



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: August 3, 2017

CBCA 5626

GODWIN ANAGU,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Godwin Anagu, pro se, Culver City, CA.

Mark Ezersky, Office of Regional Counsel, General Services Administration, San Francisco, CA, counsel for Respondent.

Before Board Judges **GOODMAN**, **VERGILIO**, and **LESTER**.

GOODMAN, Board Judge.

This appeal arises from a contract entered into between appellant, Godwin Anagu, and respondent General Services Administration (GSA), when appellant placed the winning bid on a 2009 Ford Escape (vehicle) listed on the GSA Auctions website. After taking delivery of the vehicle, appellant filed a claim seeking to return the vehicle for a full refund in the amount of \$9600, or alternatively, a price adjustment of \$2758.34 for repair costs. Respondent's contracting officer issued a decision denying the claim, and appellant appealed. Respondent filed a motion to dismiss, and thereafter the parties filed additional submissions. We treat the motion as a motion for summary relief and deny the appeal.

Findings of Fact

The advertisement on the GSA Auctions website specified the auctioneer, Norwalk Auto Auction in Norwalk, California, and provided a contact name and phone number for the auctioneer to coordinate pre-bid inspection of listed items and removal of items by the winning bidders. Exhibit 3 at 1.¹ The advertisement stated that the auction was subject to the Fleet Terms and Conditions and the General Sale Terms and Conditions, both of which were binding on bidders. Exhibit 3 at 1 and 7.

The relevant GSA Fleet Terms and Conditions of Sale provide:

Condition of Property

The following replaces Clause No. 2 of the General Terms and Conditions of the Standard Form (SF) 114C: 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. Therefore, the bidder should ascertain the condition of the item through physical inspection. Please also reference the Inspection of Property clause.

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Description Warranty & Refunds

The Government warrants to the original purchaser that the property listed in the GSAAuctions.gov website will conform to its written description. Features, characteristics, deficiencies, etc. not addressed in the description are excluded from this warranty. GSA further cautions bidders that GSA's written description represents GSA's best effort to describe the item based on the information provided to it by the owning agency. Therefore, gross omissions regarding the functionality of items, failures to cite major missing parts and/or restrictions with regards to usage may occur. The Government does not warrant the merchantability of the property or its purpose.

Exhibit 3 at 8-9. The relevant General Sale Terms and Conditions provide:

1. INSPECTION

¹ All exhibits are found in the appeal file, unless otherwise noted.

The Bidder is invited, urged, and cautioned to inspect the property prior to submitting a bid. Property will be available for inspection at the places and times specified in the Invitation.

Exhibit 3 at 12.

In addition to the terms and conditions, several other notifications indicate that the vehicle's condition was not warranted. Both the vehicle's auction advertisement and the Sale Contract Purchase Receipt stated "MAY OR MAY NOT NEED REPAIRS." Exhibit 3 at 1; Exhibit 4 at 1. Further, the Sale Contract Purchase Receipt stated "as-is." Exhibit 4 at 1. Lastly, an inspection report may indicate whether a vehicle may or may not need repairs. While appellant requested an inspection report at delivery, he did not request a report prior to placing a bid. Exhibit 14 at 6.

On August 31, 2016, appellant placed a winning bid in the amount of \$9600 for the vehicle listed on GSA Auctions. Exhibit 3 at 1, 5. Appellant did not inspect the vehicle before placing his bid. Exhibit 12 at 6-7.

Appellant alleges that "while the bid window was open, I called the number and person provided several times to find out when to inspect the car. The phone rang on end [and] was not picked [up]. It also did not provide an answering system." Exhibit 16 at 4. The auctioneer's employees deny receiving a call from appellant about inspecting the vehicle. Exhibit 8 at 1-3. Appellant's call record indicates that his calls to the auctioneer—twice on August 31 and once on September 1—were made after he submitted his winning bid and the auction closed. *Id.*; Exhibit 16 at 8-9.

Appellant paid for and removed the vehicle from the auction site on September 2, 2016. Exhibits 8 at 1-3; 4 at 2. While taking delivery, appellant noticed various issues with the vehicle and requested an inspection report. Exhibit 8 at 3-7. An auction house employee informed appellant that he had to request the report from GSA. *Id.*

By email message dated September 5, 2016, appellant advised the contracting officer that the vehicle had signs of flood damage as well as various mechanical and hazardous defects. Appellant stated the defects included a steering column that shakes when the car is driven, a mold or mildew smell, a ventilation system that blows sand and dust particles, and body panels and crevices filled with sand. Exhibit 5 at 1. He also noted that the vehicle failed a smog test. *Id.*

At the request of the contracting officer, appellant obtained and submitted a repair estimate.² Exhibit 11 at 6. The contracting officer reviewed the estimate and contacted the vehicle's former fleet manager, who stated that the vehicle had not been subjected to flood conditions. Exhibit 6 at 1. On September 26, 2016, the contracting officer offered to adjust the contract price by \$764.36. The contracting officer indicated that the adjustment addressed the left axle leak repair, which caused the shaky steering column. Exhibit 13 at 1. Appellant rejected the offer.

Appellant contacted the contracting officer again by email message dated October 3, 2016. In addition to the defects listed on the repair estimate, appellant stated that the gas tank was malfunctioning, that the vehicle was misdescribed, and that mileage should have been disclosed, as the vehicle had 34,000 miles on the odometer. Appellant alleged that if the auction house had offered a date or time for inspection, he would have uncovered the misdescription. Exhibit 11 at 3.

