

IN THE
**United States
Court of Claims**

NO. C-1030

COLLIER MANUFACTURING COMPANY, INC.

VS.

THE UNITED STATES OF AMERICA

PLAINTIFF'S REQUEST FOR FINDINGS OF
FACT AND BRIEF

The claimant considering the facts hereinafter set forth to be proven and deeming them material to the due presentation of this case in the findings of fact, requests the Court to find the same as follows:

I

That the claimant is a duly created corporation under the laws of the State of Georgia, engaged in the manufacture of knit underwear and is the sole owner of this claim, not having made any assignments thereof, and the claimant and its officers have always borne true allegiance to the United States and have never

aided, abetted, or given encouragement to the enemies of the United States. (D. C. Collier, p. 43, q. 1 and 2, p. 51, q. 84, 85 and 86).

II

That on March 7, 1918, May 7, 1918, and June 11, 1918, Clift and Goodrich, of New York, were selling agents of the claimant and were known and treated by the Government officials as the selling agents of the claimant; that the contracts entered into in the name of Clift and Goodrich were contracts between the Government and the claimant; that on March 7, 1918, a contract No. 1164-A was entered into between the United States and the claimant through its agents, Clift and Goodrich, for the manufacture of one hundred and twenty thousand undershirts to be completed August 31, 1918, which contract is made a part hereof by reference as Exhibit "A"; on May 7, 1918, a similar contract No. 2848-A to be completed October 31, 1918, was similarly entered into, which contract is made a part hereof by reference as Exhibit "B"; on June 11, 1918, a similar contract No. 3735-A was similarly entered into to be completed November 1, 1918, which contract is made a part hereof by reference as Exhibit "C"; each of the three contracts provided that the undershirts were to be manufactured by the claimant. (D. C. Collier, p. 44, q. 5, 7, 8, 9, 10, 13, 14 and 15, p. 52, q. 7 and 8, p. 53, q. 15, 16, 17, p. 54, q. 18 to 28, p. 59, q. 71 and 72) (J. C. Collier, p. 61, q. 1 to 8, p. 62, q. 9 to 19).

III

That the Government had sought out the claimant

and requested it to take these contracts, and was informed that the claimant would have to increase its plant and facilities, and the claimant was required by the contracting officer and other Government officers to increase its plant and facilities to carry out the said contracts and was performing them faithfully and satisfactorily and was ready and willing to complete the contracts in full in accordance with specifications, but was prevented from doing so by the Government. (D. C. Collier, p. 45, q. 18, 19, 20, 21, 23, 24 and 25, p. 47, q. 40 and 41, p. 55, q. 36, 37 and 38, p. 57, q. 49) (J. C. Collier, p. 62, q. 20 to 25, p. 66, q. 75 and 76).

IV

That during August, the Government inspectors who were not experienced and were ignorant and knew nothing whatever of inspecting garments began to mutilate and destroy thousands of garments without properly inspecting same so that they could not be used by the Government or by civilian trade; the Government at this time having found that they had practically won the war and it had an exceedingly large excess of orders for such underwear, began negotiations with the claimant for cancellation of the contracts Exhibits "A", "B" and "C", the negotiations being through Maj. F. H. Burgher, who originally negotiated the contracts and signed the requisition and who, on September 22, 1918, agreed that the contracts would be cancelled and the Government was to take and pay for all finished merchandise, both first and seconds, and merchandise in process of manufacture, and that satisfactory inspectors were to be sent to the claimant's plant immediately to inspect the merchandise in process of manufacture and to pay the claimant its losses

under the termination of the contract. (D. C. Collier, p. 48, q. 46 and 47, p. 56, q. 41, p. 46, q. 25 to 29) (J. C. Collier, p. 63, q. 29 to 35).

V

That while the claimant was thus negotiating with Major Burgher and without the claimant's knowledge, Capt. S. W. Shaffer and other subordinate officers of the Government secretly negotiated with Clift and Goodrich certain alleged cancellations of the said contracts, exhibit "A", "B", and "C", copies of which alleged cancellation of contracts No. 2549, dated October 18, 1918, No. 2546, dated October 22, 1918, and No. 2548, dated October 19, 1918, are made a part thereof by reference as exhibits "D", "E", and "F", which said alleged cancellation contracts were executed without the knowledge or authority of the claimant by mere agents without authority to cancel and such alleged cancellation was, and is a fraud on the claimant and is not of any force or effect and the only cancellation agreement is the one between Major Burgher and the claimant.

