

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

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DENIED: February 26, 2004

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GSBCA 16209

DANNY R. MITCHELL,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Danny R. Mitchell, pro se, Pocahontas, AR.

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

Before Board Judges **DANIELS** (Chairman), **PARKER**, and **DeGRAFF**.

**DeGRAFF**, Board Judge.

This appeal arises from the purchase by appellant, Danny R. Mitchell, of a tractor and trailer in an auction conducted by respondent, General Services Administration (GSA). GSA and Mr. Mitchell filed motions for summary relief. We grant GSA's motion and deny the appeal.

Findings of Fact

1. In March 2003, the Department of Agriculture sent a report of excess personal property to GSA. The items listed in the report were a trailer in "good condition" and a tractor in "fair condition." Both items were located at the Tennessee Division of Forestry in Nashville, Tennessee. The report said the items had been acquired in September 2001. Exhibit 1.<sup>1</sup>

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<sup>1</sup> Unless otherwise noted, all references are to the exhibits contained in the appeal file.

2. In April 2003, GSA offered the tractor and trailer for sale on its internet auction web site. The tractor and trailer were offered as one item:

1978 M911 2365 Oshkosh tractor with transport trailer, tractor VIN 17160, NFC #1551051, operable, repairs may be required. Transport trailer 60 ton, 40 ft long, VIN 3990-00-489-8334, NFC #15510521, operable, repairs may be required.

Exhibit 2.

3. The terms and conditions of the sale to which bidders were required to agree included the following:

**Condition of Property** is not warranted. . . . Deficiencies, when known, have been indicated in the property descriptions. 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/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.

**Refund Amount.** The refund is limited to the purchase price of the misdescribed property.

**Inspection.** Bidders are invited, urged and cautioned to inspect the property prior to bidding. Bidders must contact the custodian indicated in the item description for inspection dates and times.

**Oral Statements and Modifications.** Any oral statement or representation by any representative of the Government, changing or supplementing the offering or contract or any condition thereof, is unauthorized and shall confer no right upon the bidder or purchaser. Further no interpretation of any provision of the contract, including applicable performance requirements, shall be binding on the government unless furnished or agreed to, in writing by the Contracting Officer or his designated representative.

Exhibit 2.

4. The GSA auction web site said the tractor and trailer were located at the Tennessee Department of Agriculture in Nashville, Tennessee, and identified the property custodian there as the person to contact in order to schedule an appointment to inspect the tractor and trailer. Exhibit 2.

5. Before bidding, Mr. Mitchell did not inspect the tractor and trailer. Complaint ¶ 3; Answer ¶ 3; Appellant's Motion for Summary Relief at 25; Respondent's Reply to Appellant's Motion at 1. He did, however, contact the property custodian who said although the tractor had been operable three months earlier, its batteries were dead. Exhibits 7, 9.

6. Mr. Mitchell was the successful bidder for the tractor and trailer, with a bid amount of \$24,150. Exhibit 3.

7. Mr. Mitchell paid for the tractor and trailer on May 22, and arranged with the property custodian to remove them on May 30. Exhibit 5.

8. In late May, Mr. Mitchell sent a driver to Tennessee to pick up the tractor and trailer. The driver was not able to charge the tractor's batteries, so he purchased new batteries. Still, the tractor would not start. The driver replaced the starter and was able to start the tractor by running jumper cables from the batteries to the starter. The driver could not get the tractor's brakes to release, due to insufficient air pressure. Mr. Mitchell sent a service truck operator to Tennessee, and the operator made the repairs needed to build enough air pressure to release the brakes and move the tractor and trailer. Exhibits 9, 16.

9. On May 29, Mr. Mitchell called GSA to complain the tractor was misdescribed because its batteries were dead. A GSA employee told Mr. Mitchell to make a claim in writing and to send it to GSA. Exhibit 6.

10. On May 30, the property custodian told GSA the tractor and trailer were operable when they were delivered to his location. Exhibit 7.

11. Mr. Mitchell contacted GSA again on May 30. He said the tractor had been misdescribed because its batteries were dead. In addition, he said the starter and the air compressor did not work. A GSA employee again told Mr. Mitchell to make a claim in writing and to send it to GSA. She said if GSA determined Mr. Mitchell was correct, GSA would reimburse him for his purchase price. Exhibit 9.

12. In a letter to GSA dated May 30, an attorney for Mr. Mitchell said he wished to "dispute" the purchase of the tractor and trailer because GSA represented the tractor as operable even though it was not operable. The attorney said Mr. Mitchell wanted GSA to reimburse him for the expenses he incurred in making the tractor operable. Exhibit 8.

