In the United States Court of Federal Claims

No. 01-161 C
(Filed March 3, 2006)

THOMAS PATTON,	)
Plaintiff,	)
v.	)
THE UNITED STATES,	)
Defendant.	)

Richard D. Heideman, Heideman Nudelman & Kalik, P.C., Washington, D.C. for plaintiff.

Lauren S. Moore, Trial Attorney, Kathryn A. Bleecker, Assistant Director, David M. Cohen, Director, Peter D. Keisler, Assistant Attorney General, United States Department of Justice, Washington, D.C. for defendant. Ted Schwartz, Assistant General Counsel, Department of Justice, Federal Bureau of Investigation, of counsel.

OPINION AND ORDER

GEORGE W. MILLER, Judge.

This matter is before the Court on Defendant's Motion for Summary Judgment. The Court has determined that oral argument is not necessary to resolve the legal issues presented by the Government's motion. For the reasons set forth below, Defendant's Motion for Summary Judgment is DENIED.

BACKGROUND

I. Procedural History

The plaintiff, Thomas Patton, asserts a claim for breach of a written contract between himself and the Federal Bureau of Investigation ("FBI"). Defendant argues that the record on

summary judgment establishes beyond dispute that the FBI terminated the contract through a lump sum payment on November 14, 1996, for which Mr. Patton executed a written receipt, and that Mr. Patton has been fully compensated for his services. Plaintiff argues that summary judgment is inappropriate because the record reveals genuine issues of material fact as to whether the 1996 payment and signed receipt terminated the contract, and whether Mr. Patton continued to perform services for the FBI under the contract after November 14, 1996.

Mr. Patton filed a complaint on March 22, 2001 that included claims for breach of two contracts in addition to the express written contract at issue here. In an opinion dated February 12, 2002, this court, per Judge Bohdan A. Futey, dismissed on statute of limitations grounds Mr. Patton's claim that the FBI owed him $150,000 under an oral contract. *Patton v. United States*, No. 01-161C (Fed. Cl. Feb. 12, 2002). At that time, Judge Futey denied the Government's motion under Rule 12(b)(6) to dismiss the remaining claims, including the claim at issue here. *Id.* Judge Futey stated that further factual inquiry was necessary regarding the alleged termination of the 1994 express contract.[1] *Id.* at 15. In an opinion dated March 23, 2005, this Court held that it did not possess subject matter jurisdiction over Mr. Patton's implied-in-fact contract claim, which concerned an alleged promise to pay the rental fee for certain storage facilities in which Mr. Patton had stored his personal belongings. *Patton v. United States*, 64 Fed. Cl. 768 (2005). The facts relating to Mr. Patton's relationship with the FBI have been set forth in detail in the two previous opinions of this Court. This opinion will restate only those facts relevant to the remaining claim.

II. Facts[2]

On November 11, 1994, Mr. Patton entered into a written contract with the FBI to assist in "investigations regarding the La Cosa Nostra and Drug Trafficking and Money Laundering Organizations in various districts within the United States." App. to Pl.'s Resp. to Def.'s Mot. Summ. J. ("Pl.'s App.") at 5. Under the contract, Mr. Patton agreed to provide the FBI with information concerning the criminal activity of these organizations, and in return was to receive $4,000 per month, plus $3,250 for certain expenses. *Id.* Either party had the right to unilaterally terminate the contract "by deliverance of a written notice." *Id*. at 7. Plaintiff had entered into a similar contract with the FBI in 1991. *Id.* at 1. That contract was terminated by a formal and

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[1]Subsequent to this decision and in response to plaintiff's lawsuit, on July 24, 2002, the FBI's chief contracting officer, Jack R. Cordes, Jr., sent Mr. Patton a letter explicitly terminating the 1994 contract. Mr. Cordes stated in his letter that it remained the Government's position that such a letter was unnecessary because the contract had already been terminated. App. to Def.'s Mot. Summ. J. ("Def. App.") at 52. Mr. Cordes was also the author of the August 5, 1993 letter terminating the 1991 contract. *Id.* at 14.

