

**Board of Contract Appeals**  
General Services Administration  
Washington, D.C. 20405

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DENIED: June 19, 2002

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GSBCA 15303

STEPHEN E. BRYANT,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Stephen E. Bryant, pro se, Taylors, SC.

John C. Ringhausen, Office of Regional Counsel, General Services Administration,  
Atlanta, GA, counsel for Respondent.

Before Board Judges **NEILL**, **HYATT**, and **GOODMAN**.

**HYATT**, Board Judge.

Appellant, Stephen E. Bryant, has appealed a contracting officer's decision assessing liquidated damages in connection with the default termination of his purchase of a vehicle at an auction conducted by respondent, the General Services Administration (GSA). GSA has filed a motion for summary relief, asserting that the material facts are not in dispute and it is entitled to judgment as a matter of law. Although afforded ample opportunity to respond to the Government's motion, Mr. Bryant has not filed a response. After reviewing the Government's motion, the Rule 104 file, and the appellant's allegations as set forth in the letter accompanying his notice of appeal, we conclude that there are no material factual disputes to resolve and grant the Government's motion.

Findings of Fact

1. On August 3, 1999, GSA conducted sealed bid sale number 41FBPS99088, an auction sale of Government vehicles and other surplus property. The auction was held at a

GSA facility in Atlanta, Georgia. Appeal File, Exhibit 2.

2. Mr. Bryant submitted a bid for several lots, including lot 55, a 1989 Mercury Grand Marquis. His bid of \$989 was accepted for that item, and a formal notification of award was mailed on August 13, 1999. Appeal File, Exhibits 3-4.

3. The invitation for bids provided that property must be paid for and removed within thirty days after the award date, which was August 3. The invitation for bids also addressed the consequences of a bidder's default in the payment for and removal of awarded items:

Bidders are cautioned to bid only on items they are prepared to pay for and remove in accordance with the terms and conditions of this sale. Failure to pay for and remove all items awarded within the specified time could result in termination of the contract. The bidder also may be subject to paying liquidated damages (see S[tandard] F[orm] 114C, Condition No. 9). **GSA does not grant extensions of time for payment and removal.**

Appeal File, Exhibit 3 (emphasis in original).

4. The Default clause in Standard Form 114 provides that in the event the purchaser breaches the contract by failing to pay the purchase price or remove the vehicle within the prescribed times, the contracting officer may find that the purchaser is in default and may also retain or collect as liquidated damages an amount equal to twenty percent of the purchase price of the item. Appeal File, Exhibit 1.

5. GSA never received payment for the vehicle. Correspondence between appellant and the contracting officer reflects that on September 15, the contracting officer called Mr. Bryant to inquire about why payment had not been received. Mrs. Bryant told the contracting officer that a cashier's check had been sent by certified mail to GSA on August 30. That payment was not received by GSA. The contracting officer offered to extend the deadline for payment and vehicle removal so payment could be resolved. On September 17, Mrs. Bryant contacted the contracting officer again. She said that the bank had agreed to cancel the cashier's check and issue another one on September 22. Mrs. Bryant represented that the payment would be sent by overnight mail. With that understanding, the contracting officer extended the time for payment until September 24, and the time for vehicle removal to September 30. Appeal File, Exhibit 8.

6. GSA did not receive payment for the vehicle on September 24, or anytime thereafter, and there were no further communications with appellant.<sup>1</sup> On October 7, 1999, by certified mail, return receipt requested, GSA sent a notice to Mr. Bryant that his contract to purchase the vehicle had been terminated and liquidated damages assessed in the amount of \$197.80. This notice was returned by the United States Postal Service as unclaimed.

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<sup>1</sup> Appellant represented in his notice of appeal that he and his spouse attempted to telephone the contracting officer and left messages for her on voice mail.

Appeal File, Exhibit 6. In his notice of appeal, Mr. Bryant states that he was on vacation from October 8 through October 16, and never received any notices to pick up the letter.

