PLAIN MEANING RULE

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The Contract Disputes Act permits either the government (with the prior approval of the Attorney General) or the contractor to appeal the decision of a Board of Contract Appeals (41 U.S.C. §7107(a)). Appeals are taken to the Court of Appeals for the Federal Circuit. *PK Management Group, Inc. v. Secy of Housing and Urban Development ("HUD"), No. 2020-1260 (Fed. Cir. Feb. 4, 2021)* is an example of the Federal Circuit's application of the "plain meaning" rule in government contracts. The Court affirmed the Civilian Board of Contract Appeals ("CBCA") decision that the contract at issue unambiguously covered certain routine inspections through a monthly fee rather than individual payments.

PK Management had a contract for managing several types of properties, including "HUD-Owned Vacant" (owned by HUD) and "Custodial" properties (where HUD has taken possession but did not yet have title). The contract required different type of management for these two types of properties, but each property required bi-weekly inspections. The inspections for HUD-owned properties are more thorough because HUD-owned properties must be in "Ready to Show Condition" while Custodial properties generally do not need to be ready for showing.

The contract lists compensation for each contractual service in the contract line item numbers ("CLINS"). The issue in the appeal was simple: which contract CLIN specifies the payment for routine, bi-weekly inspections of Custodial properties. In the beginning of performance, HUD paid PK Management for every bi-weekly inspection (both HUD-Owned Vacant and Custodial) applying the fee from CLIN 0005AA, regardless of property type. However, HUD later rejected invoices for individual inspections of Custodial properties, explaining that prior payments were based on a computer error, not a change in interpretation. Upon appeal to the CBCA, the Board denied the appeal, concluding that the contract language was unambiguous.

The Court affirmed the CBCA, concluding that CLIN 0006 requires inspections for Custodial properties only on a monthly basis. First, the Court noted that the title of CLIN 0005AA, "On-Going Property Inspection HUD-Owned Vacant" indicates it applies only to HUD-owned properties. (Even though in HUD's possession, Custodian properties are not owned in HUD's name and HUD does not have title yet). In order to accept PK Management's argument, the court would need to read out the name of CLIN 0005AA. The court refused to do it, instead giving meaning to all parts of the contract. Second, the court looked to CLIN 0005 (titled "On-Going Property Management Fee, HUD Owned Vacant"), which was linked to CLIN 0005AA, and which applied only to HUD-Owned Vacant Properties. The linkage had to be maintained, unless, the Court said, the CLIN numbering system and titles were rendered meaningless. Only CLIN 0006 refers to Custodial properties, and governs the routine inspections. It is titled "Inspection, Initial Services, On-Going [Property Management] For Custodial Properties." This CLIN provides for a monthly fee.

Reading the contract as a whole, the court held that the plain meaning places routine inspections of Custodial properties under CLIN 0006 rather than CLIN 0005AA, and that this was unambiguous.

Takeaway. The plain meaning rule (which applies to statutory construction, contracts in general and government contracts) is important. If there is no ambiguity when the contract is read as a whole, the contract will be interpreted by its actual words, without considering extrinsic evidence or other related arguments.

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