

In the United States Court of Federal Claims

No. 12-237 C

(E-Filed: May 8, 2012)

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PEPPER TREE APARTMENTS, LTD. II,)	
)	
	Plaintiff,)	Complaint Deposited in Night
v.)	Box Was Filed on Date Deposited
)	
THE UNITED STATES OF AMERICA,)	
)	
	Defendant.)	
)	
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ORDER

Before the court is Plaintiff’s Motion to Conform Filing Date (plaintiff’s Motion or Pl.’s Mot.), Docket Number (Dkt. No.) 4, filed April 16, 2012. Plaintiff’s Motion requests that the court deem plaintiff’s Complaint for Breach of Contract and Just Compensation (Complaint or Compl.), Dkt. No. 1, “as having been filed on April 11, 2012.” Pl.’s Mot. 1. Defendant does not object to plaintiff’s Motion. Def.’s Notice in Resp. to the Court’s Apr. 19, 2012 Order, Dkt. No. 7, at 1.

Plaintiff’s Motion states that counsel for plaintiff submitted the Complaint, as well as “all materials required for commencing a civil action in this [c]ourt,” in the court’s night box on the evening of April 11, 2012. Pl.’s Mot. 1; see id. at 2 (“[C]ounsel for [p]laintiff physically delivered the Complaint and all other materials required for commencing an action in this [c]ourt’s night box between 5:15 p.m. and 12:00 midnight on Wednesday, April 11, 2012.” (internal quotation marks omitted)). This is supported by the stamp on the back of the first page of the Complaint, which states: “RECEIVED FROM NIGHT BOX APRIL 12 2012 OFFICE OF THE CLERK U.S. COURT OF FEDERAL CLAIMS.” Compl. 1; accord Berry v. United States, 86 Fed. Cl. 750, 754 (2009) (finding that a petition for review at the United States Court of Appeals for the

Federal Circuit (Federal Circuit) bearing a stamp stating “RECEIVED FROM NIGHT BOX [on] MAY 6, 2008” supported the plaintiff’s contention that the petition for review was filed in the Federal Circuit’s night box between 5:00 p.m. and midnight on May 5, 2008 and that, therefore, 28 U.S.C. § 1500 does not apply).

Rule 77.1(a) of the Rules of the United States Court of Federal Claims (RCFC) provides: “A night box is provided for filing with the clerk’s office between 5:15 p.m. and 12:00 midnight on any business day for any paper due that day.” RCFC 77.1(a). Rule 77(a) further provides that “[t]he court is considered always open for filing any paper.” RCFC 77(a); cf. Schultz v. United States, 132 Ct. Cl. 618, 620-22, 132 F. Supp. 953, 954-56 (1955) (relying on prior version of Rule 77(a), which provided that “the [c]ourt shall be deemed always open for the purpose of filing proper papers,” as a factor in determining that, where the plaintiff’s petition arrived at the court on Sunday, July 15, 1951, the petition was deemed “filed” on Sunday, July 15, 1951).

In light of the foregoing, the court finds that plaintiff’s Complaint received in the night box on April 11, 2012 shall be considered filed on April 11, 2012. Accord Kearns v. Toyota, Nos. 94-1305, 94-1321, 53 F.3d 345, 1995 WL 74582, at *2 (Fed. Cir. Feb. 15, 1995) (unpublished table decision) (finding that the appellant’s notice of appeal was “received in the night box on May 2 and should have been stamped as received on May 2”).

IT IS SO ORDERED.

s/ Emily C. Hewitt
EMILY C. HEWITT
Chief Judge