

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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GRANTED IN PART/DISMISSED IN PART FOR  
LACK OF JURISDICTION: February 12, 2002

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GSBCA 15586

EROLD A. CRUTCHER,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Erold A. Crutcher, pro se, Hixson, TN.

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

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

**BORWICK**, Board Judge.

The firm of Dixie Auto Sales of Hollywood, Alabama, through its principal, Erold A. Crutcher (appellant), purchased a vehicle at Government auction in Chattanooga, Tennessee. Respondent, General Services Administration (GSA), issued a Standard Form 97--The United States Government Certificate to Obtain Title to a Vehicle (certificate)--to Dixie Auto Sales. Well after the sale, appellant requested that the Government issue the certificate in his name. The Government refused, maintaining in its contracting officer's decision that its duty was to issue the certificate to the successful bidder, Dixie Auto Sales, and not to appellant individually. Appellant appeals that decision and seeks \$5,000 actual damages and \$5,000 punitive damages.

Respondent has moved for summary relief. We dismiss appellant's claim for punitive damages and actual damages for lack of jurisdiction. We deny respondent's motion for summary relief and grant the appeal in part. There are no genuine issues of material fact in dispute; the sales contract does not prohibit the Government from issuing a certificate in appellant's individual name instead of the name of appellant's sole proprietorship.

### Background

The Government announced a public auction of automobiles in Chattanooga, Tennessee. Appeal File, Exhibit 1. The auction announcement provided in pertinent part:

Successful bidders will be issued a Purchaser's Receipt and Standard Form 97, Certificate to Obtain Title to a Vehicle, unless communicated that a vehicle is to be sold without a Standard Form 97. The Standard Form 97 is not a registration form but the certification to be presented to the Department of Motor Vehicles in your state to register your vehicle.

Appeal File, Exhibit 3.

The General Sale Terms and Conditions included the following provisions:

#### 7. TITLE

Unless otherwise provided in the invitation, title to the property sold hereunder shall vest in the purchaser as and when removal is effected. On all motor vehicles . . . requiring licensing by a State motor vehicle regulatory agency, a certificate of release, Standard Form 97, will be furnished for each vehicle . . . unless otherwise shown in the invitation.

. . . .

#### 15. LIMITATION ON GOVERNMENT'S LIABILITY

Except for reasonable packing, loading, and transportation costs (such packing, loading, and transportation costs being recoverable only when a return of property at government cost is specifically authorized in writing by the Contracting Officer) the measure of the Government's liability in any case where liability of the Government to the purchaser has been established shall not exceed refund of such portion of the purchase price as the Government may have received.

Appeal File, Exhibit 3.

The contract's description warranty provided that the Government warranted to the original purchaser that the property described in the invitation for bids would conform to its description. Appeal File, Exhibit 3, Description Warranty. If a misdescription were determined after removal, the contract stated that the Government would refund the purchase price, provided that the purchaser submitted a written notice to the contracting officer within fifteen calendar days of the date of removal that the property was misdescribed, and provided that the purchaser maintained the property in the same condition it was in when removed. Id. The warranty was "in place of all other guarantees and warranties express or implied." Id. The amount of recovery was limited to the purchase price of the misdescribed property. Id.; see Respondent's Statement of Uncontested Facts ¶ 3.

The Special Auction Conditions provided that "unless otherwise provided in the invitation, bid offers will not be recognized from any person not properly registered." The Special Auction Conditions also provided:

Records of the Government, certified by the Contracting Officer, as to the name and number of the Bidder, the bid, and amount thereof shall be prima facie evidence of the circumstances of the sale, and all disagreements will be resolved in accordance with such records.

Appeal File, Exhibit 3.

Dixie Auto Sales registered as bidder 156; the registration was signed by appellant. Appeal File, Exhibit 2. According to appellant, Erol Crutcher, Dixie Auto Sales was his sole proprietorship that had ceased doing business in 1991. Letter from Erol Crutcher to the Board (Dec. 11, 2001).

