UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

THIS OPINION WAS INITIALLY ISSUED UNDER PROTECTIVE ORDER AND IS BEING PUBLICLY RELEASED IN ITS ENTIRETY ON AUGUST 12, 2026

APPELLANT'S MOTION FOR SUMMARY JUDGMENT GRANTED IN PART; RESPONDENT'S CROSS-MOTION FOR SUMMARY JUDGMENT GRANTED IN PART: July 9, 2026

CBCA 7965

CGS-ACE SECURITY LLC,

Appellant,

v.

DEPARTMENT OF STATE,

Respondent.

Robert Nichols, Michael Bhargava, and Logan Kemp of Nichols Law, Washington, DC, counsel for Appellant.

Randal Wax, Office of the Legal Adviser, Buildings and Acquisitions, Department of State, Rosslyn, VA, counsel for Respondent.

Before Board Judges **KULLBERG**, **ZISCHKAU**, and **KANG**.

KANG, Board Judge.

Appellant, CGS-ACE Security LLC, appeals a final decision by a contracting officer of respondent, Department of State (DOS), regarding a contract to provide security services. The parties have filed cross-motions for summary judgment. We grant DOS's motion and deny CGS-ACE Security LLC's motion with regard to payment of certain invoices. We deny DOS's motion and grant CGS-ACE Security LLC's motion with regard to entitlement to interest under the Prompt Payment Act (PPA), 31 U.S.C. §§ 3101-3907 (2024), due on the payment of the invoices.

Background

I. Solicitation, Proposal, and Award

In August 2020, DOS issued solicitation 19AQMM20R0220 for local guard services at the United States Embassy in Luxembourg. Appeal File, Exhibit 2 at 1, 6.[1] The solicitation did not allow the guard service requirements to be subcontracted but allowed offerors to propose as a joint venture wherein either member of the joint venture could perform the guard services. *See id.* at 8, 11, 123. Offerors proposing to perform the contract as a joint venture were required to identify its members. *Id*. at 123.

In September 2020, DOS received a proposal from CGS-ACE Security LLC, which was a joint venture offeror named in the proposal as both "[t]he CGS-ACE Security Joint Venture C/O Continuity Global Solutions, LLC" and "CGS-ACE JV." Exhibit 31 at 1, 5, 419. The members of the joint venture were identified as "Continuity Global Solutions" (CGS) of Falls Church, Virginia, and "ACE Sécurité S.A." (ACE)[2] of Schouweiler, Luxembourg. *Id.* at 5-6.[3]

Attached to the proposal's price volume was a July 2020 joint venture agreement between CGS and ACE. Exhibit 31 at 390-406. Section 3.2 of the joint venture agreement required ACE to "[p]erform day-to-day operations, including staffing management and ensuring that all operational and staffing requirements are fulfilled in a timely manner." *Id.*

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[1] All exhibits are found in the appeal file. Page citations are to Bates numbers, where applied to the exhibits; where no Bates numbers are available, citations are to the page numbers of exhibits; where no page numbers are available, citations are to .pdf pages.

[2] ACE is named in the record as "ACE Sécurité S.A.," "A.C.E. Securitie SA," and other similar permutations. The parties do not dispute that these names all refer to the same Luxembourg business entity.

[3] The Board's decision in *CGS-ACE Security LLC v. Department of State*, CBCA 7965, 25-1 BCA ¶ 38,769, addressed in further detail the identity of the offeror and resolved that the contractor and appellant are the same entity: CGS-ACE Security LLC. Familiarity with that decision is assumed here. References herein to CGS-ACE Security LLC are to the contractor, as distinct from its constituent members CGS and ACE.

at 392. Sections 5.5 and 5.6 of the agreement provided that "CGS shall manage the financial affairs of the Joint Venture," including maintaining accounting records, submitting invoices to DOS, and "ensuring that sufficient funds are available to make all payments on contract authorized costs." *Id.* at 394-95. CGS was required to pay ACE "for actual payroll and fringe costs of employees dedicated to work on this Contract plus other direct costs incurred by A.C.E. on the project." *Id.* at 392.

