

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

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DENIED: September 20, 2001

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GSBCA 15604

PETER JOHNSON,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Peter Johnson, pro se, Chelmsford, MA.

David G. Gherlein, Office of Regional Counsel, General Services Administration,  
Boston, MA, counsel for Respondent.

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

**DeGRAFF**, Board Judge.

Peter Johnson purchased a Ford van at a General Services Administration (GSA) auction and later returned the van to GSA in exchange for a refund of the purchase price. Mr. Johnson appeals GSA's decision not to reimburse him for the cost of repairs he made to the van. Because the terms of the warranty that GSA provided to Mr. Johnson preclude reimbursement for the cost of repairs, we grant GSA's motion for summary relief and deny the appeal.

### Findings of Fact

On March 29, 2001, GSA conducted a vehicle auction in Massachusetts. The sales announcement contained a list of vehicles to be sold, including a 1989 Ford Aerostar van. The announcement did not state that the Aerostar needed any repairs. Exhibit 1.<sup>1</sup> GSA was aware, however, that the van needed some kind of repairs. Exhibit 6.

The terms and conditions of the sale included the following:

**DESCRIPTION WARRANTY** - The Government warrants to the original purchaser that the property listed in the Invitation for Bids 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. No refund will be made unless the purchaser submits a written notice within 15 calendar days of the date of removal that the property is misdescribed and maintains the property in the same condition as when removed. After the property has been removed, no refund will be made for shortages of property sold by the "lot."

This warranty is in place of all other guarantees and warranties, express or 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 misdescribed property. The purchaser is not entitled to any payment for loss of profit or any other money damages, special, direct, indirect or consequential.

Exhibit 1 (emphasis in original).

Mr. Johnson purchased the Aerostar for \$2550. Exhibits 3, 4. On April 11, 2001, Mr. Johnson's wife sent a letter to GSA regarding the van. She explained that when he drove the van away from the auction lot, Mr. Johnson noticed a problem with the brakes. Instead of returning the Aerostar to the lot, Mr. Johnson took it to a mechanic to have the brakes repaired. On April 9, Mr. Johnson's mechanic told him that there had been a major problem with the brakes. The mechanic charged Mr. Johnson \$1084.10, which included \$1004.10 for new brakes, \$52.50 for an oil change, and \$27.50 for a check of the engine's oil pressure. Based upon the oil pressure check, the mechanic told Mr. Johnson that the Aerostar needed a new engine. On April 10, Mr. Johnson took the van for a state-required inspection, which it failed due to problems with its steering and suspension system. In her April 11 letter, Mrs. Johnson asked that GSA allow Mr. Johnson to return the Aerostar, obtain a refund of the purchase price, and be reimbursed for the money he spent to have the brakes repaired. Exhibit 5.

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<sup>1</sup> All citations are to exhibits contained in the record prepared by the parties.

The GSA contracting officer determined that GSA had misdescribed the van in the sales announcement. Although the contracting officer allowed Mr. Johnson to return the Aerostar van and refunded his purchase price, the contracting officer decided not to reimburse Mr. Johnson for the money he spent to have the brakes repaired. Exhibits 6, 7, 30. Mr. Johnson appeals to the Board from the contracting officer's decision. Exhibit 8. GSA filed a motion for summary relief, to which Mr. Johnson responded.

### 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 uncontested facts and from Mr. Johnson's statement of uncontested facts, his statement of genuine issues, and the facts set out in his opposition to GSA's motion for summary relief, insofar as they are supported by the exhibits and not contested by the other party. The parties do not disagree about any of the material facts.

The description warranty limited GSA's liability to Mr. Johnson by providing that in case of a misdescription, Mr. Johnson's recovery was limited to a refund of his purchase price. The warranty allowed Mr. Johnson to return the van in the same condition it was in when he removed it from the auction lot and to obtain a refund of the amount he paid for the van, provided he notified GSA of the misdescription within a certain time. The warranty did not give Mr. Johnson the option of undertaking expensive repairs to the van, returning the van in a condition different from the condition it was in when he removed it from the lot, and then obtaining payment from GSA for the cost of the repairs in addition to a refund of the purchase price. Robert W. Simonds, GSBCA 10018, 90-2 BCA ¶ 22,872; Geoffrey W. Garner, GSBCA 9942, 89-3 BCA ¶ 22,163. Although we have occasionally permitted appellants who purchased misdescribed vehicles to recover at least part of the cost of their repairs, we have never permitted an appellant to obtain a refund of the purchase price and also recover the cost of repairs. H.A. Wilmeth, GSBCA 9501, 89-2 BCA ¶ 21,889; Doris A. Lahage, GSBCA 7321, 84-2 BCA ¶ 17,498.<sup>2</sup> Obtaining both a refund and reimbursement

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<sup>2</sup> We wonder whether the result would have been the same in Lahage and Wilmeth if the sales announcements in those cases had contained the same "Deficiencies" clause as the one here, which reads:

**DEFICIENCIES** - All property is in used condition unless otherwise indicated and may be inoperable, parts may be missing and repairs may be required. Deficiencies, when known, have been indicated after the item description. The absence of any indicated deficiency does not mean the item(s) might not have any (further) deficiencies. Listed deficiencies are at

for the cost of repairs would clearly exceed the limitation upon recovery imposed by the warranty.

In responding to the motion for summary relief, Mr. Johnson says that GSA should have offered to allow him to remove the new brakes from the van, so that he could have attempted to return them to his mechanic for credit. Appellant's Opposition for Summary Relief at 3. If Mr. Johnson wanted to remove the new brakes before he returned the van, he could have done so. Of course, he would have needed to install the old brakes in order to return the van to GSA for a refund. GSA, however, had no obligation to offer to allow Mr. Johnson to undertake such an exchange.

Rather than keep the van, repair the steering and suspension system, and perhaps replace the engine, Mr. Johnson cut his losses by returning the van and obtaining a refund of his purchase price. This was very likely the wisest course of action he could have undertaken, given the terms of the warranty.

### 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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EDWIN B. NEILL  
Board Judge

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CATHERINE B. HYATT  
Board Judge

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least what is wrong with any particular item. Bidders are therefore cautioned to inspect the property before bidding. While every effort will be made to divulge deficiencies, **NO ADJUSTMENTS WILL BE MADE FOR DEFICIENCIES NOT NOTED**. It is the bidder's responsibility to inspect and you may bring an expert for the commodity you are considering to place a bid. Take any lack of inspection into account as you are bidding. **CONDITION OF PROPERTY IS NOT WARRANTED.**

Exhibit 1 (emphasis in original).