The sales register included the following certification at the top:

I, the undersigned, agree that any bids submitted by me will be subject to the General Sale Terms and Conditions (Standard Form 114C) and any Special Terms and Conditions applicable to this sale, copies of which I have received or have been made available to me. It is my understanding that, if I am a successful bidder, payment is required on or before Feb. 10, 1998 and property is to be removed, after payment, on or before Feb. 15, 1998.

Id.

Dixie Auto Sales submitted a bid on item 173, which was a 1994 Plymouth Acclaim. Appeal File, Exhibits 4, 5. Dixie Auto Sales was the high bidder for the Plymouth and the purchaser's receipt, signed by appellant, recorded Dixie Auto Sales as the purchaser. Dixie Auto Sales paid for the vehicle with a check in appellant's name, not in the name of Dixie Auto Sales. Letter from Erol A. Crutcher to the Board (Oct. 4, 2001), Attachment (photocopy of cancelled check).

On February 10, 1998, the Government issued the certificate in the name of Dixie Auto Sales of Hollywood, Alabama. Appeal File, Exhibit 9.

On April 17, appellant wrote to respondent's Fleet Management Division, requesting that respondent issue a new certificate in appellant's name. Appellant stated that when purchasing the vehicle he asked for the certificate to be listed in his name, but that someone "failed to follow my request." Appellant stated that the certificate the Government had provided was refused by the local motor vehicle department office and was void. Appeal File, Exhibit 8. The void certificate had appellant's name and address in place of Dixie Auto Sales' name and address originally listed on the certificate the Government had provided. Id., Exhibit 7.

On April 28, the sales contracting officer issued another certificate in the name of Dixie Auto Sales, refusing to change the name of the purchaser from Dixie Auto Sales to

appellant: "The Standard Form 97 must reflect the name and address of the successful bidder, as entered on the sale registration sheet. There are no exceptions to this requirement." Appeal File, Exhibit 10. The sales contracting officer reminded appellant that any erasures or attempted alteration of the information on the Standard Form 97 would render it void. Id. This communication was returned as undeliverable. Id.; Respondent's Statement of Uncontested Facts ¶ 6.

On February 2, 1999, GSA received another communication, ostensibly written in March 1998, but mailed in January 1999, from appellant about the requested name change on the certificate. Appeal File, Exhibit 12; Affidavit of Sales Contracting Officer (Sept. 7, 2001) at 2 (¶ 9). On February 5, GSA sent appellant a copy of its letter of April 1998, and again refused to issue a certificate in appellant's name instead of the name of Dixie Auto Sales. Appeal File, Exhibit 13.

On April 24, 2000, the Government again refused to provide a certificate in appellant's name, but suggested to appellant that he obtain, complete, and submit a State of Tennessee Certificate of Title Extension, attach the certificate, pay the Tennessee sales tax, and obtain a Tennessee title in appellant's name. Appeal File, Exhibit 16. The Tennessee Certificate of Title Extension is a document that permits a licensed automobile dealer to reassign a title to a vehicle. Id. On January 3, 2001, appellant advised the Government that the Tennessee Department of Motor Vehicles refused to accept the certificate of title extension. Appellant requested that the Government issue a certificate in appellant's name. Id., Exhibit 17.

On January 29, 2001, the Government, in a letter issued as a contracting officer's decision, refused to issue a certificate in appellant's name, stating that "on the day of the sale, as confirmed by the Chattanooga Auto Auction, you registered not as an individual, but as the representative of Dixie Auto Sales, Hollywood, Alabama." Appeal File, Exhibit 18. Appellant filed an appeal postmarked May 3, 2001, and sought \$5000 actual damages and \$5000 punitive damages. Notice of Appeal.