Each joint venture partner was required to "maintain its own separate bank account[]," with ACE responsible for maintaining an account to "pay expenses incurred in Luxembourg" and CGS responsible for maintaining "one or more accounts in the [United States] to facilitate collections for the customer and disbursement to major suppliers." Exhibit 31 at 395. The joint venture agreement specified the distribution of profits for each party and stated that each party would be jointly and severally responsible for losses in the same proportion to profits. *Id.* at 393-94.

In December 2020, the contracting officer notified CGS-ACE Security LLC that it had been selected for award. Exhibit 33. In response to an inquiry from the contracting officer, CGS-ACE Security LLC provided its System for Award Management (SAM) registry information. Exhibit 65 at 1. In February 2021, DOS and CGS-ACE Security LLC executed the contract. Exhibit 36 at 1.

The contract incorporated by reference three relevant Federal Acquisition Regulation (FAR) clauses regarding payment. Exhibit 2 at 4, 46-47. First, FAR 52.232-1, Payments (APR 1984) (48 CFR 52.232-1 (2019) (FAR 52.232-1)), required DOS to "pay the Contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract." Second, FAR 52.232-25, Prompt Payment (JAN 2017) (FAR 52.232-25), required DOS to pay properly submitted invoices within thirty days of receipt and triggered an interest penalty for invoices not paid by that date.

Third, and particularly relevant here, FAR 52.232-33, Payment by Electronic Funds Transfer–System for Award Management (OCT 2018) (FAR 52.232-33), required payment of invoices by electronic funds transfer (EFT) "using the EFT information contained in the [SAM]." *Id.* 52.232-33(b). This clause further provided that in the event of an erroneous payment, the Government was responsible for correcting the error:

> Liability for uncompleted or erroneous transfers. (1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for—

(i) Making a correct payment;
(ii) Paying any prompt payment penalty due; and
(iii) Recovering any erroneously directed funds.

Id. 52.232-33(e).

CGS-ACE Security LLC's SAM registration identified a bank account for EFT payment of invoices, which remained the same during contract performance. Appellant's Statement of Undisputed Material Facts (ASUMF) ¶ 28.[4]

II. Contract Payments

CGS-ACE Security LLC began performing the contract in April 2021. ASUMF ¶ 31. In July and August 2021, CGS-ACE Security LLC submitted four invoices to DOS for services performed from April through July 2021. *Id.* ¶ 32. In December 2021, a DOS employee contacted ACE to ask where payment of the invoices should be sent. *Id.* ¶¶ 42, 49. ACE responded by identifying its own bank account and requesting that payment be made there. *Id.* ¶ 43. DOS paid the four invoices to ACE's bank account through four EFT transfers in January 2022. Respondent's Statement of Undisputed Material Facts (RSUMF) ¶¶ 50-53.

In January 2022, after DOS paid the invoices to the account specified by ACE, CGS-ACE Security LLC asked DOS about the status of the invoices and "when we can expect to be paid." ASUMF ¶ 46. DOS responded that the invoices had already been paid and that CGS-ACE Security LLC should "check with ACE" regarding the payments. *Id.* CGS-ACE Security LLC advised DOS that, pursuant to the contract terms, payment should have been made to the bank account identified in its SAM registration. *Id.* ¶ 48. CGS-ACE Security LLC requested that any payments to ACE be halted and that the payments be "correctively transferred" to CGS-ACE Security LLC's bank account. *Id.* In February 2022, the contracting officer acknowledged that although the invoices should have been paid to the bank account identified in CGS-ACE Security LLC's SAM registration, they were instead paid to ACE's bank account. *Id.* ¶ 51. DOS did not request that ACE return the payments for the invoices or attempt to recover the payments. *Id.* ¶ 79.