7. By letter dated January 17, 2000, appellant objected to the assessment of liquidated damages, stating that he had made a good faith effort in the first instance to pay for the vehicle and had not received a refund from the canceled cashier's check in sufficient time to meet the extended deadline. He further stated that if the vehicle were still available he would be willing to take it for his original bid price. Appeal File, Exhibit 7.

8. By letter dated January 28, 2000, the contracting officer responded to Mr. Bryant's letter of January 17. She noted that the payment and removal deadlines had been extended in response to Mr. Bryant's explanation that he had tried to pay by cashier's check which had apparently been lost in the mail. These extended deadlines were established based on appellant's representation that the bank would refund the first check and issue another one on September 22. Appellant's spouse promised to send the second check by overnight mail. The payment was not made and no further communications were received from appellant until January, when he objected to the assessment of liquidated damages. Under these circumstances, the contracting officer determined that the liquidated damages were properly assessed. Appeal File, Exhibit 8.

### Discussion

GSA has moved for summary relief, maintaining that the material facts are not in dispute and that it is entitled to prevail as a matter of law. Appellant has not responded to the Government's motion, but has set forth his position in his notice of appeal. Resolving a dispute on a motion for summary relief is appropriate if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. E.g., Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986); Olympus Corp. v. United States, 98 F.3d 1314, 1316 (Fed. Cir. 1996); Copeland's Enterprises, Inc. v. CNV, Inc., 945 F.2d 1563, 1565-66 (Fed. Cir. 1991); Mingus Constructors, Inc. v. United States, 812 F.2d 1387, 1390 (Fed. Cir. 1987). The moving party has the burden of proving the absence of genuine issues of material fact. Benno Stein v. General Services Administration, GSBCA 15517, 01-2 BCA ¶ 31,490; Griffin Services, Inc., GSBCA 11171, 91-3 BCA ¶ 24,156, at 120,872. In addition, doubts as to whether summary judgment is appropriate are to be resolved against the moving party, and all inferences are to be drawn in favor of the nonmoving party. Reliance Insurance Co. v. United States, 931 F.2d 863, 865 (Fed. Cir. 1991); D.L. Auld Co. v. Chroma Graphics Corp., 714 F.2d 1144, 1146 (Fed. Cir. 1983).

The Government has met its burden in this case. There are no genuine issues of material fact, and the Government is entitled to judgment. Appellant submitted a bid for the subject vehicle and was the high bidder. The date of award is bid opening, or August 3, 1999. Appellant was formally told of the award in a notice sent on August 13. Under the terms of the auction, he was obligated as the high bidder to pay for and remove the vehicle within thirty days of award. GSA accepted his explanation that a cashier's check for the vehicle had been sent to GSA on August 30, but apparently had been lost, and extended the time for payment and removal of the vehicle accordingly. Appellant's spouse agreed to the new deadlines established for payment and vehicle removal. Although appellant states now

that he was unable to get a prompt refund for the lost cashier's check, he never contacted the contracting officer to explain the situation or make other arrangements. Appellant also claims he never received the contracting officer's default letter because he was on vacation at the time it was sent. Regardless, appellant knew he had been awarded the vehicle and it was his obligation to ensure that payment for the vehicle was timely received by GSA. He did not meet this obligation. The contracting officer was entitled by the terms of the contract to find appellant in default and to assess liquidated damages. Collins v. General Services Administration, GSBCA 14555, 98-2 BCA ¶ 30,004; Griffith v. General Services Administration, GSBCA 11571, 93-1 BCA ¶ 15,421; Torres v. General Services Administration, GSBCA 11472, 92-3 BCA ¶ 25,178.

Decision

The Government's motion for summary relief is Granted. The appeal is **DENIED**.

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CATHERINE B. HYATT  
Board Judge

We concur:

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EDWIN B. NEILL  
Board Judge

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ALLAN H. GOODMAN  
Board Judge