

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
CONTRACT OF APPEALS BOARD

APPEAL OF:

PRINCE CONSTRUCTION COMPANY, INC.	)	
	)	CAB No. D-1011
Under Contract Nos. 93-0037-AA-2-0-KA	)	(Quick Payment Act)
94-0065-AA-2-0-CC	)	

For the Appellant: Robert Klimek, Esq., Klimek, Kolodney & Casale, P.C. For the Government: Jack Simmons, III, Esq., Assistant Corporation Counsel.

Opinion by Administrative Judge Matthew S. Watson with Chief Administrative Judge Jonathan D. Zischkau, concurring.

**OPINION**  
(Courtlink Filing ID 2150339)

The Department of Public Works, Division of Transportation (“Appellee” or “District”), pursuant to Board Rules 117.1(a) and (d), moved for reconsideration of the Board’s order granting summary judgment as to the entitlement of Prince Construction Co., Inc. (“Appellant” or “Prince”) to penalty interest under the Quick Payment Act, D.C. Code § 2-221.01 *et seq.* (2001 ed.) (“QPA”). Because we conclude that the Appellant admitted in Superior Court that payment of the underlying principal amounts was an equitable recovery, not as a contractual recovery, Appellant is not entitled to QPA interest. Accordingly, we grant reconsideration, vacate our prior order and dismiss the appeal.

**BACKGROUND**

This action was brought by Appellant to recover payment from the District for work performed allegedly under Contract No. 93-0037-AA-2-0-KA for the repair of utility cuts in District streets (“Patch Contract”) and Contract No. 94-0065-AA-0-CC for repairs to the DPW Salt Storage Facility on Brentwood Road (“Salt Dome Contract”), (Complaint ¶7), together with interest penalties pursuant to the QPA for late payment. (Complaint ¶8). Just prior to filing this action with the Board, Appellant filed a two count complaint in Superior Court based on the same facts seeking recovery on alternative theories of *quantum meruit* and breach of contract. (C.A. No. 3528-97). The amount claimed in Superior Court was identical to the amount claimed before the Board, except that the court action did not include the additional request for QPA interest.<sup>1</sup> The parties jointly moved the court for a consent judgment in a motion filed July 23, 1997. The court action was concluded by a consent judgment and

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<sup>1</sup> The parties agree that initial jurisdiction to award QPA interest is exclusively with the Board.

payment by the District of the full amount claimed in the court action.<sup>2</sup> In the joint memorandum supporting the motion for consent judgment the parties stated:

Plaintiff has filed a complaint against the District of Columbia seeking \$2,506,487.00 which is the agreed value of 1) unpaid construction and road maintenance services which plaintiff Prince Construction Co., provided to the District of Columbia between December 1993 and September 1996 plus 2) unpaid work relating to Prince's construction of a salt storage facility for the District of Columbia between October 14, 1994 and August 21, 1995. All work was provided at the behest of the Department of Public Works. . . .

### DISCUSSION

The Quick Payment Act requires interest to be paid for late payment only for work performed under contract. If payment is made other than pursuant to a valid contract, the QPA is inapplicable. The Quick Payment Act is patterned after the federal Prompt Payment Act of 1982, as amended, 31 U.S.C. §§ 3901-3906. *A.S. Mcgaughan Co., Inc.* CAB No. D-897, Aug. 10, 1994, 42 D.C. Reg. 4667. The Comptroller General has held that the federal act does not authorize interest to be paid for delayed payment for work not covered by a valid contract, even if the work was done at the request and for the benefit of the government. *See Maintenance Service and Sales Corp.*, 70 Comp. Gen 664 (1991).

The District does not dispute that the work was done. As noted above, the District has consented to a court order directing it to pay for the value of the work and payment has been made. The District asserts, however, that it was not obligated to pay Appellant's claim for interest on late payments because the payments were not pursuant to valid contracts. In the case of the Patch Contract, the District asserts that the unpaid work was performed after the expiration of the contract and therefore not covered by a valid contract. In the case of the Salt Dome Contract, the District contends that the work was performed in excess of the contract ceiling without change orders and therefore without contract authority. Appellant, on the other hand, asserts that the payments were due under valid contracts, that payments were clearly late, and thus Appellant is entitled to QPA interest.

Regrettably, the parties failed in their joint motion to the Superior Court requesting the consent order to directly address the effects on the instant action of the proposed order. Thus, we are faced with determining what was intended by the Superior Court order. The issue before the Board is whether or not the amounts owed and paid in this matter were owed and paid pursuant to contract, or owed and paid as *quantum meruit*, that is, not pursuant to a contract, but nevertheless to compensate Appellant for the value of goods and services received and accepted by the District at Appellant's expense. The Board, on reconsideration, has reviewed the record before the Superior Court that culminated in the order for payment for the work performed.

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<sup>2</sup> It is the District's position that the executive branch of government has no authority to pay a claim for work done unless that performance is pursuant to a valid contract. The Superior Court, however, has equitable authority in excess of the legal authority of the executive to remedy unjust enrichment, even of the District. Where the District has accepted work not covered by contract, the District has encouraged claimants to file "friendly" lawsuits to recover the value received by the District so that the District can consent to be "ordered" by the court to make the payment.

We conclude that the parties' joint memorandum establishes that Prince received an equitable recovery. The joint motion is important because it underlies the Superior Court's consent judgment. The difference between a consent judgment and a voluntary dismissal in the Superior Court is that, in a consent judgment, the court receives a motion expressing the facts supporting the consent order and, based on these facts, approves an order directing action by the parties, while in a voluntary dismissal, the court dismisses the action without any review or substantive order. In effect, a motion for consent judgment and supporting memorandum of points and authorities is an admission of the facts supporting the judgment upon which the court will rely in entering the order.

The plain reading of the recitation of facts contained in the parties' joint memorandum in support of the motion for the consent judgment is that the amount of the judgment was based on the "value" of the goods and services, and not on a contract price.<sup>3</sup> In addition, the statement acknowledges that performance was "at the behest of the Department of Public Works," but not that the work was pursuant to a contract. These are the facts admitted by the parties and represented by both the Appellant and the District to the court to justify issuance of the order by the court. The memorandum can only be read to be a request to the court to exercise its equitable powers to direct the District to pay for the value of goods and services the District received and accepted. The memorandum pointedly does not request an order enforcing contract rights, rather it requests an equitable remedy.

The admission by both parties that the payment ordered by the court to be made by the District to Appellant was on equitable grounds was not clearly unreasonable. Appellant, having received the benefit of its admission by the payment ordered cannot now disavow what it previously admitted as fact in Superior Court. In light of the representation of facts by the parties to the court, and the court having acted upon the admitted facts in issuing its order, the Board should have ruled that QPA interest was not recoverable because the parties agreed in the Superior Court action that the Appellant's recovery was equitable, not contractual.

On reconsideration, based on the joint admission of the parties, the Board finds that the payments that were received by Appellant were not founded on contract. Therefore, Appellant is not entitled to Quick Payment Act interest penalties. The Board's summary judgment in favor of Appellant is vacated. Since Appellant's other claims in this matter have been satisfied through the consent judgment in Superior Court and Appellant is not, as a matter of law, entitled to Quick Payment Act interest penalties on the *quantum meruit* payments it received, the appeal is DISMISSED.

### SO ORDERED

July 15, 2003

/s/ Matthew S. Watson  
MATTHEW S. WATSON  
Administrative Judge

CONCURRING:

/s/ Jonathan D. Zischkau  
JONATHAN D. ZISCHKAU  
Chief Administrative Judge

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<sup>3</sup> The fact that the "value" of the services and the alleged contract price may have been the same was not before the court.