

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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DENIED: April 28, 2006

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GSBCA 16729

MICHAEL GRIFFIN,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Michael Griffin, pro se, Wauwatosa, WI.

Judith A. Bonner, Office of Regional Counsel, General Services Administration, Philadelphia, PA, counsel for Respondent.

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

**HYATT**, Board Judge.

This appeal arises from the purchase by appellant, Michael Griffin, of a vehicle in an auction of surplus property conducted by respondent, the General Services Administration (GSA). Mr. Griffin contends that the condition of the vehicle he purchased was misrepresented and he seeks to recover the cost of repairs he made to the vehicle. GSA has filed a motion for summary relief. Based on the undisputed facts of record and accepting as true all of Mr. Griffin's factual assertions, as a matter of law, appellant cannot prevail. Accordingly, we grant GSA's motion and deny the appeal.

### Findings of Fact

1. In May 2005, GSA conducted an on-line auction, listing for sale a 1993 Chevrolet Astro passenger van. The description of the vehicle provided the vehicle identification number and the odometer reading and further noted that the vehicle was equipped with air conditioning, cruise control, power brakes, power steering, tilt steering, an AM/FM cassette radio, and intermittent windshield wipers and that “additional mechanical, interior/exterior body deficiencies are unknown.” The on-line description also expressly stated that “[t]he condition of the property is not warranted” and informed prospective bidders that the vehicle would be available for inspection from May 26 through June 1, 2005, from 8:30 a.m. until 3:00 p.m. Appeal File, Exhibits 2-4.

2. The terms and conditions of the sale, to which bidders are required to agree in order to register and participate in the auction, included, inter alia, 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 exist.

**Description Warranty.** The Government warrants to the original purchaser that the property listed in the GSAAuctions.gov website will conform to the 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.

**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.

Appeal File, Exhibit 5.

3. GSA notified Mr. Griffin that he was the successful bidder on June 2, 2005. On June 3, the agency sent the appellant a Standard Form 97, "Certificate to Obtain Title to a Vehicle." Appeal File, Exhibits 7, 9.

4. Appellant removed the vehicle on June 9, 2005. Appeal File, Exhibit 10.

5. In a letter dated June 15, 2005, appellant submitted a claim to the contracting officer seeking some \$1583 for estimated repairs to the vehicle. In a second letter, dated June 16, 2005, appellant revised the claimed repair amount to \$1617.20. In these letters, appellant identified the several deficiencies that he felt obligated to address immediately after taking possession of the car and undertaking to drive it to his home in Wisconsin. These included replacement of the battery, replacement of the radio antenna, repairs to the brakes, and replacement of four tires. He also noted that the air conditioning did not appear to work and received an estimate of some \$800 - \$1000 to repair it.<sup>1</sup> Appeal File, Exhibits 11-12.

6. In a letter dated July 14, 2005, the contracting officer denied appellant's claim for the cost of the enumerated repairs. Appeal File, Exhibit 16.

7. Prior to listing the van on GSAAuctions, GSA received the car from the Department of Homeland Security, which provided a description and vehicle checklist. That description stated that the vehicle had no known deficiencies and was in usable condition. Appeal File, Exhibit 2.

### Discussion

Respondent argues that it is entitled to summary relief because the terms of the sale limit GSA's liability to appellant and preclude the relief he seeks. 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

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<sup>1</sup> In addition, appellant noted that there was a typo in the registration and title issued for the van. A corrected title was issued to resolve that matter. Appeal File, Exhibits 14-15.

F.3d 1314, 1316 (Fed. Cir. 1996). In resolving summary relief motions, the Board has recognized that 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 that 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.

Neither party disputes the facts as set forth above -- they simply disagree as to the legal import of the facts. Respondent argues that the only relief available to a buyer under the applicable terms and conditions is to return the vehicle for a full refund of monies paid under the description warranty. Appellant has not shown a misdescription and thus is not entitled to relief under this term of sale.

Appellant contends that he is not arguing misdescription; his point is that the vehicle was not properly described with respect to its condition. He states that he tried, but was unable, to discuss the car's condition with the property custodian prior to placing a bid. He also urges that while the auction listing included by GSA in the appeal file states that the condition of the property is not warranted, his printout of the auction description does not reflect this statement.

We cannot explain why the printouts provided by GSA and appellant differ (although only as to the one statement). Nonetheless, giving appellant the benefit of the doubt, we accept his description as the one that he used to formulate his bid. This does not change the result -- regardless of whether this sentence was present on the auction description, appellant agreed to the terms and conditions of sale, and the identical statement is made in those terms and conditions. Although GSA warrants that the items purchased in its auctions are the items they are stated to be, it expressly disavows any warranty of condition. At best, purchasers are told of any known deficiencies. *Chris Ward v. General Services Administration*, GSBCA 16473, 05-1 BCA ¶ 32,881; *Coleridge D. Henri v. General Services Administration*, GSBCA 13991, 97-2 BCA ¶ 29,187, at 145,161; accord *Rene Hernandez v. General Services Administration*, GSBCA 15448, 01-2 BCA ¶ 31,463; *William B. Wobig v. General Services Administration*, GSBCA 14424, 98-1 BCA ¶ 29,650. Prospective bidders are strongly encouraged to inspect property in person prior to bidding. The custodian contact information is provided to assist the prospective buyer in arranging to inspect the vehicle in person -- there is no remedy for an inability to reach that person to ask questions about the condition of the property.

In essence, the vehicle Mr. Griffin purchased required far more extensive repairs than he had planned for based on the description provided on line. As we noted above, in these

sales, the buyer assumes the risks and uncertainties inherent in purchasing a used vehicle through the auction process. It is expected that the buyer will account for these risks and uncertainties, including the possible need for extensive repairs, in formulating the price that is bid for the property. If it is impracticable to inspect the property prior to submitting a bid, as Mr. Griffin says was the case here, the buyer should consider the possibility that, in the absence of a warranty as to condition, the article purchased may require substantial repairs. The terms and conditions of these auction sales do not provide a remedy for the optimistic bidder who is disheartened to learn, upon making arrangements to accept delivery of the property, that the repairs required are more extensive than he or she had anticipated. At that point the bidder has two choices -- to breach the contract, decline to purchase the property, and pay the resulting liquidated damages, or to honor the contract, purchase the property, and remove it from the Government's premises. Once the property has been removed, the buyer has no alternative but to keep it, unless he or she can demonstrate a misdescription that would justify a full refund under the Description Warranty clause. The contracting officer has no authority to provide any other relief and neither does the Board. *Chris Ward*, 05-1 BCA at 162,922.

GSA had no particularized knowledge as to the condition of the vehicle that it failed to disclose. The checklist provided by the Department of Homeland Security, the agency that originally used the vehicle, does not indicate that it was aware of the deficiencies complained of by appellant. Moreover, most of the problems raised, such as mismatched tires and the missing antenna would have been noticeable in a personal inspection. GSA did not misrepresent the condition of the car. *See Roberto Gomez v. General Services Administration*, GSBCA 16700, 05-2 BCA ¶ 33,095.

#### Decision

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

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CATHERINE B. HYATT  
Board Judge

We concur:

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ANTHONY S. BORWICK  
Board Judge

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MARTHA H. DeGRAFF  
Board Judge