[4] Citations to each party's statement of undisputed material facts are to numbered paragraphs that are not disputed by the opposing party, unless otherwise noted.

III. Disputes Between CGS-ACE Security LLC and ACE

CGS-ACE Security LLC requested that ACE send it the funds received for the invoices or alternatively return them to DOS. ASUMF ¶ 61. ACE refused to return the funds, claiming that it was entitled to receive them. *Id.* CGS-ACE Security LLC subsequently "began exploring the logistics of how to terminate its joint venture with ACE" but was unable to do so immediately due to the contract's requirements that security be provided by a locally licensed contractor or joint venture member. *Id.* ¶¶ 82-83.

In August 2023, CGS-ACE Security LLC conducted an audit of costs claimed by ACE for its performance of the contract. ASUMF ¶¶ 85-87; Exhibit 208. The audit found that ACE submitted requests to CGS-ACE Security LLC for payment of incurred costs under the contract totaling €5,425,342.34, of which €4,193,548.67 had been paid by CGS-ACE Security LLC through August 2023. Exhibit 120 ¶¶ 31-33; Exhibit 208 at 1. The audit further found that CGS-ACE Security LLC overpaid ACE by €392,467.12 because only €3,801,081.55 of the costs claimed by ACE were allowable under the terms of the joint venture agreement.[5] *Id.* According to the audit, ACE credited CGS-ACE Security LLC in January 2022 for €531,294.31, the amount of the four invoices paid to ACE by DOS. Exhibit 208 at 23; RSUMF ¶¶ 60-61. This is consistent with ACE's summary of its invoiced amounts and credits. Exhibit 203 at 43229.

On August 25, 2023, CGS terminated the joint venture agreement with ACE, with an effective date of September 1, 2023. Exhibit 119 at 1. CGS-ACE Security LLC stated that termination was for cause based on a breach of the joint venture agreement arising from: (1) ACE's actions causing the four invoices to be paid to its own bank account and refusing to provide the funds to CGS-ACE Security LLC; (2) overcharging CGS-ACE Security LLC for labor; and (3) charging CGS-ACE Security LLC for unallowable administrative services. *Id.* From that point forward, CGS-ACE Security was wholly owned by CGS.[6] RSUMF ¶ 9.

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[5] CGS-ACE Security LLC states that sometime after conducting the audit it identified an additional €17,445.52 charge from ACE that was unallowable. ASUMF ¶ 91. CGS-ACE Security LLC also contends it "suffered losses of approximately €2.6 million in performing this contract" and that, under the terms of the joint venture agreement, "ACE should have contributed—but did not—an additional €650,000 to cover these losses." Appellant's Motion for Summary Judgment at 14.

[6] CGS-ACE Security LLC was a joint venture at the time the four invoices were paid to ACE and remained a joint venture until it terminated ACE as member of the joint venture, effective September 1, 2023. *See* Appellant's Statement of Genuine Issues ¶ 13

CGS-ACE Security LLC performed the remainder of the contract without the participation of ACE. ASUMF ¶ 96.

IV. CGS-ACE Security LLC's Claim

In September 2023, CGS-ACE Security LLC submitted a claim to the contracting officer in which it argued that DOS breached the contract by paying the invoices to ACE's bank account in violation of the contract's payment provisions in FAR 52.232-33. Exhibit 19 at 1-2. CGS-ACE Security LLC sought payment of €531,294.31 for the four invoices, plus interest pursuant to FAR 52.232-25. *Id.*

In November 2023, the contracting officer denied the claim. Exhibit 1 at 1, 5. The contracting officer acknowledged that the disputed payments were made to ACE's bank account and that the payments "may not have been made in strict conformance with the contract terms[.]" *Id.* at 3-5. The contracting officer, however, noted that the contractor was a joint venture between CGS and ACE, as specified in the proposal. *Id.* at 4. The contracting officer determined that because the invoices were paid to one of the members of the joint venture, the joint venture received the benefit of the payments and no further payment was required. *Id.* at 5.

