

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

DENIED: December 3, 2002

GSBCA 15957

JOHN KOZAKA,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

John Kozaka, pro se, North Easton, MA.

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

Before Board Judges **PARKER, NEILL, and DeGRAFF.**

DeGRAFF, Board Judge.

John Kozaka purchased a car at a General Services Administration (GSA) auction. Mr. Kozaka subsequently learned that the car was not equipped with four-wheel drive, as stated in the auction catalog. He asked GSA for \$1100, which he estimated was the difference between the cost of a vehicle equipped with four-wheel drive and the cost of a vehicle equipped with two-wheel drive. Mr. Kozaka appeals GSA's decision not to pay the \$1100. Because the terms of the warranty that GSA provided to Mr. Kozaka preclude the payment that he seeks, we grant GSA's motion for summary relief and deny the appeal.

Findings of Fact

On July 18, 2002, GSA conducted a vehicle auction in Massachusetts. The terms and conditions of the sale included the following:

DESCRIPTION WARRANTY - 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 before removal of the property,

the Government will keep the property and refund any money paid. 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. After the property has been removed, no refund will be made for shortages of property sold by the "lot."

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.

Exhibit 1.¹

According to the list of vehicles for sale, one of the cars was a 1999 Ford Contour LX sedan equipped with four-wheel drive. Exhibit 1. Mr. Kozaka purchased the Ford Contour for \$3400. Exhibit 3. Within fifteen days after removing the car from the auction lot, Mr. Kozaka notified GSA that it was not equipped with four-wheel drive. Exhibit 4. GSA offered to take back the car and refund Mr. Kozaka's money, but Mr. Kozaka did not agree to such an arrangement. Instead, he asked GSA to adjust the contract price. GSA's contracting officer denied Mr. Kozaka's request on August 27, 2002. Exhibit 5.

Mr. Kozaka appealed to the Board from the contracting officer's decision. In his notice of appeal, Mr. Kozaka made it clear that he wants GSA to adjust the contract price by \$1100, which he estimates is the difference in cost between a four-wheel drive Ford truck and a similar Ford truck equipped with two-wheel drive.² Exhibits 6, 7. GSA filed a motion for summary relief, to which Mr. Kozaka responded.

Discussion

Summary relief is appropriate when there are no genuine issues of material fact in dispute and when the moving party is entitled to relief as a matter of law. A fact is material if it will affect our decision. 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. Celotex Corp. v. Catrett, 477 U.S. 317 (1986); Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574 (1986). Because there are no genuine issues of material fact in dispute and because GSA is entitled to relief as a matter of law, we grant GSA's motion for summary relief.

¹ All citations are to exhibits contained in the appeal file.

² Actually, Mr. Kozaka arrived at an estimate of the difference in cost of a vehicle equipped with two-wheel drive and a vehicle equipped with all-wheel, not four-wheel, drive. This factual discrepancy is not material to our decision.

Our findings of fact are taken from GSA's statement of uncontested facts and from Mr. Kozaka's opposition to GSA's motion for summary relief, insofar as they are supported by the exhibits and not contested by the other party. The parties do not disagree about any of the material facts. GSA agrees that the list of vehicles for sale at the auction misdescribed the car that Mr. Kozaka purchased. Motion for Summary Relief at 1, 3.

GSA is entitled to relief as a matter of law because the description warranty limited GSA's liability to Mr. Kozaka by providing that, in case of a misdescription, Mr. Kozaka's recovery was limited to a refund of his purchase price. The warranty allowed Mr. Kozaka to return the car in the same condition as when he removed it from the auction lot and to obtain a refund of the amount he paid, provided he notified GSA of the misdescription within a certain time. The warranty did not give Mr. Kozaka the option of obtaining payment from GSA for what he estimates to be the difference in value between a vehicle with four-wheel drive and a vehicle with two-wheel drive. Bob's Auto Sales v. General Services Administration, GSBCA 14447, 98-1 BCA ¶ 29,647 (buyer's only remedy is to return car for refund when description misstated year of manufacture); John Gottsche, GSBCA 8374, 87-3 BCA ¶ 20,076 (buyer's only remedy is to return car for refund when not equipped with power steering or power disc brakes as stated in description). Mr. Kozaka cannot recover what the description warranty expressly disallows.

Decision

GSA's motion for summary relief is granted and the appeal is **DENIED**.

MARTHA H. DeGRAFF
Board Judge

We concur:

ROBERT W. PARKER
Board Judge

EDWIN B. NEILL
Board Judge