



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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DENIED: September 27, 2018

CBCA 6155

PENNA GROUP, LLC,

Appellant,

v.

DEPARTMENT OF JUSTICE,

Respondent.

Bryant S. Banes and Sean D. Forbes of Neel, Hooper & Banes, P.C., Houston, TX, counsel for Appellant.

Monica Barron and William D. Robinson, Office of General Counsel, Federal Bureau of Prisons, Department of Justice, Washington, DC, counsel for Respondent.

**VERGILIO**, Board Judge.

In a certified claim, Penna Group, LLC (contractor) sought \$146,048.85 for what it describes as costs incurred in performing under an expanded scope of work under a roofing contract. A contracting officer of the Federal Bureau of Prisons (agency) denied the claim, relying upon a release of claims with the signature of the contractor's president which released the United States from any and all claims arising under the contract; on the release form the word "NONE" is in the space to identify excepted claims and dollar amounts. The agency paid the full contract price following receipt of the release and other documents. The contractor has elected the small claims procedure, which means that a decision by one judge is final, conclusive, and non-precedential, and may be set aside only in cases of fraud. 41 U.S.C. § 7106(b) (2012).

The agency has moved for summary judgment (the term that replaces summary relief, under the Board's Rules effective September 17, 2018), contending that the contractor may not pursue the claim or prevail given the release. The contractor asserts that the release is of no force or effect because it was completed by one without the actual or apparent authority to do so, and that material facts are in dispute so as to preclude summary judgment. It contends further that the release can be invalidated because of economic duress and because of mutual mistake.

The Board concludes that the release is enforceable and precludes the contractor from pursuing and prevailing upon the claim. The release bears the signature of the contractor's president. The president of the contractor was aware that the individual who completed the release on behalf of the contractor had his signature stamp; he thus had endowed her with actual and/or apparent authority to use the signature. The contractor raises no facts at this summary judgment stage that would establish that the release should not be enforced; the affidavit provides sufficient assumed-to-be-true facts that dictate the enforcement of the release. The Board denies the claim.

#### Findings of Fact

The agency identified documents and provided the contractor with forms needed to close out the contract. The contractor provided to the agency a completed release of claims form that explicitly released the United States from any and all claims arising under the contract or any modification or change with the word "NONE" to identify the claims excluded by the contractor. That document bears the signature of the president of the contractor, as placed there and witnessed by an employee of the contractor in order for the contractor to receive final payment under the contract. The contractor's president is identified as a recipient of the email from the contractor to the agency containing the completed release and other documentation. The agency received the release and other materials and made the final payment.

The contractor's president states by affidavit:

5. Also on July 10, 2015, PennaGroup sought the last payment, and the Government forwarded the pay application and included a release of claims to PennaGroup's Project Manager (PM), [Ms. X]. Importantly, the [agency] required PennaGroup's PM to sign all forwarded documents, including the release, in order to receive final payment. As such, Ms. [X], affixed my stamped signature to all documents the [agency] sent, including the release.

6. Regarding authority, PennaGroup is a single-member LLC and I am the only executive officer with the sole authority to sign any release, and in this specific matter, I did not authorize or sign the release of claims, nor would I have done so since Penna Group was actively attempting to negotiate a modification for work performed outside the plans and specifications, and scope of work (SOW).

7. Ms. [X] mistakenly, and without authority, affixed my signature stamp on the release solely for the purposes of receiving the final pay application which the Government required in order to release PennaGroup's final payment.

8. Notably, I never received notice of the release of claims [until April 19, 2018, when I received a copy of the decision of the contracting officer denying the claim].

Referencing emails he sent to personnel at the agency before and after the release, the affiant asserts that the emails show that "everyone believed there was still an outstanding [request for equitable adjustment] well after the purported signing of the release" and which "clearly show that I never intended to release the claims." The emails sent before the release was sent to the agency do not show the contractor's intent at the time of the release; those sent later are from the contractor to the agency, not from the agency to the contractor and do not show an intent of the affiant or agency personnel at the time the release was submitted. Further, although the affiant states that he did not receive notice of the release until April 19, 2018, on August 25, 2015, the contractor's project manager emailed to the agency, with a cc copy to the affiant, the release and other documents to receive payment. Other particular problems of overstatement in the affidavit need not be detailed, because they are not material.