IV. Proceedings Before the Board

CGS-ACE Security LLC filed this appeal of the contracting officer's final decision, seeking payment of €531,294.31 for the four invoices, plus interest. In July 2024, DOS filed a motion for summary judgment, contending that CGS-ACE Security LLC is not the contractor and was therefore not eligible to submit a claim or pursue this appeal. DOS asserted that a different entity, CGS-ACE JV, submitted the proposal and is therefore the entity that was selected for award and that entered into the contract with DOS.

In March 2025, the Board denied the motion for summary judgment, concluding that the plain language of the contract showed that the contract is between DOS and CGS-ACE Security LLC. *CGS-ACE Security LLC*, 25-1 BCA at 188,422. For this reason, the Board concluded that CGS-ACE Security LLC is eligible to pursue this appeal. *Id.* In

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("After September 1, 2023, Appellant continued performing the contract, but not as a joint venture."). The record is not clear as to what the form of business CGS-ACE Security LLC became after September 1, 2023. This fact, however, is not necessary for resolution of the cross-motions for summary judgment.

December 2025 and January 2026, the parties filed these cross-motions for summary judgment.[7]

Discussion

I. Standard of Review

Board Rule 8(f) provides that "[a] party may move for summary judgment on all or part of a claim or defense if the party believes in good faith it is entitled to judgment as a matter of law based on undisputed material facts." 48 CFR 6101.8(f) (published in eCFR). Summary judgment is appropriate when there are no genuine disputes of material fact and the movant demonstrates it is entitled to judgment as a matter of law. *Carmazzi Global Solutions, Inc. v. Social Security Administration*, CBCA 6264, et al., 19-1 BCA ¶ 37,439, at 181,950. Genuine disputes of material fact exist when a rational finder of fact could resolve an issue in favor of either party and the resolution of that issue would impact the outcome of the case under governing law. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986).

When ruling on motions for summary judgment we must view all inferences in a light most favorable to the non-moving party. *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). Interpretation of contract language is primarily a matter of law, and disagreements concerning the legal interpretation of contract documents do not create factual disputes that preclude summary judgment. *Edgewater Construction Services, LLC v. Department of Veterans Affairs*, CBCA 7399, 24-1 BCA ¶ 38,506, at 187,154; *South Texas Health System v. Department of Veterans Affairs*, CBCA 6808, 23-1 BCA ¶ 38,420, at 186,707; *Partnership for Response & Recovery, LLP v. Department of Homeland Security*, CBCA 3566, et al., 14-1 BCA ¶ 35,805, at 175,114-15; *see M.A. Mortenson Co. v. Brownlee*, 363 F.3d 1203, 1205-06 (Fed. Cir. 2004).

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[7] CGS-ACE Security LCC filed, along with its opposition and reply brief, a motion to supplement the record with a second declaration by Steve Hartsuff, the chief executive officer of CGS and CGS-ACE Security LLC. CGS-ACE Security LCC stated that the declaration was needed to address issues raised in DOS's cross-motion for summary judgment and reply. DOS objected to the motion to supplement the record. All of the concerns raised by DOS go to the weight to be given to the supplemental declaration rather than its admissibility. We therefore deny DOS's objection. Nevertheless, the supplemental declaration does not create any genuine issue of material fact that affects the result in this matter.

II. Improper Payment of Invoices to ACE

A. Material Breach and Affirmative Defense of Payment

A claim for breach of contract contains four elements: "(1) a valid contract between the parties, (2) an obligation or duty arising out of the contract, (3) a breach of that duty, and (4) damages caused by the breach." *San Carlos Irrigation & Drainage District v. United States*, 877 F.2d 957, 959 (Fed. Cir. 1989). The party who asserts an affirmative defense to a breach of contract claim has the burden of proof. *See Shell Oil Co. v. United States*, 751 F.3d 1282, 1297 (Fed. Cir. 2014) ("[D]efendant has the burden of pleading and proving any affirmative defense that legally excuses performance."); *Lynchval Systems Worldwide, Inc. v. Pension Benefit Guaranty Corp.*, CBCA 3466, 14-1 BCA ¶ 35,792, at 175,067.