VI

That the Government refused to live up to the agreement made on September 22, 1918, for the cancellation of the contracts, exhibits "A", "B", and "C", with the claimant, and on October 23, 1918, Major Burgher made an agreement with the claimant through Mr. J. C. Collier that the Government and claimant would cancel the contracts and that the Atlanta depot would send inspectors to the claimant's plant and that the Govern-

ment would take over and pay for all the garments which were manufactured and those in process of manufacture and that the unfilled portions of the contract would be cancelled and that the Government would pay the claimant all that it was entitled to, but later the Government refused to carry out this cancellation agreement. (J. C. Collier, p. 65, 2. 50 to 57).

VII

On November 4, 1918, the Clothing and Equipage Division, by letter, signed by Harry Jacobson, a subordinate officer under Major Burgher, directed to Clift and Goodrich, but mailed direct to the claimant, offered a cancellation of the contracts, Exhibits "A", "B", and "C", the letter, Exhibit "H" to the depositions is made part hereof by reference, but the Government later refused to carry out this agreement to cancel (p. 65, q. 55 to 64); at this time the claimant did not know of the so-called cancellation agreement Exhibits "D", "E", and "F", and did not learn of same until the following Spring (p. 66, q. 69) when claimant repudiated same and has always repudiated same as unauthorized. (p. 59, q. 65 to 70, p. 67, q. 81 to 85).

VIII

That the claimant by the Government violating its agreement and refusing to carry out the cancellation agreements made directly with the claimant, damaged the claimant to the amount of \$61,530.02, as is set out in detail in Exhibit "G", which is made a part thereof by reference (p. 51, q. 76 to 83, p. 47, q. 33 and 34, p. 66, q. 73, 74 and 77); that the Government auditors never

disputed the figures or the amount of the claimant's losses.

CONCLUSIONS OF LAW

The Court decides as a conclusion of law that there is justly due and owing to the plaintiff by the defendant the sum of \$61,530.02 without any offsets or deductions.

STATEMENT OF THE CASE

The claimant early in 1918 was doing a large civilian business in manufacturing underwear, when it was approached by the Government through Lieutenant Stanley, of the St. Louis depot, and Major Power, of the Atlanta depot, requesting the claimant to take Government contracts. The negotiations were continued at Barnesville, Ga., and then the claimant's officers came to Washington where the negotiations were further continued, and then they were consummated in New York, and the contracts were executed by the sales agents of the claimant, Clift and Goodrich, in their effort to save having to give additional bond, as the sales agents were already bonded to the Government; all the parties to the contracts at that time and all the way through treated the claimant as the contractor, and Clift and Goodrich merely as agents. After the battle of Chateau Thierry, the Government finding that the War was practically won, began examining its contracts and discovered that it had contracts far in excess of its future requirements for underwear and it began tactics to force the claimant to give up its contracts or to cancel same. It put three inspectors in the claimant's plant, who were in no way qualified

as inspectors and were ignorant and incompetent, one being a belt boy in an overall factory, one a hundle wrapper in a department store, and the other an unexperienced young man just out of college, and these inspectors in violation of article of Sec. 2 of the contract (p. 8) mutilated and tore up some 25,000 garments and stamped them in such a way that they could not be used for Government or civilian trade and could not be sent to the depot for final inspection.

The contract provides that the inspectors should act only in an advisory capacity and that the final inspections should be at the depot in Atlanta.

The claimant vigorously protested such inspection, and Major Burgher, who originally negotiated the contracts and signed the requisitions for the contracts went into the matter, and stated, as well as Major Walton, that the Government had wrongfully inspected the garments and that it should not have been done, and they promised that they would stop such practices, but they only stopped for a few days.

On September 5, 1918, Major Gray, of the Atlanta depot, sent a telegram: "No further shipments will be received on contract 2848-A until satisfactory garments can be delivered", notwithstanding that the Atlanta depot had not turned down more than 40 or 50 garments under the former contract 1164-A for 120,000 garments, and only a few had been ejected by the Atlanta depot out of the 10,480 garments delivered under contract 2848-A.

The Government officers began then negotiating with the claimant, the negotiations being mainly carried on by Major Burgher, who originally negotiated the contracts and signed the requisitions, and on September 22, 1918, he agreed to cancel all three contracts where by the Government was to take all the goods manu-

factured and the goods in process of manufacture and to fairly and justly inspect same and to pay the claimant for losses under the cancellation of the three contracts, Exhibits "A", "B", and "C", notwithstanding there was no cancellation clause, as no percentage of increase or decrease was named in the circulars to bidders and no bids were taken and no circulars were made part of the contract.

