NO UNILATERAL MISTAKE ALLOWED IN WOODIES' LEASES TO GSA

The Court of Federal Claims held that the General Services Administration ("GSA") could not recover and re-charge Woodies Holdings LLC for a tax-sharing provision that GSA itself had authored in five leases that GSA had signed. *Woodies Holdings, LLC, v. United States,* Fed. Cl. No. 15-962C, (reissued June 13, 2019). Woodies rented office space in Washington, DC and the leases all included a provision for sharing property tax increases assessed by the District of Columbia government. Each lease stated that GSA was obligated to pay a tax adjustment that was proportional to the percentage of each building that was leased—GSA's tax obligation was simply determined by dividing square footage that the government occupied by total square footage in Woodies' building.

The Woodies building had over 500,000 square feet of rentable space, but the leases with GSA stated that there was only 372,990 square feet. As a result, the government overpaid Woodies for the tax increases, totaling $3.4 million of alleged overpayments, the amount claimed by Woodies but denied by GSA. The GSA stated that its personnel had made a mistake when they used 372,990 sq. ft. as the building size, and asked the court to reform the contract to reflect an accurate percentage of occupancy.

The court first determined whether Woodies had established a prima facie case that it was entitled to damages. The court noted that the tax adjustment clauses were unambiguous and required GSA to reimburse Woodies 13.98% of any increase in taxes over the base year. Woodies timely submitted invoices for the proper amounts, and applied prompt payment act interest, resulting in the $3.4 million claim.

The GSA's defense was that there was a mistake, and the contract should be reformed, which the court said was an "extraordinary remedy" available only by showing clear and convincing evidence that the intent of the parties is not expressed by the lease itself—that both parties made the same factual mistake. However, the GSA alleged that *it* had made a unilateral mistake, and that Woodies knew or should have known of the mistake. The court noted that GSA had to show that:
(1) it made a mistake and did not bear the risk of that mistake
(2) the mistake had a material effect on the agreed exchange of performance; and
(3) either the result is unconscionable or Woodies knew or had reason to know of the mistake.

The court identified the mistake as having been made by GSA personnel, and furthermore that GSA bore of the risk of that mistake because it ignored and disregarded information that GSA had at hand. Woodies had presented accurate information prior to the lease and the government had all the information it needed but simply moved forward without paying attention to it. There were careless errors by GSA staff ("cavalier and careless approach" to the work, compounded by "equally careless oversight of [] superiors"). And the mistake was material.

As to Woodie's knowledge, the company believed that GSA had omitted the rental space in the building space computation, something the court found to be a plausible explanation by

Woodies' witness. The court found that Woodies lacked the requisite knowledge of the mistake, and that therefore, Woodies was entitled to the withheld real estate tax plus interest.

Takeaway. GSA should exercise greater care in calculating rentable square footage in its leases. Perhaps it should use a "savings" clause for errors, omissions and mistakes discovered later in the lease, when the issue of tax adjustments arises.

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