The contract incorporated FAR 52.232-33, which required payment of invoices via EFT to the bank account identified in CGS-ACE Security LLC's SAM registration. The parties agree that DOS improperly paid the four invoices to ACE's bank account, rather than to CGS-ACE Security LLC's account. Further, FAR 52.232-33 required DOS to make the correct EFT payment to the designated bank account, to pay interest, and to recover the improperly paid funds, and the parties agree that DOS failed to do these things. Based on these undisputed facts, there is no question that DOS breached the contract with regard to its obligations under FAR 52.232-33.

DOS does not specifically dispute that its payment of the invoices to ACE breached the contract. *See* Respondent's Opposition and Cross Motion for Summary Judgment at 5-6. Instead, DOS argues that the breach was nonmaterial because ACE was authorized to receive payment on behalf of CGS-ACE Security LLC, which was a joint venture comprised of CGS and ACE. DOS further contends that the breach of contract caused by payment of the invoices to ACE was excused based on the affirmative defense of payment. DOS cites the decision by the United States Court of Claims[8] in *Lentz v. United States*, 346 F.2d 570 (Ct. Cl. 1965), for the proposition that "[w]here a joint venture has incurred obligations within the scope of the business enterprise, the cases are agreed that payment by a third person to one co-venturer is payment to all." *Id.* at 576. *Lentz* relied on various state court decisions and legal authorities such as Corpus Juris Secundum and American Jurisprudence. *Id.* at

[8] The Court of Claims was a predecessor court to the United States Court of Appeals for the Federal Circuit. Decisions by the Court of Claims constitute binding precedent for the Federal Circuit unless overturned *en banc*. *South Corp. v. United States*, 690 F.2d 1368, 1370 (Fed. Cir. 1982).

574-77. Based on this principle, the Court found that the Government did not breach the contract by issuing checks to the joint venture that were endorsed on behalf of the joint venture by a single joint venture member and paid to that joint member's account. *Id.* at 576-77.

CGS-ACE Security LLC contends that the United States Court of Appeals for the Federal Circuit's decision in *Aspen Consulting, LLC v. Secretary of the Army*, 25 F.4th 1012 (Fed. Cir. 2022) more directly applies to this appeal and that *Lentz* does not support DOS's positions on the materiality of the breach or the affirmative defense of payment. *Aspen Consulting* reversed a decision by the Armed Services Board of Contract Appeals (ASBCA) concerning a claim for breach of contract based on the Government's payment of an invoice to a bank account different from the account specified in the contract, which incorporated FAR 52.232-33.[9] 25 F.4th at 1017-18. The ASBCA found that payment of the invoice did not breach the contract because the Government could have reasonably believed that appellant's principal officer had the authority to direct a change in payment. *Aspen Consulting, LLC v. Secretary of the Army*, ASBCA 61122, 20-1 BCA ¶ 37,715, at 183,088.

The Federal Circuit in *Aspen Consulting* held that the payment of funds to a bank account different from the account specified in the Central Contractor Registration (CCR) registration was a material breach of contract:

> The plain language unambiguously requires the government to pay Aspen using the EFT information contained in the CCR database. Its use of mandatory language, that payments "shall" be made "using the EFT information . . . in the [CCR] database," indicates that the contract afforded the government no discretion to pay an account other than the one listed in the CCR database.