That then Major Burgher and other Government officers for some unknown reason refused to carry out this cancellation agreement and to send the inspectors.

Then on October 18, 1918, October 19, 1918, and October 22, 1918, another Government officer, Capt. S. W. Shaffer, without the knowledge of the claimant, and so far as we can learn, without the knowledge of Major Burgher negotiated or claimed to have negotiated certain cancellations of the said contracts, being Exhibits "D", "E", and "F", but it will be noted that the claimant was never informed of the claimed cancellations until the Spring of 1919, when a letter was written to the Company on April 8, 1919 (p. 50) in which Lieutenant Van Horn stated when the cancellation of the contracts were claimed to have been executed and referred to them as "supplemental agreement *reducing your contracts,*" showing that they considered them the claimant's contracts. It will be further noted that Clift and Goodrich not even after that letter admitted ever having executed the so-called cancellation (p. 67, q. 81 to 85) and the Government has never made any effort to prove that they were executed by Clift and Goodrich.

After these so-called cancellations, Major Burgher entered into other negotiations with Mr. J. C. Collier of the claimant on October 23, 1918, and agreed then to another cancellation agreement whereby Major

Burgher agreed to send inspectors down at once and to take what goods claimant had manufactured and the goods in process of manufacture and to cancel the unfilled portion of the contracts and to pay claimant its losses for the cancellation, but Major Burgher failed and refused to carry out this agreement and then on November 4, 1918 (Exhibit "H", p. 70), Mr. Harry Jacobson, who was under Major Burgher, wrote another offer to the claimant, addressed to Clift and Goodrich, but mailed direct to claimant at Barnesville, Ga., which put restrictions on inspections and percentages which had not been in any of the former agreements made by the Government with Mr. D. C. Collier on September 22, 1918, and Mr. J. C. Collier on October 23, 1918, and later the Government refused to live up to the letter of Captain Jacobson, Exhibit "H", this probably because Major Burgher had learned of the so-called cancellation agreements of Clift and Goodrich, but he did not tell claimant of them.

The Government had promised to take care of the interests of the claimant but did not do so, but terminated the three contracts, Exhibits "A", "B", and "C", in violation of their terms and without any right unless the War Statutes gave the Government that right; the claimant has proven the items of this claim and is entitled to judgment.

BRIEF

It is undisputed that the Government officers, the contracting officer and the ones who were in charge of the performance of the three contracts construed them to be the claimant's contracts and this construction by the parties is binding on the Court. District of Colum-

bia vs. Gallaher, 124 U. S. 505, 8 Sup. Ct. 585, affirming 19 Ct. Cls. 564.

The Government letter of April 8, 1919 (p. 50) refers to them as the contracts of the claimant and not of Clift and Goodrich.

As these contracts were negotiated with the claimant and treated as its contracts and there was no cancellation clause, the Government having refused to comply with same, but having suspended them is liable to the claimant for its damages.

In Russell Motor Company vs. United States, 261 U. S. 514, 43 Sup. Ct. 428, affirming 57 Ct. Cls. 626, the Court made allowances for damages in contracts which were terminated, but did not have a termination or cancellation clause and held that it could do so under the terms of the Statute, but the Court also stated that where there was no termination clause and the Statute did not authorize termination that the claimant was entitled to more items of damage for the violation than was under the Statute.

It does not seem that the Statute governs these contracts and accordingly the claimant is entitled to all the damages claimed, the same having been duly performed and the facts and figures have never been disputed by the Government auditors. *performed*
 Peninsular Stove Co. vs. U. S., 58 Ct. Cls. 36.

Let it be remembered that the Government put on no testimony whatever, denying the fraudulent cancellations of the contracts obtained by Capt. Shaffer from Clift and Goodrich if they were actually signed Clift and Goodrich. *by*

But even after the dates of the so-called cancellations, Major Burgher, who was the real officer in charge, he having originally negotiated the contracts and signed the requisitions, was still supervising the

contracts and he was actually negotiating, and did agree to a cancellation whereby the claimant would be paid the amount sued for, Major Burgher having made these verbal agreements for cancellations and the Government having refused to proceed with the work, the claimant is entitled to recover the amount of its claim, \$61,530.02, and judgment for same is prayed.

Respectfully submitted,

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Attorney for Claimant.