

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

DENIED: June 11, 2003

GSBCA 16046

JOHN A. GLASURE,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

John A. Glasure, pro se, Harlem Springs, OH.

Leigh Ann Bunetta, Office of Regional Counsel, General Services Administration, Denver, CO, counsel for Respondent.

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

DeGRAFF, Board Judge.

John A. Glasure purchased a truck at a General Services Administration (GSA) online auction. Mr. Glasure subsequently learned the truck had some defects of which he was unaware when he placed his bid. He asked GSA to reduce the sales price, to compensate for the defects. Mr. Glasure appeals GSA's decision not to reduce the sales price. Because the terms of the warranty provided to Mr. Glasure preclude the remedy he seeks, we grant GSA's motion for summary relief and deny the appeal.

Findings of Fact

In mid-2002, Mr. Glasure purchased a truck at a GSA online auction. Exhibit 5.¹ The terms and conditions of the sale included the following:

Condition of Property is not warranted Deficiencies, when known, have been indicated in the property description. However, absence of any indicated deficiencies does not mean that none exists.

....

Description Warranty. The Government warrants to the original purchaser that the property listed in the GSAAuctions.gov website 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 following the Refund Claim Procedure described below. No refunds will be made, after property is removed, for shortages of individual items within a 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 purpose. The purchaser is not entitled to any payment for loss of profit or any other money damages – special, direct, indirect, or consequential.

Refund Claim Procedure. To file a refund claim for misdescribed property, (1) submit a written notice to the Contracting Officer within 15 calendar days from the date of removal that the property was misdescribed, (2) maintain the property in the purchased condition until it is returned, and (3) return the property at your own expense to a location specified by the Contracting Officer.

Exhibit 2.

Approximately six weeks after removing the truck from the auction lot, Mr. Glasure notified GSA that he thought the truck had been poorly described by GSA. Exhibit 6. When GSA did not agree that the truck had been misdescribed, Mr. Glasure asked GSA to refund part of his purchase price. Exhibits 7, 8. GSA's contracting officer denied Mr. Glasure's request. Exhibit 9.

Mr. Glasure appealed to the Board from the contracting officer's decision. In his notice of appeal, Mr. Glasure said he wants GSA to adjust the contract price from \$2632 to \$800, which he believes is the value of the truck. Exhibit 10. GSA filed a motion for summary relief, to which Mr. Glasure decided not to respond.

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

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 facts in support of its motion for summary relief, insofar as they are supported by the exhibits. Mr. Glasure did not contest any of the facts as stated by GSA.

GSA is entitled to relief as a matter of law because the terms of the sale limit GSA's liability to Mr. Glasure. If the truck was misdescribed, the terms of the sale provide that Mr. Glasure's recovery is limited to a refund of his purchase price. The terms of the sale allow Mr. Glasure to return the truck in the same condition as when he removed it from the auction lot and to obtain a refund of the amount he paid. The terms of the sale do not give Mr. Glasure the option of obtaining either a partial refund or a reduced purchase price to compensate for whatever defects he found when he removed the truck from the auction lot. 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); Jerome T. Jenks, GSBCA 7952, 86-2 BCA ¶ 18,877 (buyer's remedy is to return vehicle for refund, not to receive reduction in purchase price).

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

ANTHONY S. BORWICK
Board Judge