



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: September 27, 2007

CBCA 479

WILLIAM W. CASWELL,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

William W. Caswell, pro se, Roswell, GA.

Gabriel N. Steinberg, Office of Regional Counsel, General Services Administration, Atlanta, GA, counsel for Respondent.

Before Board Judges **BORWICK**, **HYATT**, and **DeGRAFF**.

HYATT, Board Judge.

This appeal concerns the purchase by appellant, William W. Caswell, of a 1993 Ford truck offered for sale by the General Services Administration (GSA) through Rawls Auto Auction. Appellant's primary complaint is that the truck as purchased was inoperable in four wheel drive, but the description provided in the web site did not advise prospective purchasers of this fact. He seeks the costs he incurred in repairing the vehicle. GSA has filed a motion for summary relief, contending that, based on the undisputed facts of record, the Government is entitled to prevail as a matter of law.

Findings of Fact

1. A GSA fleet vehicles auto auction was conducted at Rawls Auto Auction in Leesville, South Carolina, on January 24, 2006. An opportunity to inspect vehicles and to register early was provided on January 23, 2006. Payment was due on the date of the auction, January 24, and property removal was required to be completed by February 1, 2006. Appeal File, Exhibit 3.

2. Bidders who registered to participate in the auction agreed to certain terms and conditions of sale. The registration agreement, which was signed by Mr. Caswell on the date of the auction, provided that the registered bidder agreed to be subject to GSA's General Sales Terms and Conditions (Standard Form 114C) and any special terms applicable to the sale. Copies of these terms were made available at registration. In addition, the registration agreement itself expressly provided that vehicle descriptions were believed to be correct and were "conscientiously set forth, however, there is no warranty or guarantee, actual or implied." The registration agreement further stated that all items were sold "AS IS" and "WHERE IS." Finally, the agreement cautioned that further important announcements may be made by the auctioneer and that it was the buyer's responsibility to listen for pertinent announcements. Appeal File, Exhibit 3.

3. Among the general announcements made at the auction was the following:

The vehicles offered at this sale are owned by the U.S. Government. The terms and conditions of this sale are contained in Standard Form 114C and any special terms and conditions announced at this time. The property is warranted as to description only. Condition is not guaranteed. Defects, when known, are announced. However, absence of any mention of defects does not mean there are none. Copies of the Description Warranty clause, the Privacy Act Notice, and excerpts from the Standard Form [SF] 114C are posted in the sales area, included in the sales catalog, and are available in their entirety upon request from GSA, Region 4. Please take the time to familiarize yourself with the information contained in the excerpts from the SF-114C, the Privacy Act Notice, and the Description Warranty. We urge inspection prior to bidding.

The applicable description warranty clause provided in pertinent part:

The Government warrants to the original purchaser that the property listed in the Invitation for Bids will conform to its description. Condition is not guaranteed. If a mis-description is determined before removal of the property, the Government will keep the property and refund any money paid. If a mis-description is determined after removal, the Government will refund any money paid if the purchaser takes the property at his or her expense to a location specified by the contracting officer. No refund will be made unless the purchaser submits a written notice to the contracting officer within 15 calendar days of the date of removal that the property is mis-described and maintains the property in the same condition as when removed. . . . This warranty is in place of all other guarantees and warranties, expressed or implied. The Government does not warrant the merchantability of the property or its fitness for any use or purpose. The amount of recovery under this provision is limited to the purchase price of the mis-described property. The purchaser is not entitled to any payment for loss of profit or any other money damages, special, direct, indirect, or consequential.

Appeal File, Exhibit 3; Respondent's Motion for Summary Relief, Exhibit 2.

4. Thirty-two vehicles were offered for sale at this auction, including a 1993 Ford F800, which was listed as VIN 1FDXK84A6PVA02256, having a mileage of 66,170. Mr. Caswell, who had signed the registration agreement on January 24, 2006, purchased a total of three vehicles at this auction, including the F800 truck for the amount of \$12,500. Appeal File, Exhibits 2-4; Respondent's Motion for Summary Relief, Exhibit 3.

5. When the subject truck was driven through the auction lane, it was announced that the front drive shaft had been removed and placed inside the vehicle. Nothing in the repair history of this vehicle explained why the drive shaft might have been removed at the sale. Appeal File, Exhibits 1, 6, 12.

6. In May 2006, Mr. Caswell contacted the contracting officer by electronic mail (e-mail) to raise concerns about the need for significant repairs involving the Ford truck's drive shaft. He stated in this e-mail message that he had telephoned in February 2006 to advise the contracting officer that there were serious problems with the running gear in this truck. He further stated that since late January he had been trying to have this problem repaired. Finally, Mr. Caswell added that although he had previously purchased, through GSA auctions, trucks with major mechanical problems, these problems had been disclosed

in advance of the auction. As such, the need to repair the front drive shaft, which cost him some \$5000, should have been disclosed. Thus, in his view, the description of the truck provided at auction was inadequate. Accordingly, Mr. Caswell requested compensation for the amount spent to repair the truck. Appeal File, Exhibit 7.

7. By letter dated July 24, 2006, the contracting officer denied Mr. Caswell's claim for the expense of repairing the truck's drive shaft. In this letter, the contracting officer pointed out that the Government did not warrant the condition of the vehicles sold and that the absence of any mention of defects did not mean that there would be none. The contracting officer also stated that the only remedy available to the purchaser -- a refund of the purchase price if the vehicle was misdescribed -- was inapplicable for several reasons, but most notably because the time limit to seek a refund is fifteen days from the date of purchase, and the vehicle must be returned in the condition it was in at the time of sale. Finally, the contracting officer noted that the sale terms and conditions did not allow for the remedy sought by appellant -- reimbursement of the cost of repairs. Appeal File, Exhibit 13.

