

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 2668212)

This is the second request for reconsideration of this matter. In an opinion dated February 25, 2002, the Board granted summary judgment for quick payment act interest to Appellant. (50 D.C. Reg. 7400). Upon motion of the District to reconsider that judgment, the Board vacated its judgment and dismissed the action. (July, 15, 2003, 50 D.C. Reg. 7518). The matter is now before the Board on the motion of the Appellant to reconsider the dismissal. Upon consideration of the instant motion and the response of the District, the Board finds no basis to reconsider the dismissal. The Appellant's Motion for Reconsideration is denied.

BACKGROUND

As noted in the Board's July 15, 2003 opinion, (*Id.*), in addition to the instant action, claims involving the contracts now before the Board were previously heard by the Superior Court. The Superior Court action was concluded by a consent judgment. As opposed to a voluntary dismissal in which the court makes no determination as to facts, in a consent judgment, just as in any other judgment, the court makes an affirmative determination of the facts and law in the case. The judgment of the court, including a consent judgment, establishes the facts, and may be enforced in its own right without further proof of the underlying cause. The Board, pursuant to the "law of the case" doctrine, is required to give deference to the Superior Court's determinations.

The Court of Appeals recently discussed the "law of the case" doctrine stating:

"The 'law of the case' doctrine bars a trial court from reconsidering the same question of law that was presented to and decided by another [judge] of coordinate jurisdiction" *Tompkins v. Washington Hospital Center*,

433 A.2d 1093, 1098 (D.C. 1981). "The analysis focuses on whether the question initially decided is substantially the same as the issue being presented and whether the court's first ruling was deemed to be final." *Gordon v. Raven Systems & Research, Inc.*, 462 A.2d 10, 12 (D.C. 1983) (citing *Tompkins*). The doctrine applies "when (1) the motion under consideration is substantially similar to the one already raised before, and considered by, the first court; (2) the first court's ruling is sufficiently final; and (3) the prior ruling is not clearly erroneous in light of newly presented facts or a change in substantive law." *P.P.P. Productions, Inc. v. W & L, Inc.*, 418 A.2d 151, 152 (D.C. 1980) (citation and internal quotation marks omitted).

Pannell v. District of Columbia, 829 A.2d 474, 477-8 (D.C. 2003).

Appellant supports the instant motion for reconsideration by a recitation of facts supporting its position that the payment made in settlement of the Superior Court action was payment of a contract claim and not an equitable claim of unjust enrichment. The facts now alleged by appellant were all available at the time the Superior Court entered its judgment. We found in our previous order dismissing the matter that the joint memorandum in support of the consent judgment which was adopted in the court's final judgment clearly based the award on equitable, rather than contract grounds. This is the same question of law as is now before the Board. Regardless of whether the Board might itself come to a different opinion as to whether the payments were contractual or equitable, the determination adopted by the Superior Court is not clearly erroneous. The Board may not relitigate a factual matter already adopted by the parties and reduced to a consent judgment of the Superior Court. The Board is therefore bound to follow the Superior Court determination in this matter that the payment was based on equity, not contract. Interest is not authorized on an equitable payment. Appellant's Motion for Reconsideration must therefore be denied.

SO ORDERED

November 7, 2003

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

CONCURRING:

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