25 F.4th at 1016. The Court also explained, however, that where an improper payment breaches the requirements of FAR 52.232-33, the Government may have an affirmative defense to the breach if it "establishes that the misdirected funds . . . were subsequently used

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[9] The contract in *Aspen Consulting* incorporated the 2013 version of FAR 52.232-33, which required EFT payment to the bank account specified in the contractor's Central Contractor Registration (CCR) entry. The CCR was a predecessor to the SAM. 78 Fed. Reg. 37676 (June 21, 2013). The differences between the two versions of FAR 52.232-33 (2013 and 2018) and between the CCR and the SAM are irrelevant for purposes of this decision.

for [appellant's] benefit." *Aspen Consulting*, 25 F.4th at 1017-18. If the funds benefitted appellant, it must "incorporat[e] those cost savings into its damages calculation." *Id.* at 1017 (quoting *Boston Edison Co. v. United States*, 658 F.3d 1361, 1367 (Fed. Cir. 2011)). The Court remanded the appeal to the ASBCA to determine whether appellant received the benefit of the improper payment because it was "'necessarily a fact-intensive task' that the Board must address in the first instance." *Id.* at 1018 (quoting *Health Choice, Inc. v. United States*, 970 F.3d 1364, 1379-80 (Fed. Cir. 2020)).

On remand, the ASBCA found that the Government established the affirmative defense of payment because the joint venture appellant received the benefit of the improper payment. *Aspen Consulting, LLC v. Secretary of the Army*, ASBCA 61122, 22-1 BCA ¶ 38,146, at 185,278-79. Specifically, the Board found that the account into which the payment was improperly deposited showed payments to vendors and employees under the contract in excess of the amount of the improper payment. *Id.*

DOS is correct that the Federal Circuit has not expressly overruled *Lentz* or its holding that payment of funds to one joint venture partner is payment to the joint venture itself. *See Lentz*, 346 F.2d at 577. The Court, however, clearly explained in *Aspen Consulting* that where a contract contains FAR 52.232-33, failure to pay in accordance with that clause is a material breach of that specific contract provision. 25 F.4th at 1017. Notably, *Lentz* did not involve a contractual requirement to pay to a specific bank account, as was the case in *Aspen Consulting* based on the inclusion of FAR 52.232-33. Whereas the Court of Claims in *Lentz* held that payment to a joint venture member was a payment to the joint venture itself and therefore not a breach of contract, the Federal Circuit in *Aspen Consulting* held that (1) failure to pay invoices to the correct bank account as required by FAR 52.232-33 was a material breach of the contract, but (2) the defense of payment excuses a breach of the contractual requirements of FAR 52.232-33 where the payment benefitted the party asserting the breach.

Because *Aspen Consulting* more clearly applies to the specific facts of this appeal, as compared to *Lentz*, we follow the guidance from *Aspen Consulting* and conclude that DOS materially breached the contract by paying the four invoices to ACE's bank account, rather than to CGS-ACE Security LLC's bank account.

B. The Joint Venture Received the Benefit of the Improper Payments

Having concluded that DOS breached the contract, we next address whether CGS-ACE Security LLC received the benefit of DOS's improper payments to ACE. DOS argues that CGS-ACE Security LLC received the benefit of the payment of the four invoices to ACE because those funds were credited to CGS-ACE Security LLC against amounts owed to ACE. CGS-ACE Security LLC argues that it did not receive the benefit of the improper payments because ACE received payments from CGS-ACE Security LLC in excess of that to which it was entitled under the joint venture agreement.

From January 2021 to August 2023, ACE sought payment from CGS-ACE Security LLC of €5,425,342.34 for work performed and received payment of €4,193,548.67. Exhibit 120 ¶¶ 31-33; Exhibit 208 at 1. CGS-ACE Security LLC acknowledges that ACE performed work that entitled it to payment of €3,801,081.55. *Id.* Based on these amounts, CGS-ACE Security LLC contends that ACE overbilled by €1,231,793.67 and was overpaid by €392,467.12.

