



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: February 22, 2024

CBCA 7890

FIRST PLACE AUTO SALES, INC.,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Kamalodin Toghyani, President, and John Cousins, Consultant and Buyer, of First Place Auto Sales, Inc., Gainesville, FL, appearing for Appellant.

Anthony M. Giannopoulos, Office of Regional Counsel, General Services Administration, Philadelphia, PA, counsel for Respondent.

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

LESTER, Board Judge.

Respondent, the General Services Administration (GSA), has filed a motion seeking summary judgment on a claim for damages arising out of the public auction of a vehicle that its purchaser, First Place Auto Sales, Inc. (First Place Auto), asserts was mis-described. GSA argues that it did not make any representations about the condition of the paint on the vehicle, which is the defect about which First Place Auto complains, and that, even if it had, the language in the parties' agreement, including GSA's disclaimers of any warranties, bars recovery of repair costs. For the reasons explained below, we grant summary judgment in GSA's favor and deny the appeal.

Background

The Auction

GSA Auctions offers personal property, such as vehicles, computers, heavy equipment, jewelry, and furniture, for sale to the general public. Appeal File, Exhibit 9 at AF024.¹ Before participating in a GSA Auctions bid process, bidders must complete the Bidder Registration and Bid Form contained in the Invitation for Bids for a particular sale. *Id.* As part of that process, bidders “must acknowledge that they have read and accepted ALL terms and conditions detailed on [the GSA Auctions] website and indicate that they agree by marking the required box during the registration process or when prompted to when a change to the terms have been implemented.” *Id.* at AF025. By accepting the GSA Auctions terms and conditions, “bidders are also agreeing to the General Sales Terms and Conditions (Standard Form 114C, April 2001),” *id.* at AF024, which “apply to all sales of GSA Fleet vehicles” and are incorporated into all GSA fleet sales contracts. Exhibit 2 at AF03.

The “Inspection” clause in the Standard Form 114C terms and conditions, which indicates that property being auctioned “will be available for inspection at the places and times specified in the Invitation,” “invite[s], urge[s], and caution[s]” bidders “to inspect the property prior to submitting a bid.” https://www.gsa.gov/system/files/SF_114C.pdf (incorporated into Exhibit 2 at AF03). The Standard Form 114C terms and conditions also include a “Limited Description Warranty” clause, which reads as follows:

LIMITED DESCRIPTION WARRANTY. The Government warrants to the original purchaser that the property listed in the Invitation for Bids or the Fleet Sales Catalog will conform to its description only. *Condition of property is not guaranteed. Deficiencies, when known, have been noted in the item description; however, the absence of any indicated deficiencies does not mean there are none.* Announced conditions at time of sale supersede the description in the Invitation for Bids or the Fleet Sales Catalog.

If a mis-description is determined, the Government will keep the property and refund any money paid unless an equitable resolution is agreeable between both parties. Any refund of payment, full or in part, as a result of a vehicle claim, will be made by electronic funds transfer (EFT) or a credit back to the credit card, if paid with such, on which payment was originally made. If a

¹ Unless otherwise noted, all exhibits cited in this decision are contained in the appeal file.

mis-description is determined after removal, the purchaser may be required to take the property at his or her expense to a location specified by the contracting officer. *No refund will be made unless 1) the purchaser is still in possession of, and the owner of the vehicle, and 2) the purchaser submits a written notice, claiming a mis-description, to the contracting officer within 15 calendar days of the date . . . specified for removal and maintains the property in the same condition as when removed.* Purchasers may be required to submit an independent estimate of repairs from a reputable repair facility as part of their written notice to the contracting officer. 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 mis-described property. The purchaser is not entitled to any payment for loss of profit or any other monetary damages, including special, direct, indirect, or consequential damages.*

Exhibit 2 at AF03-04 (emphasis added).² Similarly, the GSA Auctions terms and conditions identify the following limited warranty:

The Government warrants to the original purchaser that the property listed on GSAAuctions.gov 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. *The purchaser is not entitled to any payment for loss of profit or any other money damages—special, direct, indirect, or consequential.*

² Similarly, the GSA Auctions terms and conditions contained the following disclaimer: "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." Exhibit 9 at AF035.

Exhibit 9 at AF035 (emphasis added). If a bidder does not agree to the presented terms and conditions, it cannot place bids on the property. *Id.* at AF024.