[2] The facts set forth in this section are drawn from the parties' submissions in connection with Defendant's Motion for Summary Judgment. They do not constitute findings of fact by the Court.

explicit letter of termination, dated August 5, 1993, which stated:

> This letter will serve as a written confirmation of the previous conversation . . . where you were advised that your continued assistance and services under the referenced agreement . . . would no longer be required.
> Inasmuch as this is the case, the consideration payable under this agreement is hereby terminated pursuant to clause 11 of the agreement.

Def. App. at 14.

Pursuant to the 1994 contract, Mr. Patton assisted the FBI in connection with an investigation in Los Angeles until February 1996, and was paid $101,500.00 for his services, including expenses. Pl.'s Statement of Genuine Issues at 4. Defendant asserts that in February of 1996 the FBI orally advised Mr. Patton that the investigation on which he was assisting was being concluded, and that his services would no longer be required by the FBI. Def. Br. at 5. Mr. Patton claims that the FBI only informed him that the Los Angeles investigation had been completed, and not that the 1994 contract was being terminated. Pl.'s Statement of Genuine Issues at 5. Later that month, Mr Patton, having expressed concerns about his personal safety and that of his family, moved from Los Angeles to Dallas, Texas, and the FBI paid his relocation expenses. *Id.*

After his move to Dallas, two FBI agents made a lump sum payment of $30,000 to Mr. Patton on November 14, 1996, for which he signed a receipt stating that the payment "represent[ed] full and final payment for services rendered." Def. App. at 27. The receipt contains no further detail or explanation specifying for what Mr. Patton was being paid. *Id.* FBI internal memoranda concerning the payment state that it was to represent "full and final payment for services rendered to the FBI." They do not refer to any particular investigation. Def. App. at 24-26. Authorization for the "final payment" appears to have come from FBI headquarters after the Los Angeles Division indicated in an earlier memorandum to the Director that the contract had been terminated orally. *Id.* at 19-24. The memorandum from one of the agents in Dallas who made the "final payment" to Mr. Patton acknowledged that Mr. Patton had stated that it was his opinion that the payment "was for services provided to the 'California Investigation.'" *Id.* at 26.

Plaintiff alleges that after receiving the $30,000 lump sum payment he continued to perform services for the FBI under the belief that the 1994 contract remained in effect. Pl.'s Br. at 6; Pl.'s App. at 15. As examples of services performed under the contract following the conclusion of the Los Angeles investigation, Mr. Patton cites numerous phone calls with agents, meetings with agents of the Pittsburgh and Boston offices, and a meeting in Baltimore with several agents. *Id.* The Government claims that the FBI possesses a record of only one phone call, made by Mr. Patton in November of 2001, which was after the filing of his complaint in this lawsuit. Def. Br. at 9. The Government also points out, and the record reflects, that the meetings with the Pittsburgh and Boston agents actually occurred in May of 1996, before the FBI paid Mr. Patton the $30,000 "final payment," Def. App. at 35, and that the FBI paid Mr. Patton $2,500

specifically for these meetings on or about July 19, 1996. Def. Reply at 5, App. 1. With respect to the meeting in Baltimore, it took place in November of 1999. Pl's Statement of Genuine Issues at 7. Plaintiff initiated the contact that led to the Baltimore meeting. Def. App. at 8. Mr. Patton was compensated for his expenses and paid a per diem allowance for his attendance at the Baltimore meeting. *Id.* Before that meeting, in April of 1999, plaintiff's attorney submitted a claim to the FBI for, *inter alia*, payment due under what plaintiff asserts he understood to be the ongoing 1994 contract. *Id.* at 6. The denial of that claim led to the filing of this lawsuit. Pl.'s Br. at 7.

DISCUSSION

I. Jurisdiction

Plaintiff is asserting a claim for breach of an express contract. Pl. Br. at 1-2. Accordingly, this Court has jurisdiction over plaintiff's claim pursuant to the Tucker Act, which provides that "[t]he United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States . . . upon any express or implied contract with the United States." 28 U.S.C. § 1491(a)(1) (2000).

