

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

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DENIED: March 5, 2003

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GSBCA 16025

DAN PARISH,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Dan Parish, pro se, Omaha, NE.

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

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

**BORWICK**, Board Judge.

Appellant filed this appeal from a contracting officer's decision denying appellant's claim for damages arising out of a purchase of a vehicle from respondent General Services Administration at a government surplus property auction. The contracting officer had offered appellant a refund of the purchase price, the relief available under the description warranty of the contract.

Respondent filed a motion for summary relief, together with a statement of undisputed facts. Appellant does not dispute respondent's statement of undisputed facts, but maintains he is entitled to damages beyond a refund of the purchase price of the vehicle. We grant respondent's motion for summary relief and deny the appeal since a refund of the purchase price is the exclusive contractual remedy.

Findings of Fact

1. The appeal arises out of GSA Sale Number 6CFBPC02-095, an auction sale of government automobiles in Omaha, Nebraska. The sale took place on August 22, 2002, at

approximately 3:00 p.m. Respondent's Statement of Undisputed Facts ¶ 1;<sup>1</sup> Appeal File, Exhibit 1.

2. Prior to the sale, there were two periods in which the motor vehicles could be inspected by potential bidders: August 21, 2002, between 2:00 p.m. and 6:00 p.m.; and August 22, 2002, between 1:00 p.m. and 3:00 p.m. Respondent's Statement of Undisputed Facts ¶ 2; Appeal File, Exhibit 1.

3. Appellant signed the sales register as bidder number 215. Respondent's Statement of Undisputed Facts ¶ 3; Appeal File, Exhibit 2.

4. Included in the auction was a 1992 Ford Crown Victoria. The vehicle is listed on run 2185. Respondent's Statement of Undisputed Facts ¶ 4; Appeal File, Exhibits 1, 5, 6. The invitation for bid described the vehicle as having 42,592 miles on the odometer. Appeal File, Exhibit 1.

5. The invitation provided:

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 items in this sale, including those described as "USED." Oral statements of conditions and descriptions are unauthorized and confer no rights on the bidder or purchaser. BIDDERS ARE CAUTIONED TO INSPECT THE PROPERTY BEFORE BIDDING.

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**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 mis-description 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 MIS-DESCRIBED AND MAINTAINS THE PROPERTY IN THE SAME CONDITION AS WHEN REMOVED. After property is removed, NO refunds will be made for shortages of property sold by "lot."

This warranty is in place of all other guarantees and warranties, expressed or

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<sup>1</sup> For ease of reading, instead of quoting directly from respondent's statement of undisputed facts, we make minor changes in wording. The substance, however, is the same. We also supplement the statement with references to the appeal file.

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 mis-described property. The purchaser is not entitled to any payment for loss of profit or any other monetary damages, special, indirect, or inconsequential. Condition 2 of Standard Form 114C is deleted.

Respondent's Statement of Undisputed Facts ¶ 5; Appeal File, Exhibit 1.

6. On August 22, 2002, appellant signed the sales register, acknowledging the terms of the Register that any bid submitted by him was subject to the terms and conditions of the Register, standard form 114C, and standard form 114C-4. Respondent's Statement of Undisputed Facts ¶ 7; Appeal File, Exhibit 2.

7. Prior to the sale on August 22, 2002, all bidders were instructed that:

The vehicles being sold are warranted as to description only. Condition is not guaranteed. Defects when known are announced. However, the absence of any mention of defects does not mean there are none. We strongly encourage you to inspect the vehicles before you bid.

Respondent's Statement of Undisputed Facts ¶ 7; Appeal File, Exhibit 4.

8. On August 22, 2002, appellant purchased the 1992 Ford Crown Victoria at auction for \$1300, and removed the vehicle. Respondent's Statement of Undisputed Facts ¶ 8; Appeal File, Exhibit 5. The Government then issued appellant a certificate of title which stated the odometer reading of the vehicle to be 42,592 miles and that to the best of respondent's knowledge the odometer reading reflected the actual mileage of the vehicle. Appeal File, Exhibit 5.

9. On or about September 27, respondent's Fleet Management Center (FMC) advised the contracting officer that appellant had complained about an odometer change to the Ford Crown Victoria. The FMC instructed appellant to contact the contracting officer. Appeal File, Exhibit 6.

10. Appellant called the contracting officer on September 30, 2002, and was instructed to submit his claim in writing with supporting documentation. Respondent's Statement of Undisputed Facts ¶ 9; Appeal File, Exhibit 10.

