and caused the creek to flood the grounds and building. As a result, appellant seeks to recover for water and structural damage occasioned to the interior and exterior walls of the building; to wall, floor, and water heaters; cooler freezer units; a Hobart meat saw; the septic tanks; and the grounds, which became unstable and thus unsuitable for parking.¹

¹ The parties discuss additional damages claimed by appellant for the loss of a tree that was cut down by the Government because its branches were blocking the driveway and scratching vehicles, for heaters that were disconnected when the Government left the premises, and for other miscellaneous items. Since none of these damage claims were presented in the claim letter submitted for a contracting officer's decision, we do not address them here.

Under the lease, the Government is required to return the premises in good order and repair excepting ordinary wear and tear and damage for which the Government has no obligation to make repairs. The lease also provides that the Government may vacate and pay no further rent in the event of a major casualty that makes the property untenable.

The principal issue presented is whether the flooding attributable to the rainstorm caused the trailer to float in the creek and subsequently drop to ground level when the water receded, as the Government contends, or whether the trailer slid into the creek and stopped up the bridge, thus causing the water to overflow and damage the building, as appellant maintains.

The evidence presented by the parties to support their respective positions consists mostly of photographs of the property and the semitrailers. The Government's photographs, which are dated January 7-9, 2008, show the trailer alleged to have blocked the creek floating almost level with the top of the bridge during the storm, and subsequently at the creek bottom by the bridge after the water subsided. Appellant's pictures are undated. One shows the trailer blocking the viaduct. Another shows gravel close to creek level. It is not clear that this picture is of a parking area and there are no trailers in the picture.

Appellant's evidence does not demonstrate that the semitrailer caused the flood that damaged the building, or that the damage to the building was directly caused by inadequate maintenance measures taken by the Government. This severe storm was deemed to qualify the entire county as eligible for disaster relief; the sequence of the Government's pictures show the semitrailers floating first in flood waters and subsequently at the creek bottom in front of the viaduct. This supports the conclusion that the flood waters dislodged the trailer rather than that the trailer caused flooding by blocking the viaduct.

The terms of the lease do not expressly shift the risk of damage by the elements from the lessor to the tenant. Indeed, it may be inferred from general clause number 2 that the Government has no obligation to repair this type of damage, and may vacate the premises and terminate the lease if the casualty serves to render the property untenable. At the same time, there is an implied obligation on the part of the Government not to damage the property. *HG Properties A, L.P. v. General Services Administration*, GSBCA 15219, 01-1 BCA ¶ 31,376 at 154,924; *KMS Development Co. v. General Services Administration*, GSBCA 12584, 96-2 BCA ¶ 28,404 at 141,840, *reconsideration denied*, 97-1 BCA ¶ 28,968. Nothing in the record suggests that the flooding damage may be attributed to a lack of reasonable care of the property by the Government. As such, the Government may not be held responsible for the damages claimed. *See, e.g., Mount Manresa v. United States*, 70 Ct. Cl. 144, 149 (1930); *W.L. Holbrook*, AGBCA 2000-174-1, et al., 03-1 BCA ¶ 32,103, at 158,714 (2002).

Decision

The appeal is **DENIED**.

CATHERINE B. HYATT
Board Judge