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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA for
the use and benefit of
PROGRESSIVE SERVICES, INC.,
d/b/a/ PROGRESSIVE ROOFING,

Plaintiff,

v.

JMR CONSTRUCTION CORP.; NORTH
AMERICAN SPECIALTY INSURANCE
COMPANY; and DOES 1 through
10 inclusive,

Defendant.

JMR CONSTRUCTION CORP.,
Counterclaimant,

v.

PROGRESSIVE SERVICES, INC.
d/b/a PROGRESSIVE ROOFING,
and ROES 1 through 10,
inclusive,

Counterdefendants.

No. 2:11-cv-03005-JAM-DAD

**ORDER GRANTING PLAINTIFF'S
MOTION TO LIFT STAY**

Plaintiff Progressive Services, Inc. ("Plaintiff") moves
(Doc. #30) to lift the stay issued November 8, 2012 (Doc. #29),

1 of this action against Defendants JMR Construction Corp. ("JMR");
2 North American Specialty Insurance Company ("NAS"); and Does 1
3 through 10 (collectively "Defendants"), and on JMR's Counterclaim
4 (Doc. #10) against Plaintiff and Roes 1 through 10.¹

5 6 I. PROCEDURAL BACKGROUND

7 In August 2010, JMR entered into a contract with the
8 Department of the Air Force, on behalf of the United States of
9 America, to perform certain work at Beale Air Force Base in
10 California ("Project"). First Amended Complaint ("FAC") (Doc.
11 #7) ¶ 6. One month later, JMR entered into a subcontract with
12 Plaintiff in which Plaintiff agreed to furnish certain roofing
13 work on the Project. Id. ¶ 8. Shortly after Plaintiff began
14 working on the Project, it ran into unforeseen difficulties and
15 required additional time and compensation to complete the roofing
16 work. Id. ¶¶ 9-11, 14, 15. Plaintiff submitted its requests for
17 additional compensation to JMR and JMR refused to pay. Id. ¶ 17.
18 Plaintiff filed its original complaint on November 10, 2011 and
19 its FAC on January 12, 2012.

20 On November 7, 2012, Plaintiff and Defendants submitted a
21 Joint Motion to Stay ("Joint Motion") (Doc. #27). In this
22 motion, the parties stated that they had an agreement
23 ("Agreement") to enter into a pass-through arrangement. Joint
24 Mot. at p. 2. The pass-through arrangement would allow Plaintiff
25 to pursue additional compensation, in JMR's name, for the

26
27 ¹This motion was determined to be suitable for decision without
28 oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled
for June 17, 2015.

1 unanticipated site conditions directly against the U.S.
2 Government under the Contract Disputes Act ("CDA"), 41 U.S.C.
3 § 7101. Id. The Joint Motion requested that this litigation be
4 stayed pending the outcome of the dispute resolution process
5 outlined in the CDA, and that all pre-trial and discovery
6 deadlines should be vacated. Id. The Court granted the Joint
7 Motion (Doc. #29) and this lawsuit has been stayed since November
8 8, 2012.

10 II. OPINION

11 Plaintiff asks the Court to lift the stay in order to
12 pursue recovery through the instant action. Mot. ¶ 5. The
13 Court stayed this case "pending Plaintiff's pursuit of
14 administrative remedies against the federal government" (Doc.
15 #29). Plaintiff has fulfilled its obligations under the Court's
16 stay Order. It did so voluntarily and at its sole cost and
17 expense. Its decision to now stop pursuing this administrative
18 remedy is well within its rights under the stay Order. Indeed,
19 nowhere in any agreement, motion or order is there any language
20 which prohibits Plaintiff from filing the instant motion until
21 all administrative remedies have been exhausted. Plaintiff is
22 also not required to obtain Defendants' consent before deciding
23 to stop pursuing any administrative remedies.

24 Plaintiff is entitled to have its day in court. The reasons
25 for the administrative claim being denied are not relevant nor
26 does it matter whether or not Defendants met all of their
27 obligations under the joint agreement staying this action.
28 Regardless of the terms of the written Joint Prosecution

1 Agreement, the conditions of the stay are controlled by the
2 Court's Order. Defendants have not cited to any law or
3 authority that gives the Court the power to deny the motion.

4 The Court ordered a stay of the instant action "in light of
5 the parties' agreement and stipulation that this matter should be
6 stayed pending Plaintiff's pursuit of administrative remedies
7 against the federal government." Order at p. 1. The purpose of
8 the stay was to give the parties a chance to either resolve the
9 action or simplify the issues for trial. See Joint Mot. at p. 2.
10 After more than two and a half years it is readily apparent that
11 the parties are no longer in agreement, and Plaintiff is now
12 entitled to resume its action for recovery in this Court. The
13 Court grants Plaintiff's motion and lifts the stay.

14

15 III. ORDER

16 For the reasons set forth above, the Court GRANTS
17 Plaintiff's motion to lift the stay. The parties shall file a
18 joint status report within twenty days of this order.

19 IT IS SO ORDERED.

20 Dated: June 22, 2015

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JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE