



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

GRANTED IN PART: November 6, 2020

CBCA 6502

BERKLEY PROPERTY ASSOCIATES, LLC,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Seamus Curley of Stroock & Stroock & Lavan LLP, Washington, DC, counsel for Appellant.

James Scott and Jessica Gunzel, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Board Judges **BEARDSLEY**, **ZISCHKAU**, and **CHADWICK**.

BEARDSLEY, Board Judge.

Respondent, the General Services Administration, offset the amount of \$896,251.57 from its lease payment to appellant, Berkley Property Associates, LLC, to recoup real estate taxes GSA alleged it had wrongly paid. Appellant has moved for summary judgment in the amount of the offset claiming that the government's right to offset is barred by the Contract Dispute Act's (CDA) six-year statute of limitations, 41 U.S.C. § 7103(a)(4)(A) (2018). Appellant also moved for an award of interest in the amount of \$21,377.82 from the date of the offset until November 15, 2018, the date appellant submitted its CDA claim.

GSA does not oppose this motion, except to challenge appellant's claim for \$21,377.82 in other than CDA interest.¹ GSA states that it cannot produce any documentary evidence that a contracting officer asserted a claim to withhold the funds and resolve the issues of tax liability and of damages within the CDA limitations period. Based on the Board's decision in *1000-1100 Wilson Owner, LLC v. General Services Administration*, CBCA 6506, 20-1 BCA ¶ 37,642, which involved almost identical facts to this case, GSA's claim for \$896,251.57 is, therefore, barred by the CDA statute of limitations.

Decision

The Board **GRANTS IN PART** appellant's motion for summary judgment and enters judgment for appellant in the amount of \$896,251.57, plus CDA interest to run from November 15, 2018. Only appellant's claim for other than CDA interest remains to be decided in this appeal.

Erica S. Beardsley

ERICA S. BEARDSLEY

Board Judge

We concur:

Jonathan D. Zischkau

JONATHAN D. ZISCHKAU

Board Judge

Kyle Chadwick

KYLE CHADWICK

Board Judge

¹ The parties are currently briefing for the Board the issue of appellant's entitlement to other than CDA interest.