In an October 17 email response, the contracting officer requested a written statement with a final summary of all claim items. Exhibit 11 at 1. After receiving the final summary, the contracting officer issued a decision dated November 10, 2016 denying the claim. Exhibit 14 at 4-5. The contracting officer's denial cited both the GSA Fleet Terms and Conditions of Sale and the General Sale Terms and Conditions. Exhibit 14 at 4-5.

Appellant also maintains that he never received adequate documentation necessary to transfer title. Appellant did not raise this issue until January 26, 2017, almost three months after taking possession of the vehicle, and after the contracting officer issued a decision on his claim. Therefore, the alleged lack of adequate documentation was not presented to the contracting officer for decision. Respondent asserts that appellant received adequate documentation when he took delivery of the vehicle. Exhibit 17 at 2-3. Additionally, on June 30, 2017, respondent provided appellant via UPS with duplicate originals of the documents required to transfer title. Respondent has further agreed to make duplicate original copies available for physical pick up at the auction house until August 24, 2017, which appellant indicated would be acceptable. Respondent's Additional Information in Response to the Board's July 17, 2017 Order at 2; Appellant's Response to Respondent's Response and Additional Information at 4.

² Appellant indicated in an email message dated September 15, 2016 that the estimate did not include costs to repair the "cracked windshield, door panel strip and other [unspecified items]." Exhibit 11 at 5.

Appellant appealed the contracting officer's decision to this Board on February 5, 2017. On May 5, 2017, GSA filed a motion to dismiss for failure to state a claim upon which relief can be granted.

Discussion

We have jurisdiction to decide this timely appeal under the Contract Disputes Act, 41 U.S.C. §§ 7101-7109 (2012). When appellant registered and placed a bid on the auction, he agreed to the terms and conditions of GSA Auctions, including the GSA Fleet Terms and Conditions and the General Sale Terms and Conditions. This case is evaluated under those terms and conditions, which are binding on the parties. *Shchupak v. General Services Administration*, CBCA 4380, 15-1 BCA ¶ 35,901, at 175,508.

Respondent has filed a motion to dismiss the appeal, and the parties have referred to materials outside the pleadings in their submissions. Accordingly, we treat the motion as a motion for summary relief. *See Ibarra v. Department of Homeland Security*, CBCA 1986, 10-2 BCA ¶ 34,573, at 170,457-58 (citing *Metlakatla Indian Community v. Department of Health and Human Services*, CBCA 282-ISDA, 09-2 BCA ¶ 34,279); *see also Systems Management & Research Technologies Corp. v. Department of Energy*, CBCA 4068, 15-1 BCA ¶ 35,976, at 175,790. Granting summary relief is only appropriate “where there is no genuine issue as to any material fact (a fact that may affect the outcome of the litigation) and the moving party is entitled to relief as a matter of law.” *Ibarra*, 10-2 BCA at 170,458.

The only warranty provided by the General Sales Terms and Conditions is that the vehicle will “conform to its written description.” A successful misdescription claim may be brought if the Government makes an affirmative and inaccurate representation about the vehicle's condition.

Appellant alleges that multiple mechanical and cosmetic defects were not specified prior to delivery. However, in this case, the terms and conditions disclaim any warranty of condition—no warranty for the vehicle's condition exists in the contract. The GSA Fleet Terms and Conditions of Sale explicitly state that the condition of the vehicle is not warranted. The lack of warranty as to condition is further indicated in the vehicle's auction advertisement and the sale contract purchase receipt, which both stated “MAY OR MAY NOT NEED REPAIRS,” and again in the “as-is” disclosure on the Sale Contract Purchase Receipt. Additionally, the GSA Fleet Terms and Conditions of Sale explicitly warn that “gross omissions regarding the functionality of items, failures to cite major missing parts and/or restrictions with regards to usage may occur” and further provide that the Government disclaims any warranty of merchantability. The government is not obligated to reimburse

appellant for repairs that are not specified prior to delivery.³ *Aghdam v. General Services Administration*, CBCA 4673, 15-1 BCA ¶ 36,104, at 176,268 (“That appellant had to pay for repairs to fix problems that were not specified does not obligate respondent to reimburse appellant for these repairs.”); *see also Spicer v. General Services Administration*, CBCA 1532, 09-2 BCA ¶ 34,195, at 168,994 (denying repair reimbursement or a refund of purchase price for a vehicle sold “as is”).

In cases where the vehicle is sold “as is,” the warranty of description is satisfied when the advertisement provides an accurate year, make, model, and VIN number. *Farnam v. Department of the Treasury*, CBCA 2870, 12-2 BCA ¶ 35,159, at 172,542; *see also Ibarra*, CBCA 1986, 10-2 BCA at 170,458. Respondent has met its burden since no genuine issue of material fact exists, as the vehicle here was accurately described by year, make, model, and VIN number, and thus satisfies the warranty of description.

Appellant has no remedy as the vehicle was not misdescribed. Therefore, the appellant is not entitled to repair costs or a refund.

Decision

The respondent’s motion to dismiss, treated as a motion for summary relief, is granted. The appeal is **DENIED**.

ALLAN H. GOODMAN
Board Judge

We concur:

JOSEPH A. VERGILIO
Board Judge

HAROLD D. LESTER, JR.
Board Judge

³ While the contracting officer offered appellant monetary compensation to address appellant’s claim for a shaky steering column, respondent was not obligated to pay for this condition based on the terms and conditions of the contract.