ACE received €531,294.31 from DOS for the four invoices and credited that same amount to CGS-ACE Security LLC. *See* Respondent's Cross Motion for Summary Judgement at 6-7; Appellant's Opposition and Reply at 9-10. The credit is reflected in CGS-ACE Security LLC's audit and is confirmed by ACE's invoice summarizing credits and debits through August 2023. Exhibits 203 at 43228-29, 208 at 23; RSUMF ¶¶ 60-61. This credit reduced the amount owed by CGS-ACE Security LLC to ACE.

CGS-ACE Security LLC argues that because ACE submitted invoices for more than it was entitled under the terms of the joint venture agreement, and because CGS-ACE Security LLC paid ACE more than it was entitled, CGS-ACE Security LLC did not receive a benefit from DOS's improper payment of the invoices to ACE. In essence, CGS-ACE Security LLC argues that the alleged net loss arising from its overpayment to ACE precludes finding that DOS's improper payments to ACE conferred a benefit on CGS-ACE Security LLC . Neither the decisions in *Aspen Consulting* nor any other principles cited by CGS-ACE Security LLC support a conclusion that a joint venture must be in a net profitable position at the conclusion or termination of the joint venture agreement in order to have received a benefit from an improper third-party payment.

Black's Dictionary defines the term "benefit" as follows: "1. The advantage or privilege something gives; the helpful or useful effect something has <the benefit of owning a car>. 2. Profit or gain; esp., the consideration that moves to the promisee <a benefit received from the sale>. — Also termed legal benefit; legal value." Black's Law Dictionary (12th ed. 2024). Neither this definition nor any argument advanced by CGS-ACE Security LLC shows that the word benefit means net profit.

Additionally, the majority of ACE's costs that CGS-ACE Security LLC characterizes as unallowable were submitted to and paid by CGS-ACE Security LLC after DOS's improper payment of the four invoices in January 2022. *See* Exhibit 208 at 1, 7-17. CGS knew that the four invoices had been paid to ACE in January 2022 and that ACE refused to send those funds to CGS or return them to DOS. ASUMF ¶ 61. Despite this knowledge, CGS continued to make payments to ACE in 2022 (€1,705,673.36) and 2023 (€938,268.55). Exhibit 208 at 1. CGS-ACE Security LLC was responsible for managing the joint venture's finances and to the extent it believed that the payments were improperly received by ACE or that ACE was not entitled to payments of funds in a manner that made the €531,294.31 improperly retained, CGS-ACE Security LLC could have withheld payments to ACE following the improper payment by DOS in January 2022.

CGS-ACE Security LLC also contends that it did not receive a benefit from DOS's improper payments to ACE because DOS has not established that ACE spent the funds it received on contract performance. In essence, CGS-ACE Security LLC argues that it could not have received a benefit unless ACE segregated the money received from DOS and spent those segregated funds on eligible costs.

In *Aspen Consulting*, the Federal Circuit held that the affirmative defense of payment applies where the misdirected payments "were subsequently used for [appellant's] benefit." 25 F.4th at 1018. On remand, the ASBCA found that appellant received a benefit because the account into which the Government made the improper payment showed actual contract expenditures in excess of that amount. *Aspen Consulting*, 22-1 BCA at 185,278-79. Neither the ASBCA nor the Federal Circuit held, however, that a benefit is conferred only where the funds received from an improperly paid invoice were segregated and then spent on costs that benefitted appellant. Money is fungible, and there is, therefore, no need to determine that ACE spent the same funds that were improperly deposited in its account on allowable contract performance costs. *See United States v. Sperry Corp.*, 493 U.S. 52, 62 n.9 (1989) ("Unlike real or personal property, money is fungible."); *see also Holder v. Humanitarian Law Project*, 561 U.S. 1, 31 (2010).

