

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

DENIED: March 6, 2003

GSBCA 15993

GAVEN L. ROUSE,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Gaven L. Rouse, pro se, Waukesha, WI.

Paul J. Maxse, Office of Regional Counsel, General Services Administration,
Chicago, IL, counsel for Respondent.

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

DeGRAFF, Board Judge.

Gaven L. Rouse purchased a Dodge car at a General Services Administration (GSA) auction. Mr. Rouse appeals GSA's decision not to reimburse him for the cost of repairs he made to the car. Because the terms of the warranty that GSA provided to Mr. Rouse preclude the relief that he seeks, we grant GSA's motion for summary relief and deny the appeal.

Findings of Fact

On September 10, 2002, GSA conducted a vehicle auction in Indiana. The sales announcement contained a list of vehicles to be sold, including a 1996 Dodge car. Exhibits 1, 4.¹ The car's repair history showed that, although some repairs had been made from time to time, no repairs had been made to the transmission. Exhibit 9.

The terms and conditions of the sale included the following:

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

NOTICE OF POSSIBLE DEFICIENCIES - Absence of deficiencies in the description of sales items does not mean that deficiencies do not exist. Bidders are cautioned that parts, equipment, and accessories may be missing from sales items. Bidders are further advised that sales items and any of their parts, equipment and accessories may be defective and/or damaged. These deficiencies may exist for any item in this sale, including those described as "USED." Oral statements of condition and description are unauthorized and confer no rights on the bidder or purchaser. **BIDDERS ARE CAUTIONED TO INSPECT THE PROPERTY BEFORE BIDDING.**

DESCRIPTION WARRANTY - The Government warrants to the original purchaser that the property listed in the invitation for bid 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/her own 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 MISDESCRIBED AND MAINTAINS THE PROPERTY IN THE SAME CONDITION AS WHEN REMOVED. After the property has been removed, NO refunds will be made for shortages of property sold by the "lot."

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 misdescribed property. The purchaser is not entitled to any payment for loss of profit or any other monetary damages, special, indirect or consequential.

Exhibit 4.

Mr. Rouse purchased the car for \$4400. Exhibit 6. On September 24, 2002, he sent a letter to GSA and said that, a few days earlier, he noticed that the car was leaking transmission fluid. Exhibit 7. On October 1, 2002, the GSA contracting officer denied Mr. Rouse's claim for either a refund of the purchase price or the cost of repairing the car. Exhibit 10.

Mr. Rouse appealed to the Board from the contracting officer's decision. Exhibit 12. GSA filed a motion for summary relief, to which Mr. Rouse responded. In his response, Mr. Rouse clearly states that he does not want a refund of the purchase price. Instead, he wants to be reimbursed for the cost of having the car towed (\$55) and repaired (\$121.19). Exhibit 12.

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.

Our findings of fact are taken from GSA's statement of uncontested facts and from Mr. Rouse's response to the motion, 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.

The only warranty that GSA gave to Mr. Rouse was that the car would be accurately described. All other warranties were specifically excluded. GSA did not provide any warranty regarding the condition of the car. In order for Mr. Rouse to show that the car was misdescribed, he would have to establish that the problems he experienced were known to GSA before the sale. Jack P. Wade v. General Services Administration, GSBCA 12173, 93-2 BCA ¶ 25,808. The only evidence in the record, however, establishes that GSA did not know that the car had anything wrong with its transmission. The car that Mr. Rouse purchased was not misdescribed, so the description warranty does not provide him with any basis for relief.

Even if the car had been misdescribed, the description warranty limited GSA's liability to Mr. Rouse by providing that in case of a misdescription, his recovery was limited to a refund of the purchase price. The warranty allowed Mr. Rouse 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 for the car, provided he notified GSA of the misdescription within a certain time. The warranty did not give Mr. Rouse the option of undertaking repairs to the car and then obtaining payment from GSA for the cost of the repairs. Jack P. Wade.

In his response to GSA's motion for summary relief, Mr. Rouse asserts that "an employee of the auction" assured him that "all vehicles are inspected for leaks and fixed" before being auctioned. Appellant's Response to Respondent's Motion for Summary Relief at 1. Even if Mr. Rouse's assertion is true, it does not amount to a material fact because it does not affect our decision. The terms and conditions of the sale provide that any statements made regarding the condition of the car were unauthorized and did not give Mr. Rouse any rights. His rights were set out elsewhere in the terms and conditions of the sale and, as explained above, those terms and conditions bar the recovery sought by Mr. Rouse. Thus, even if an employee of the auction told Mr. Rouse that the car had been inspected and repaired, he would have no right to recover the amount that he seeks. Jack P. Wade.

Decision

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

MARTHA H. DeGRAFF
Board Judge

We concur:

EDWIN B. NEILL
Board Judge

ALLAN H. GOODMAN
Board Judge