### Discussion

The claim for punitive damages must be dismissed. Absent express consent of Congress, punitive damages may not be awarded against the United States. Schrager Auction Galleries, Ltd. v. Department of the Treasury, GSBCA 15658-TD (Dec. 10, 2001) (citing Janice Cox, D/B/A Occupro Limited, ASBCA 50,587, 01-1 BCA ¶ 31,377; Advance Engineering Corp., ASBCA 46889, 95-1 BCA ¶ 27,475. Furthermore, appellant's claim for punitive damages sounds in tort, over which the Board lacks jurisdiction. David Finley, PSBCA 3922, 98-2 BCA ¶ 29,989; Land Movers Inc., ENG BCA 5656, 91-1 BCA ¶ 23,317.

Appellant's claim for actual damages must be dismissed for lack of jurisdiction as the claim for damages was never presented to the contracting officer for decision. A claim presented to the contracting officer is the linchpin of Board jurisdiction under the Contract Disputes Act of 1978. 41 U.S.C. §§ 605(a), 606 (Supp. V 1999); McDonnell Douglas Corp. v. United States, 754 F.2d 365, 370 (Fed. Cir. 1985); Grant Communications Inc. v. Social Security Administration, GSBCA 14862-SSA, 99-1 BCA ¶ 30,281; American Geotech, Inc., AG BCA 2000-162-1, 01-1 BCA ¶ 31,257.

In seeking a certificate in appellant's name (as opposed to the name of Dixie Auto Sales), appellant in essence sought from the contracting officer an adjustment or interpretation of contract terms. Appellant's request to the contracting officer thus falls within the definition of a claim as implemented by the Federal Acquisition Regulation (FAR). 48 CFR 33.201 (1999). The contracting officer issued his decision that appellant contractually was not entitled to a certificate issued in his name as opposed to the name of the sole proprietorship. We have jurisdiction to review that determination. 41 U.S.C. § 607(d); William D. Eulie v. General Services Administration, GSBCA 15261, 00-1 BCA ¶ 30,910.

Although we deny respondent's motion for summary relief, the record is sufficient for us to grant that part of the appeal over which we have jurisdiction--the issue of whether appellant is entitled to a certificate in his individual name. No genuine issue of material fact exists. See Granco Industries, Inc. v. General Services Administration, GSBCA 14900, et al., 99-2 BCA ¶ 30,568; Twigg Corp. v. General Services Administration, GSBCA 14387, 98-2 BCA ¶ 29,803. Here, the non-moving party is entitled to judgment on this limited issue.

In a sole proprietorship, the proprietor is personally liable for the debts and obligations of the sole proprietorship. 18A Am.Jur. 2d Corporations § 154 (1985). A sole proprietorship and the principal are thus a single legal entity. Moorer v. Hartz Seed Co., 120 F. Supp. 2d 1283, 1287 (M.D. Ala. 2000); Hughes v. Cox, 601 So. 2d 465, 471 (Ala. 1992) (default judgment in name of sole proprietorship valid against individual doing business under trade name); Clardy v. Sanders, 551 So. 2d 1057, 1059-60 (Ala. 1989) (estate of deceased individual may be sued in tort by victim of automobile accident occurring while individual driving on business for sole proprietorship).

Here, we see no contractual impediment to respondent's issuing the certificate in the name of appellant. Nothing in the Title clause of the General Sale Terms and Conditions limits the Government's ability to issue the Standard Form 97 in appellant's name. That clause states that "title to the property sold hereunder shall vest in the purchaser," but we have seen that legally Dixie Auto Sales and appellant Erol Crutcher are one and the same. The Special Auction Conditions provided that "bid offers will not be recognized from any person not properly registered"; however, since Dixie Auto Sales was properly registered, so was its alter ego, Erol Crutcher. In cashing Erol Crutcher's personal check, the Government recognized that appellant and Dixie Auto Sales were identical.

#### Decision

Appellant's claim for punitive and actual damages is **DISMISSED FOR LACK OF JURISDICTION**. The remainder of the appeal is **GRANTED**.

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ANTHONY S. BORWICK  
Board Judge

We concur:

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EDWIN B. NEILL  
Board Judge

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MARY ELLEN COSTER WILLIAMS  
Board Judge