As discussed, CGS-ACE Security LLC acknowledges that ACE incurred €3,801,081.55 in eligible costs and, therefore, that the payment of €531,294.31 was allowable within that total amount. Thus, any alleged overbilling or overpayment is a separate matter that does not alter the fact that CGS-ACE Security LLC received a benefit because ACE credited it €531,294.31.[10] At most, CGS-ACE Security LLC appears to argue that, had DOS

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[10] We further note that the alleged overbillings by ACE and overpayments by CGS-ACE Security LLC are private matters between joint venture partners that are not within this Board's jurisdiction to consider. *See Kristin Allred v. Department of Veterans*

paid the invoices to the correct bank account, the alleged net overpayment to ACE would have been smaller. ACE's crediting of the improper payments received from DOS to CGS-ACE Security LLC is sufficient to show that a benefit was conferred.

In sum, the undisputed facts show as a matter of law that CGS-ACE Security LLC received the benefit of the improper payments by DOS to ACE. CGS-ACE Security LLC does not demonstrate that the terms of the contract, or the undisputed material facts in the record, require DOS to pay the invoices a second time. CGS-ACE Security LLC is not entitled to additional payments in the amount of the face value of the four invoices. Based on this conclusion, DOS is entitled to summary judgment in its favor with regard to the claim for breach of contract regarding DOS's payment of invoices to ACE.

III. CGS-ACE Security LLC is Entitled to Interest

The contract incorporated FAR 52.232-25, which requires payment of interest on properly submitted invoices not paid with thirty days. CGS-ACE Security LLC submitted invoices for payment in July and August 2021. The face values of the invoices were paid to ACE in January 2022.

The undisputed facts show as a matter of law that CGS-ACE Security LLC is entitled to PPA interest on the submitted invoices, as required by FAR 52.232-25, running from thirty days after the submission of each invoice until their payment. In this regard, the parties do not dispute that the invoices were proper. ASUMF ¶ 32-34; *see* FAR 52.232-25(a)(5)(ii) (PPA interest is not due if delay was due to disagreement over the amount due or contract compliance). Instead, DOS merely paid the invoices late. *See Thunderhoof Ranch v. Department of the Interior*, CBCA 1554, et al., 10-2 BCA ¶ 34,477, at 170,046 ("If the agency does not make payment by the required payment date, it must pay the contractor not only the principal amount due, but also an interest penalty."). CGS-ACE Security LLC is also entitled to interest under the Contract Disputes Act on its PPA interest claim, dating from the contracting officer's receipt of the certified claim. 41 U.S.C. § 7109(a).

Affairs, CBCA 4952, 15-1 BCA ¶ 36,108, at 176,283 ("This Board, as an adjudicative tribunal within the executive branch of Government, does not sit to resolve disputes between private parties." (quoting *Employers Mutual Casualty Co.*, GSBCA 11003, 92-1 BCA ¶ 24,442, at 121,962 (1991)). We therefore need not resolve whether in fact ACE overbilled CGS-ACE Security LLC.

In sum, there are no genuine issues as to material facts regarding the matter of PPA interest. The record shows that CGS-ACE Security LLC is entitled to summary judgment and DOS is not entitled to summary judgment.

Decision

For the foregoing reasons, we **GRANT** DOS's motion for summary judgment and **DENY** CGS-ACE Security LLC's motion for summary judgment with respect to entitlement to payment of the value of the four invoices paid to ACE. We **DENY** DOS's motion for summary judgment and **GRANT** CGS-ACE Security LLC's motion for summary judgment with respect to entitlement to PPA interest on the value of the four invoices paid to ACE. By separate order, the Board will schedule further proceedings to address the calculation of the PPA interest amount properly due CGS-ACE Security LLC.[11]

Jonathan L. Kang
JONATHAN L. KANG
Board Judge

We concur:

H. Chuck Kullberg
H. CHUCK KULLBERG
Board Judge

Jonathan D. Zischkau
JONATHAN D. ZISCHKAU
Board Judge

[11] The parties each raise other collateral arguments. Although we do not address every argument, we have reviewed them all and find that none provides a basis for a different result in this case.