13. On June 7, Mr. Mitchell removed the tractor and trailer from their location in Tennessee. Exhibit 11.

14. In a letter to Mr. Mitchell dated June 17, the GSA contracting officer denied the claim set out in the attorney's May 30 letter. Exhibit 13.

15. In June 21 and July 2 electronic mail messages to the GSA Office of Inspector General, Mr. Mitchell said an employee of the Tennessee Division of Forestry other than the property custodian said the tractor had not been started for over one year and also said someone had tried and failed to start the tractor three months earlier. Exhibit 16.

16. On July 15, Mr. Mitchell filed this appeal from the contracting officer's decision. The notice of appeal says the tractor needed several unspecified repairs in order to make it operable, even though it had been advertised as being operable. Mr. Mitchell asked to be compensated for all of the damages he incurred due to GSA's "misrepresenting the conditions of the vehicle." Exhibit 18.

17. In October, Mr. Mitchell obtained from Fort Campbell, Kentucky, copies of two forms regarding two pieces of property. To each form, someone has added a handwritten notation consistent with federal supply codes for unserviceable property and federal condition codes for property that could be economically repaired.<sup>2</sup> It is not apparent from the faces of the forms whether the two pieces of property covered by the forms are the same two pieces of property sold to Mr. Mitchell by GSA. The forms show a Department of Defense agency declared the two pieces of property to be surplus in October 2001, one month after the Department of Agriculture says it acquired the two auctioned items. Although one form shows one piece of property had the same original purchase price as the trailer purchased by Mr. Mitchell, the other piece of property had an original purchase price approximately \$60,000 less than the tractor purchased by Mr. Mitchell. Exhibit 1; Appellant's Cross-Motion for Summary Relief at Exhibits 12, 13. Even if the two pieces of property covered by the forms are the same two pieces of property sold to Mr. Mitchell by GSA, there is no evidence to show the property was in the same condition in 2003, when it was sold, as it was in 2001, when the forms were prepared.

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<sup>2</sup> These codes are found at the following Department of Defense web site: [https://www.drms.dla.mil/rtda/Help\\_Definitions/Condition\\_Codes/condition\\_codes.html](https://www.drms.dla.mil/rtda/Help_Definitions/Condition_Codes/condition_codes.html).

### Discussion

Before we turn to the merits, we need to address briefly the limits of our jurisdiction. In his complaint, Mr. Mitchell says he filed this appeal "to recover damages and other monetary relief under the common law or equitable theories of fraud, unjust enrichment, payment by mistake of fact, recoupment of illegal profits, and to recover restitution for criminal offenses perpetrated against him." Complaint ¶ 1. In his brief, Mr. Mitchell cites dozens of civil and criminal statutes, regulations, treatises, and cases from many jurisdictions in support of his position. Appellant's Cross-Motion for Summary Relief at 1-38. According to the Contract Disputes Act, our jurisdiction does not extend to torts and criminal matters and is limited to a review of the contracting officer's decision denying Mr. Mitchell's claim. 41 U.S.C. §§ 601-613 (2000); Danny R. Mitchell, GSBCA 16122 (Jan. 22, 2004).

GSA contends the auctioned item was not misdescribed and its condition was not warranted. In addition, GSA says, whatever oral statements might have been made about the auctioned item did not confer any rights upon Mr. Mitchell. Respondent's Statement of Position in Support of Motion for Summary Relief at 4-5; Respondent's Reply to Appellant's Motion at 2.

Mr. Mitchell says the tractor and trailer were misdescribed because they were not operable. Appellant's Cross-Motion for Summary Relief at 12. He also says the web site's description of the condition of tractor and trailer was "an oxymoron" because it said the auctioned item was operable and also said repairs might be required. He says "any logical and reasonable person reading and interpreting" these words would realize if an item is operable, it should not need any repairs. Appellant's Cross-Motion for Summary Relief at 9. He also says GSA misrepresented the condition of the tractor and trailer. Appellant's Cross-Motion for Summary Relief at 6. He asks to recover in excess of \$775 million and says the contract provisions limiting the amount of any recovery to a return of the purchase price are unlawful and illegal. Appellant's Cross-Motion for Summary Relief at 8, 38.

Summary relief is appropriately granted when there is no genuine issue of material fact and the moving party is clearly entitled to judgment as a matter of law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986); US Ecology, Inc. v. United States, 245 F.3d 1352, 1355 (Fed. Cir. 2001); Olympus Corp. v. United States, 98 F.3d 1314, 1316 (Fed. Cir. 1996). A fact is material if it will affect our decision, and 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. John A. Glasure v. General Services Administration, GSBCA 16046, 03-2 BCA ¶ 32,284 (citing Celotex Corp.; Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574 (1986)). Because we find 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.