II. Standard of Review

Summary judgment is appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. RCFC 56(c); *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 247 (1986); *Jay v. Sec'y, DHHS*, 998 F.2d 979, 982 (Fed. Cir. 1993). A fact is material if it might significantly affect the outcome of the suit under the governing law. *Anderson*, 477 U.S. at 248. The party moving for summary judgment bears the initial burden of demonstrating the absence of any genuine issues of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). If the moving party demonstrates an absence of a genuine issue of material fact, the burden then shifts to the opposing party to show that a genuine issue exists. *Sweats Fashions, Inc. v. Pannill Knitting Co.*, 833 F.2d 1560, 1563 (Fed. Cir. 1987). Alternatively, if the moving party can show there is an absence of evidence to support the opposing party's case, then the burden shifts to the opposing party to proffer such evidence. *Celotex*, 477 U.S. at 325. The court must resolve any doubts about factual issues in favor of the party opposing summary judgment. *Litton Indus. Prods., Inc. v. Solid State Sys. Corp.*, 755 F.2d 158, 163 (Fed. Cir. 1985). A trial court should act "with caution" when determining whether to grant summary judgment and may deny the motion if "there is reason to believe that the better course would be to proceed to trial." *Anderson*, 477 U.S. at 255. Among the tasks properly left for the finder of fact are credibility determinations, evidence weighing, and the drawing of factual inferences. *Id.*

III. Plaintiff has Proffered Evidence Sufficient to Create a Genuine Issue of Material Fact as to Whether He Reasonably Understood that Further Work was Contemplated Under the 1994 Contract

The 1994 Agreement provided that "[i]t may be terminated at any time by either party by deliverance of a written notice to terminate." Pl.'s App. at 7. Defendant asserts that the November 1996 receipt that both parties signed served as such notice. It is well established that, when interpreting a contract, a court should focus on the intent of the parties, and discerning that intent becomes particularly important when the language of the contract is inexplicit. *Dravo v. United States,* 202 Ct. Cl. 500, 504, 480 F.2d 1331, 1333 (1973); *Firestone Tire & Rubber Co. v. United States*, 195 Ct. Cl. 21, 30, 444 F.2d 547, 551 (1971). Such a determination is an objective one, and "[t]he unexpressed, subjective unilateral intent of one party is insufficient to bind the other contracting party, especially when the latter reasonably believes otherwise." *Firestone*, 195 Ct. Cl. at 30, 444 F.2d at 551; *see also Dravo*, 202 Ct. Cl. at 504, 480 F.2d at 1333 ("The language of the contract must be given the meaning that would be understood by a reasonably intelligent person acquainted with the contemporary circumstances."). Cases cited by the Government indicate that a contract's termination, like its formation, is subject to an objective standard, and the subsequent conduct of the parties is relevant to determining their understanding of an alleged termination notice. *See Kraemer Mills Inc. v. United States*, 162 Ct. Cl. 367, 319 F.2d 535 (1963); *Enright v. United States*, 73 Ct. Cl. 416, 54 F.2d 182 (1931). In *Kraemer Mills, Inc. v. United States*, the Court of Claims held that a "clear-cut agreement of a formal nature" is not necessary to terminate a contract and initiate the running of the statute of limitations on a breach of contract claim. 162 Ct. Cl. at 367, 319 F.2d at 538. The court in *Kraemer* cited *Enright v. United States*, in which the court relied on the parties' conduct subsequent to a contract's suspension to illustrate that the they "fully understood" that the notice to suspend "in effect canceled the contracts." 73 Ct. Cl. at 427, 54 F.2d at 187. It is unclear whether, in either of those cases, the contracts at issue contained a requirement of written notice to terminate. However, in each case it was very clear from the conduct of the parties that neither intended that further work would take place under the contract. Indeed, in the *Kraemer* case, it was the plaintiff who gave notice to the Government that he would be unable to fulfill his contractual obligations. 162 Ct. Cl. at 372, 319 F.2d at 538. Judge Futey stated in his 2002 opinion that because the receipt for the $30,000 payment, which the Government asserts terminated the 1994 Agreement, does not contain explicit cancellation language, the court must look to the subsequent behavior of the parties. *Patton v. United States*, No. 01-161C, slip op. at 13 (Fed. Cl. Feb. 12, 2002).

