

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

DENIED: September 22, 2005

GSBCA 16700

ROBERTO GOMEZ,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Roberto Gomez, pro se, Manchester, CT.

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

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

DeGRAFF, Board Judge.

Roberto Gomez appeals the decision of the General Services Administration (GSA) to deny his request for reimbursement of the cost to repair a vehicle he purchased at a GSA auction. We grant GSA's motion for summary relief and deny the appeal.

Background

In early 2005, GSA listed a 1999 Chevrolet Suburban for sale on its online auction web site. The description of the vehicle contained the vehicle identification number, listed the vehicle's odometer reading, and said it was equipped with four wheel drive, an air

conditioner, power brakes, and power steering. The description also said the vehicle needed repairs which included, but were not limited to, repairs to the vehicle's body and windshield. Exhibit 4.¹

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 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 **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 3.

Mr. Gomez was the high bidder for the vehicle and GSA awarded it to him on January 31, 2005. He paid for the vehicle on February 3 and removed it from the Government's custody on February 11. Exhibits 5 - 10.

¹ All cited exhibits are contained in the appeal file.

On June 9, 2005, Mr. Gomez wrote to GSA regarding the vehicle. He said the item description was inaccurate because the air conditioner did not work, and he asked GSA to pay for the necessary repairs. Exhibit 13. The contracting officer denied the request because the sale terms and conditions said the condition of the property was not warranted and also said deficiencies could exist even if they were not listed in the description of the property, and because the claim was filed after the fifteen-day deadline established by the refund claim procedure contained in the sale terms and conditions. Exhibit 14. Mr. Gomez appealed to the Board. Exhibit 15.

Discussion

When considering a motion for summary relief, we review affidavits, declarations, documents, and appeal file exhibits relied upon by the parties in supporting and opposing the motion. Rule 108 (48 CFR 6101 .8 (2004)). We do not weigh evidence in order to determine the truth of the matter. Rather, we examine evidence in order to determine whether there are factual issues in dispute. 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. Summary relief will be granted if the movant demonstrates there is an absence of evidence to support an essential element of the non-movant's claim or defense. Although the non-movant is entitled to the benefit of the doubt as to the facts, it cannot rest its opposition upon allegations, conclusions, and denials contained in its pleadings. If the moving party demonstrates the absence of a genuine issue as to any material fact, the burden shifts to the non-moving party to set forth specific facts demonstrating there is a genuine issue as to a material fact to be resolved 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).

The facts set out above were put forward by GSA in its motion and are supported by the cited exhibits. Mr. Gomez has not demonstrated there is a genuine issue as to any material fact, so we look to see whether GSA is entitled to relief as a matter of law.

GSA did not misdescribe the vehicle. The web site described the auctioned item as a 1999 Chevrolet Suburban with a specified vehicle identification number, a certain number of miles on the odometer, and several named features. The sale terms warranted this description was accurate. Because Mr. Gomez received the vehicle advertised on the web site, we conclude it was not misdescribed. *Chris Ward v. General Services Administration*, GSBCA 16473, 05-1 BCA ¶ 32,881; *Danny R. Mitchell v. General Services Administration*, GSBCA 16209, 04-1 BCA ¶ 32,551.

Even if GSA had misdescribed the vehicle, the terms and conditions of the sale limit Mr. Gomez's recovery in the case of a misdescription to a refund of his purchase price, provided he notified the contracting officer of the problem within fifteen days after he removed the vehicle. Mr. Gomez waited nearly five months to notify the contracting officer of what he believes was a misdescription. He says the fifteen-day limitation should not apply to him because he purchased the vehicle in the winter and did not discover a problem until several months later when the weather turned warmer. Unfortunately for Mr. Gomez, the terms of the sale contract are clear and do not vary depending upon the time of year he purchased the vehicle. He had fifteen days after he picked up the vehicle to examine it and to conduct whatever inspections he wanted in order to determine if the vehicle was misdescribed. Because no problem with the description became apparent within the fifteen days, the terms of the sale do not provide him with a remedy even if the vehicle was misdescribed. *McNutt Used Cars v. General Services Administration*, GSBCA 16398, 04-2 BCA ¶ 32,668; *Rene A. Hernandez v. General Services Administration*, GSBCA 15448, 01-2 BCA ¶ 31,463.

Mr. Gomez's true complaint is about the condition of the vehicle. However, the terms 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. Gomez establishes the disclaimer is ineffective. For example, if Mr. Gomez could establish that GSA misrepresented the condition of the air conditioning system, the condition warranty disclaimer would be ineffective. *Mitchell*. Mr. Gomez says GSA did not properly document the repairs the vehicle needed and he suspects the agency which consigned the vehicle to GSA for auction knew the air conditioner did not work. The problem with Mr. Gomez's position is that he does not know whether the air conditioner worked when he purchased the vehicle. Although he assumes it did not, he cannot know this for sure because he did not try to run the air conditioner for several months. Even if the air conditioner did not work at the time of purchase, there is no evidence to show the problem was known to GSA or the consigning agency before the sale, or to show the problem was not apparent and would have escaped detection if Mr. Gomez had made a reasonable inspection of the vehicle before purchasing it. In the absence of such proof, there was no misrepresentation and the disclaimer of the warranty regarding condition precludes Mr. Gomez from obtaining the relief he requests.

In summary, the auctioned item was not misdescribed, GSA disclaimed any warranty regarding the condition of the item, and Mr. Gomez 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**.

MARTHA H. DeGRAFF
Board Judge

We concur:

ROBERT W. PARKER
Board Judge

EDWIN B. NEILL
Board Judge