8. Thereafter, Mr. Caswell appealed the contracting officer's decision.

Discussion

Respondent has filed a motion for summary relief. Summary relief is properly granted when there is no genuine issue of material fact and the moving party is clearly entitled to judgment as a matter of law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *US Ecology, Inc. v. United States*, 245 F.3d 1352, 1355 (Fed. Cir. 2001); *Olympus Corp. v. United States*, 98 F.3d 1314, 1316 (Fed. Cir. 1996). In resolving summary relief motions, a fact is considered to be material if it will affect our decision and an issue is genuine if enough evidence exists such that the fact could reasonably be decided in favor of the non-movant at a hearing. *John A. Glasure v. General Services Administration*, GSBCA 16046, 03-2 BCA ¶ 32,284, at 159,746 (citing *Celotex Corp.*; *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986)).

Although the salient facts are not disputed, the meaning to be attributed to them is. GSA points out that the truck was driven through the auction with the forward drive shaft removed and placed inside the vehicle. An announcement to this effect was made at the auction. The reason for removal of the drive shaft was not included in the vehicle's maintenance history. The truck purchased by Mr. Caswell was the truck advertised for sale and driven through the auction lane; no element of the description was inaccurate. In addition, GSA asserts that the terms and conditions of sale preclude recovery by appellant. The vehicle's condition was not warranted and bidders knew the drive shaft had been removed when the vehicle was driven through the auction lane. Moreover, even if a

misdescription could be established, the only remedy available to a bidder under the terms and conditions of sale would be to return the vehicle within fifteen days of the sale for a refund of the purchase price. The availability of this remedy expired once the fifteen days lapsed and appellant undertook repairs in lieu of asking to return the vehicle.

In support of his position, Mr. Caswell relies on the statement in the general announcements that “defects, when known, are announced.” He maintains that GSA did not comply with this proviso when it failed to announce that the drive shaft was defective. He surmises that GSA must have known this was the case when it drove the vehicle through the auction lane and announced that the drive shaft had been removed and placed inside the vehicle. In appellant’s view, the defects in the drive shaft rendered the truck “inoperable” and this is how it should have been represented to prospective buyers. Appellant asserts that the failure to inform the prospective buyers of defects in the drive shaft should supersede the terms and conditions of sale and override the limitations on remedies available to bidders.

In response to Mr. Caswell’s contentions, GSA counters that it did nothing to attempt to misrepresent or conceal the condition of the truck. The bidders were informed and could see that the drive shaft had been removed. The general announcements cautioned that the failure to identify deficiencies did not mean none existed. No information was provided about the condition of the drive shaft, other than the fact that it had been removed. This fact, however, coupled with the age of the truck, could reasonably be expected to have alerted prospective bidders to the possibility that repairs would be needed. In support of its position that it did not deliberately withhold information about the truck’s condition, GSA points to the maintenance history of the vehicle, which contained no explanation as to why the drive shaft had been removed. The vehicle, although inoperable with the drive shaft installed, was in fact driven through the auction lane. Mr. Caswell’s unsupported assertion that GSA “must have known the drive shaft was defective” is not enough to overcome the fact that the maintenance history makes no mention of the drive shaft.

In essence, the vehicle Mr. Caswell purchased required far more extensive repairs than he had anticipated. The terms of sale offer no remedy in this situation, however, as the condition of the vehicle is expressly not warranted. Under these terms, the buyer assumes the risks and uncertainties inherent in purchasing a used vehicle through the auction process. *See Chris Ward v. General Services Administration*, GSBCA 16473, 05-1 BCA ¶ 32,881; *Coleridge D. Henri v. General Services Administration*, GSBCA 13991, 97-2 BCA ¶ 29,187, at 145,161; *accord Rene Hernandez v. General Services Administration*, GSBCA 15448, 01-2 BCA ¶ 31,463; *William B. Wobig v. General Services Administration*, GSBCA 14424, 98-1 BCA ¶ 29,650. It is expected that the buyer will consider and account for these risks and uncertainties, including the possible need for extensive repairs, in formulating the price that is bid for the property.

In this case, a misdescription cannot be established given the relevant facts. Mr. Caswell bid on and purchased the 1993 Ford truck described in the auction brochure and driven through the auction lane. Even if the truck were deemed to have been misdescribed, the sole relief prescribed in the terms and conditions of the sale, which appellant accepted when he signed the registration agreement prior to bidding, limited the buyer's relief to a refund of the purchase price if the contracting officer was notified of the misdescription within fifteen days of removing the truck from the Government's possession and the truck was returned in the same condition to a location specified by the contracting officer. *See, e.g., Roberto Gomez v. General Services Administration*, GSBCA 16700, 05-2 BCA ¶ 33,095. Mr. Caswell did not actually submit his claim to the contracting officer until several months had elapsed after the property was removed from the Government's possession. Moreover, he asked for reimbursement of the cost of repairs to the drive shaft, rather than offering to return the truck for a full refund. It is well-settled that these terms do not give the purchaser the option of obtaining such relief. *John A. Glasure v. General Services Administration*, GSBCA 16046, 03-2 BCA ¶ 32,284; *Bob's Auto Sales v. General Services Administration*, GSBCA 14447, 98-1 BCA ¶ 29,647.

To conclude, the auctioned vehicle was not misdescribed and the terms of sale expressly disclaimed any warranty as to condition of the truck. As a matter of law, there is no remedy available to appellant and GSA is entitled to prevail.

Decision

Respondent's motion for summary relief is granted. The appeal is **DENIED**.

CATHERINE B. HYATT
Board Judge

We concur:

ANTHONY S. BORWICK
Board Judge

MARTHA H. DeGRAFF
Board Judge