The contractor also maintains that the agency should have detected a difference between the blue electronic signature contained in direct correspondence from the president and the black signature stamp placed on the release by the contractor's employee, but has not indicated how this difference should have led the agency to question the reliability of the signature. The pre-proposal conference meeting minutes and preconstruction conference agency minutes referenced by the contractor provide no support for the assertion that the employee lacked actual or apparent authority to bind the contractor or put the agency on notice to question any such signature.

### Discussion

The standards to be applied in resolving a motion for summary judgment are well known. *Mingus Constructors, Inc v. United States*, 812 F.2d 1387, 1391 (Fed. Cir. 1987); *Safe Haven Enterprises, LLC v. Department of State*, CBCA 3871 et al., 16-1 BCA ¶ 36,444, at 177,623. The language of the release is clear on its face; the contractor reserved no claims when it submitted the release. Thereafter, the contractor received payment of the remainder of the contract price. The signature on the release is that of one with the authority to sign, the contractor's president. The contractor asserts that the signature was placed on the document by an employee with a signature stamp but without actual or apparent authority to do so.

The contractor contends that summary judgment is inappropriate in light of the holding of *Safe Haven*. That case does not assist this contractor. The signature in question there was that of a vice president whom the contractor alleged was without the authority to bind the company. Here, the signature on the document is that of the contractor's president, one with the authority to sign a release. That opinion, however, addresses other aspects of the binding nature of a release; this decision is in keeping with what is there decided.

Leaving for another day material distinctions, if any in this situation, between a company and an individual, an unauthorized signature is inoperative as to the individual whose name is signed unless ratified or precluded from denying it. A signature is binding if placed on a document by one with actual or apparent authority to do so. Negligent oversight regarding a signature stamp or electronic signature may result in the binding nature of the signature when appropriately relied upon by a party. *Great American Insurance Co. v. United States*, 481 F.2d 1298, 1309-10 (Ct. Cl. 1973).

A company acts through its employees and agents. The president was aware that the employee had the signature stamp; this endowed her with the apparent, if not actual, authority to use it. The contractor has proffered no support for the affiant's statement of limitations on the use of the stamp. The contractor has provided no basis for the agency reasonably to conclude that the release was invalid or mistaken, or that only particular versions of the president's signature should be accepted or only accepted for particular actions. On its face, the release does not indicate how it was completed by the contractor. It was negligent of the president to provide the employee with a stamp that could be used without his knowledge or instruction, not oversee its usage, and permit the individual with the stamp to witness the signature. The employee timely provided the president with a copy of the signed release and request for final payment. The agency is not at fault for the president's failure to receive, review, or act on the information. The agency appropriately relied upon the signature in closing out the contract. The contractor has not established a sufficient factual or legal basis to limit the release.

The contractor reaches beyond credible arguments when it asserts that the release should not be enforced because of economic duress or mutual mistake. On its face, the release form permitted the contractor to identify claims and an associated dollar amount not to be included in the release. Nothing suggests or supports the notion that the agency would not have paid the contractor for the work completed, when the claim seeks payment in addition to that amount. The “no choice but to sign” assertion is mere verbiage. There is no basis to support a theory of duress. As to mutual mistake and potential contract reformation, the issue on summary judgment relates to the release, not the claim. Even assuming that the contractor can establish that a mutual mistake existed in the formation of the contract (which is the focus of the contractor’s allegation here), such a claim does not survive the release.

### Decision

The agency has met its burden to substantiate its motion for summary judgment. The Board **DENIES** the appeal.

*Joseph A. Vergilio*  
JOSEPH A. VERGILIO  
Board Judge