Considering the record in this case, it is nowhere near as clear as in *Kraemer* or *Enright* that both parties understood the contract to be terminated and that neither intended that further work would take place under the contract. The language of the receipt signed by both parties does not contain explicit cancellation language. Thus, the issue becomes whether a reasonable person in Mr. Patton's position would have believed that the contract was ongoing. *See Dravo*, 202 Ct. Cl. at 504, 480 F.2d at 1333. The FBI's internal memoranda, combined with the fact that the authorization for the $30,000 so-called "final payment" came from headquarters rather than the Los Angeles Division, suggest that the FBI intended to terminate the contract. Mr. Patton's

testimony, however, would contradict the FBI's assertion that it notified him orally of its intent to terminate the contract. Taken together, Mr. Patton's testimony, the fact that the FBI provided an explicit written termination notice with respect to the 1991 contract, and the statement in the FBI memorandum that Mr. Patton had stated his belief that the November 12, 1996 payment was solely for his work on the California investigation rather than a complete termination of the contract, when viewed in the light most favorable to plaintiff, are sufficient to create a genuine issue of material fact with respect to the reasonableness of Mr. Patton's understanding that the 1994 contract remained in effect.

In addition, Mr. Patton claims he had numerous phone conversations during the period subsequent to November 12, 1996 with FBI agents in which he provided information pursuant to what he believed were his obligations under the contract. Mr. Patton also claims to have been acting under the contract when he attended the meeting in Baltimore in November of 1999, although that meeting occurred after his attorney first contacted the FBI to request payment of money allegedly owed under the contract. Plaintiff explains that, although at the time of his claim to the FBI in April of 1999 he had received no payments since November 14, 1996, this did not indicate to him that the contract had been terminated because it had been the practice of the FBI under the contract to pay him in larger lump sums, rather than on a monthly basis. Pl.'s Statement of Genuine Issues at 7. This is consistent with the payment of the $30,000 lump sum on November 14, 1996. Mr. Patton requested a large lump sum payment in his April 1999 claim, and in this lawsuit he is seeking damages consisting of the $7,250 monthly payment provided for in the 1994 contract for each month that the FBI did not pay him between November 14, 1996 and the filing of the complaint in this action.

The evidence and arguments presented thus far indicate that factual disputes exist as to whether the plaintiff was informed orally that the 1994 contract would be terminated and the nature and extent of the conduct of the parties subsequent to the 1996 payment. These factual disputes are material because they could significantly affect a determination as to whether Mr. Patton reasonably believed that the 1994 contract with the FBI remained in effect after November 12, 1996. Thus the plaintiff has met his burden of raising genuine issues of material fact as to whether the 1996 payment terminated the 1994 contract. In addition, the weight to be given the parties' conflicting factual assertions depends, in part, upon the credibility of the witnesses, which is an evaluation that can only be made by the finder of fact at trial. Summary judgment is therefore inappropriate, and proceeding to trial is the "prudent course." *A. K. Suda, Inc. v. United States*, ___ Fed. Cl. ___, No. 00-172C, 2006 WL 337520 at *5 (Feb. 9, 2006).

CONCLUSION

For the reasons stated herein, Defendant's Motion for Summary Judgement with respect to plaintiff's claim for breach of the 1994 written contract is DENIED. The Court further orders that the parties shall participate in a joint telephonic status conference on **Monday, April 10, 2006 at 10 a.m.** to determine the course of further proceedings in this case. The Court will initiate the call.

IT IS SO ORDERED.

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George W. Miller
Judge