GSA did not misdescribe the tractor and trailer. The web site described the auctioned item as consisting of a 1978 Oshkosh tractor with a specified vehicle identification number and a transport trailer of a certain size and capacity with a specified vehicle identification number, and the sale terms and conditions warranted this description was accurate.

Mr. Mitchell does not deny receiving the Oshkosh tractor and the trailer described in the web site, so we conclude the tractor and trailer were not misdescribed. GSA is entitled to summary relief as to the issue of misdescription. Nyquest v. General Services Administration, GSBCA 15044, 00-1 BCA ¶ 30,628 (1999) (nonprecedential decision with persuasive reasoning). Even if the tractor and trailer had been misdescribed, summary relief in favor of GSA would be appropriate because the contract limited Mr. Mitchell's relief in case of a misdescription to a refund of his purchase price. Dan Parish v. General Services Administration, GSBCA 16025, 03-1 BCA ¶ 32,211.

Regarding the condition of the tractor and trailer, the terms and conditions of the sale contained an express disclaimer of any warranty regarding condition. The disclaimer is unambiguous and entitles GSA to summary relief regarding the issue of condition, unless Mr. Mitchell establishes the disclaimer is ineffective. Wittmann v. United States, 37 Fed. Cl. 239 (1997).

Mr. Mitchell contends the condition warranty disclaimer is of no effect because GSA misrepresented the condition of the auctioned item as being ready for service.<sup>3</sup> In order to establish GSA's liability for misrepresentation of the condition of the tractor and the trailer, Mr. Mitchell must show GSA made a misrepresentation, the misrepresentation was either fraudulent or material, the misrepresentation induced Mr. Mitchell to enter into the contract, and he was justified in relying upon the misrepresentation. Morris v. United States, 33 Fed. Cl. 733, 745 (1995). We examine only whether Mr. Mitchell justifiably relied upon representations contained in the web site and in the statements made by the property custodian regarding the condition of the tractor and trailer.<sup>4</sup>

Mr. Mitchell was not justified in relying upon the web site's representation of the condition of the tractor and trailer as "operable, repairs may be required" to mean the tractor and trailer could be placed into service immediately. The terms and conditions of the sale "invited, urged and cautioned" bidders to inspect the property prior to bidding, and contained an express disclaimer of any warranty regarding condition. It is not reasonable for a bidder faced with such admonitions and disclaimers to disregard them and to place complete reliance upon statements regarding condition such as those found in the web site. Mortenson v. United States, 229 Ct. Cl. 534 (1981); Wittmann; Morris. This is especially true if the bidder considers the web site's statement to be patently ambiguous, as did

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<sup>3</sup> Although we lack jurisdiction to consider a claim alleging the tort of misrepresentation, we have jurisdiction to consider a claim, such as this one, alleging an agency's misrepresentation constituted a breach of a contract's implied warranty that information provided to bidders is accurate. Morris v. United States, 33 Fed. Cl. 733 (1995); Maron Construction Co. v. General Services Administration, GSBCA 13625, 98-1 BCA ¶ 29,497.

<sup>4</sup> To the extent there are any genuine disputes as to any material facts regarding the condition of the property or the representations made by the property custodian, we resolve them in favor of Mr. Mitchell for purposes of considering GSA's motion for summary relief.

Mr. Mitchell. He says any reasonable person would find the web site's statement contradictory because an operable item should not require any repairs. Because Mr. Mitchell thought the web site's statement of condition was contradictory, any reliance he placed on the statement was not reasonable.

Mr. Mitchell's reliance upon oral statements made by the property custodian was also unjustified. The terms and conditions of the sale said any oral statement or representation by any representative of the Government, changing or supplementing the offering or contract or any condition thereof, was unauthorized and did not confer any right upon the bidder or purchaser. Even if the property custodian, an employee of the state of Tennessee, could be considered a representative of GSA and even if he misrepresented the condition of the property, Mr. Mitchell could not have justifiably relied upon his oral statements in light of the express terms and conditions of the sale warning bidders of the unauthorized nature of any such statements. Aubrey A. Bishop, GSBCA 4419, 76-1 BCA ¶ 11,705.

In summary, the auctioned item was not misdescribed, GSA disclaimed any warranty regarding the condition of the item, and Mr. Mitchell has not established the disclaimer is ineffective due to misrepresentation by GSA. There is no genuine dispute as to any material fact and GSA is entitled to relief as a matter of law.

#### Decision

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

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MARTHA H. DeGRAFF  
Board Judge

We concur:

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STEPHEN M. DANIELS  
Board Judge

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ROBERT W. PARKER  
Board Judge