11. On October 8, 2002, appellant sent, by facsimile, two letters to the contracting officer advising her of the alleged odometer change and the cost of repairs made to the vehicle. In the alternative, appellant requested \$775 based on the Kelly Bluebook price for the odometer difference. Respondent's Statement of Undisputed Facts ¶ 10; Appeal File, Exhibits 7, 8.

12. Claimant explained in his letters to the contracting officer that after having work performed on the vehicle a sticker was discovered on the driver's door that which indicated that the odometer had been changed at 73,000 miles. Thus the actual mileage on the vehicle

was in excess of 115,000, instead of the approximately 42,000 miles appellant had expected. Appeal File, Exhibit 7.

13. A contracting officer's final decision was sent to appellant dated October 21, 2002, offering appellant a refund of the purchase price of the vehicle in the amount of \$1300 in exchange for return of the vehicle. The refund would be made upon confirmed receipt of the vehicle. Appellant had fifteen days from the date of the letter to return the vehicle to the Omaha Auto Auction House. Appellant's claim for additional reimbursement for repairs or \$775 was denied. Respondent's Statement of Undisputed Facts ¶ 11; Appeal File, Exhibit 9.

14. On November 8, 2002, the contracting officer repeated her offer to refund the purchase price of the vehicle. The above offer terminated on November 15, 2002. Appellant acknowledged receipt of the November 8, 2002, correspondence on the same date. To date, the vehicle has not been returned as instructed. Respondent's Statement of Undisputed Facts ¶ 12.

### Discussion

In this matter appellant does not dispute respondent's statement of undisputed facts, but maintains he is entitled to relief greater than that offered by the contracting officer. Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Anderson v. Liberty Lobby, 477 U.S. 242, 247-48 (1986); Seaboard Lumber Co. v. United States, 308 F.3d 1283, 1291-92 (Fed. Cir. 2002).

Here, the contracting officer offered appellant, upon return of the car, a refund of the purchase price. Appellant insists he is entitled to additional relief. However, the contract provides that the amount of recovery under the description warranty is "limited to the purchase price of the mis-described property. The purchaser is not entitled to any payment for loss of profit or any other monetary damages, special, indirect, or inconsequential." Finding 5. Refund of the purchase price under the description warranty is the exclusive relief available to appellant. Iristine Evans-Brody v. General Services Administration, GSBCA 14822, 99-2 BCA ¶ 30,416; Loren Brown v. General Services Administration, GSBCA 12539, 94-2 BCA ¶ 26,718. A claim for the cost of repairs--or for \$775 in damages--is simply not allowed under the contract. Brown; James P. Zylla, GSBCA 8226, 89-3 BCA ¶ 22,084. Respondent is entitled to summary relief because appellant does not have a contractual claim for relief greater than the relief already offered by the contracting officer.<sup>2</sup>

Appellant argues that he "bases his claim on US Code, Title 49, Subtitle VI, Part C,

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<sup>2</sup> The contracting officer was generous in offering appellant a refund under the description warranty. To be entitled to a refund under the description warranty, the refund must be claimed in writing within fifteen days of the removal of the vehicle and the vehicle must be returned in the same condition as when removed. See Brown; Zylla. Appellant did not claim a refund within fifteen days of the vehicle's removal and, having made repairs to the vehicle, appellant could not return the vehicle in the same condition as when removed. Id.

Chapter 327 which requires the accurate reporting of odometer readings upon the transfer of motor vehicle titles." Appellant's Objection to Respondent's Motion. Appellant refers to the Motor Vehicle Information and Cost Savings Act, 49 U.S.C. §§ 32701-32711 (2000). The act provides that a person transferring ownership of a motor vehicle shall give the transferee a written disclosure of the cumulative mileage registered on the odometer or that the mileage is unknown if the transferee knows that the mileage registered by the odometer is incorrect. 49 U.S.C. § 32705(a)(A)-(B).

The act further provides that a person who violates the chapter or a regulation or order issued under the chapter with intent to defraud is liable for three times the actual damages or \$1500, whichever is greater. It also provides that a person may bring a civil action to enforce a claim under the section in an appropriate United States district court or in another court of competent jurisdiction. 49 U.S.C. § 32710. This statutory right of action does not enlarge appellant's contractual remedies. Rather, it creates a separate cause of action in a United States district court or other court of competent jurisdiction essentially for odometer fraud or reckless disregard amounting to fraud. See Ralbovsky v. Lamphere, 731 F. Supp. 79 (N.D.N.Y. 1990). Whatever remedy claimant seeks to pursue under that statute must be pursued in the appropriate forum, not at this Board.

#### Decision

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

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ANTHONY S. BORWICK  
Board Judge

We concur:

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ROBERT W. PARKER  
Board Judge

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MARTHA H. DeGRAFF  
Board Judge