

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

MOTION FOR SUMMARY RELIEF GRANTED: June 29, 2001

GSBCA 15517

BENNO STEIN,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Benno Stein, pro se, Lawrence, NY.

David G. Gherlein, Office of Regional Counsel, General Services Administration,
Boston, MA, counsel for Respondent.

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

WILLIAMS, Board Judge.

Appellant seeks the costs of repairs he made to a vehicle he purchased from the General Services Administration (GSA) at an auction. After owning the vehicle for over one year and driving it over 24,000 miles, appellant sought a refund or exchange because the vehicle had some stalling problems. Subsequently, appellant traded in the automobile and amended his claim to seek repair costs. Because appellant failed to file a written notice within fifteen days and return the property in the same condition as when removed, he cannot recover. Nor has appellant proved that the vehicle was misdescribed. As such, the Government's motion for summary relief is granted.

Findings of Fact

On Thursday, December 2, 1999, GSA conducted a vehicle auction in North Dighton, Massachusetts. Mr. Benno Stein (appellant) was the successful bidder on item number 9, a 1996 Dodge Stratus ES with 41,039 miles. Appeal File, Exhibit 1. Mr. Stein paid \$7300 for the vehicle. Appeal File, Exhibit 2.

Regarding deficiencies, the Government's terms of sale states in relevant part:

All property is in used condition unless otherwise indicated and may be inoperable, parts may be missing and repairs may be required. Deficiencies, when known, have been indicated after the item description. The absence of any indicated deficiency does not mean the item(s) might not have (further) deficiencies. Listed deficiencies are at least what is wrong with any particular item NO ADJUSTMENTS WILL BE MADE FOR DEFICIENCIES NOT NOTED. CONDITION OF PROPERTY IS NOT WARRANTED.

Appeal File, Exhibit 1.

The Government's terms of sale addresses the description warranty as follows:

The Government warrants to the original purchaser that the property listed in the Invitation for Bids will conform to its description. . . . If a misdescription 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 within 15 calendar days of the date of removal that the property is misdescribed and maintains the property in the same condition as when removed. . . .

This warranty is in place of all other guarantees and warranties express 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 misdescribed 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 1.

Over one year after Mr. Stein's purchase of the vehicle, on January 18, 2001, he wrote to GSA requesting a refund or an exchange for another automobile. Appeal File, Exhibit 3. Mr. Stein's letter alleged that the vehicle had some stalling and starting problems. The GSA repair history for the vehicle states that it was towed on two occasions, once for "no start," once for no specified reason; no repairs for the no-start condition are listed. Id.

Mr. Stein's request for a refund or replacement automobile was denied by the contracting officer in a final decision dated January 26, 2001. Appeal File, Exhibit 4. Mr. Stein appealed the contracting officer's final decision on February 26, 2001. Id., Exhibit 5.

After advising the Board that he had traded in the automobile for another vehicle on March 23, 2001, Mr. Stein withdrew his request for a refund or replacement vehicle. Mr. Stein stated that the value received for the trade-in was \$5000, and that he had driven the automobile over 24,000 miles during his fourteen-month ownership. Conference Memorandum (Apr. 19, 2001). Mr. Stein states that, at the point that he filed his

misdescription claim, he had put 18,000 miles on the vehicle. Appellant's Reply to Respondent's Motion for Summary Relief.

Mr. Stein amended his complaint to claim costs of repair to the vehicle in the amount of \$549.88.

Discussion

Motions for summary relief may be granted only if there are no genuine issues of material fact in dispute and the moving party is entitled to judgment as a matter of law. The moving party has the burden of proving the absence of genuine issues of material fact. 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 the instant case. There are no genuine issues of material fact, and the Government is entitled to judgment.

Appellant cannot recover because he failed to submit a written notice of claimed deficiencies within fifteen days of removal of the vehicle and did not return the vehicle in the same condition as when removed. The law is clear that appellant is not permitted to recover because he failed to comply with the terms of the notice provision of the description warranty. Geoffrey W. Garner, GSBCA 9942, 89-3 BCA ¶ 22,163; Irving Kaplan, GSBCA 8244, 86-3 BCA ¶ 19,196; Jerome T. Jenks, GSBCA 7952, 86-2 BCA ¶ 18,877. The Board has strictly enforced the terms and conditions of vehicle auctions. See Magdi A. Risk, GSBCA 13572, 96-2 BCA ¶ 28,401; Ashby Wood, GSBCA 11124, 93-2 BCA ¶ 25,608; Afaf Salem, GSBCA 10375, 91-1 BCA ¶ 23,343. The Board in Garner explained:

In these circumstances, the only remedy available to the buyer is, in accordance with the terms of the catalog, to return the car for a refund of the purchase price within fifteen days of the date of removal of the vehicle from the Government lot. The buyer does not have the option of repairing the car and seeking the cost of repairs.

Garner, 89-3 BCA at 111,537.

In addition, appellant has not proved a misdescription claim. For there to be recovery under a claim of misdescription, appellant must show "that the specific mechanical problems experienced by appellant[s] were known to the Government prior to the sale and that the information was not disclosed to prospective buyers." Dorothy and Al Audycki, GSBCA 9309, 88-3 BCA ¶ 21,112, at 106,574; Mike Casey v. General Services Administration, GSBCA 11570, 92-2 BCA ¶ 24,882, at 124,102. Appellant has not shown that the Government knew of a defective condition in the vehicle at the time of the auction.

As we recognized in Garner, in a sale of this sort, "where both buyer and seller are ignorant of a car's condition, the risk that unknown defects exist is on the buyer. James P. Smith, GSBCA 8216, 86-3 BCA ¶ 19,131, at 96,715." Garner, 89-3 BCA at 111,536.

Decision

As appellant did not file a written notice or return the vehicle within the fifteen-day period required and did not prove a misdescription claim, he cannot recover as a matter of law. Respondent's motion for summary relief is **GRANTED**.

MARY ELLEN COSTER WILLIAMS
Board Judge

We concur:

EDWIN B. NEILL
Board Judge

ALLAN H. GOODMAN
Board Judge