On or about August 8, 2023, GSA conducted a live auction at the Bel Air Auto Auction in Edgewood, Maryland. Bidders were provided with an auction catalog identifying the year, make, model, color, and mileage of each vehicle in the auction. In addition, each vehicle had an accompanying “Condition Report,” which provided additional information specific to each vehicle. One of the vehicles included in the auction was a 2012 Blue Bird All American Bus (the Blue Bird bus), listed as Run #923, VIN #1BABNBXA1CF283590. Exhibit 1 at AF02. The condition report for the Blue Bird bus identified the make and model of the bus, its color (blue), its Vehicle Identification Number (VIN), the brand of its tires, and its engine size, and it indicated that the bus was “[d]rivable” and had no unibody/frame damage. Exhibit 7 at AF018-019. Even though the report included thirteen exterior and interior photographs of the bus, *id.* at AF019-020, the GSA Auctions terms and conditions indicated that “[p]hotographs may not depict an exact representation of the bid item(s) and should not be relied upon in place of written item descriptions or as a substitute for physical inspection.” Exhibit 9 at AF030. The report also contained the following disclaimer:

DISCLAIMER. THIS CONDITION REPORT IS FOR INFORMATIONAL PURPOSES ONLY AND IS BASED ON INFORMATION PROVIDED BY THE SELLER. THIS CONDITION REPORT IS NEITHER INTENDED, NOR SHOULD IT BE CONSTRUED TO CONSTITUTE, ANY TYPE OF WARRANTY, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, AND ANY SUCH WARRANTY, WHETHER ARISING BY OPERATION OF LAW OR OTHERWISE, IS HEREBY DISCLAIMED. ANY REPUBLISHING OF THIS CONDITION REPORT SHALL CONTAIN THIS DISCLAIMER.

Exhibit 7 at AF021.

A representative of First Place Auto attended the August 8 auction and was the highest bidder for the Blue Bird bus, at a price of \$12,000. Exhibit 3 at AF014. Notice of award of the vehicle to First Place Auto was issued that same day under contract no. GS0WF23FBE2105. Exhibit 4 at AF015. It is unclear from the record whether, prior to bidding on the Blue Bird bus, First Place Auto had visited the auction site on the auction “preview dates,” which were advertised in the auction notice as being August 7 and early on August 8 prior to the auction. *See* Exhibit 1 at AF01.

When making payment for the Blue Bird bus on August 8, 2023, First Place Auto signed a sales receipt agreeing to the following:

NO REFUNDS EXCEPT AS PERMITTED IN ACCORDANCE WITH THE STANDARD FORM 114C AND THE GSA SALE TERMS AND CONDITIONS APPLICABLE TO SALE NUMBER WAFBPC23239[.]

Exhibit 3 at AF014.

First Place Auto's Claim

On August 23, 2023, First Place Auto notified the GSA Sales contracting officer by email that the exterior paint on the bus was in poor condition. Exhibit 6 at AF017. First Place Auto has represented that “[t]he entire bus had particles that were glued to the surface, so the bus . . . had two problems, it needed material to be removed and the entire bus needed painting.” Appellant’s Response (Feb. 1, 2024) at 2. First Place Auto’s email of August 23, 2023, contained what First Place Auto identified as a “claim” seeking payment of \$5000 for “complete paint.” Exhibit 6 at AF017.

On August 25, 2023, the GSA Sales contracting officer issued a final decision denying First Place Auto’s claim. Exhibit 8. In the final decision, the contracting officer indicated that the Blue Bird bus was accurately described in the “Condition Report” and that the condition of the bus was not guaranteed. *Id.* at AF023. The contracting officer also represented that, under the terms and conditions to which First Place Auto had agreed as a condition of being allowed to participate in the auction, the amount of recovery for any mis-described property is limited to a return of the purchase price of the property and that, as relevant to the claim here, no purchaser is entitled to payment for monetary damages, whether they be special, direct, indirect, or consequential damages, for the cost of repairing or otherwise altering property purchased at auction. *Id.* at AF022.

Proceedings Before the Board

On August 31, 2023, First Place Auto timely mailed to the Board, through the United States Postal Service, its notice of appeal of the contracting officer’s decision, and the Clerk of the Board docketed that appeal on September 12, 2023, as CBCA 7890. First Place Auto described its claim, which it had increased from \$5000 to \$6000, as follows:

I am writing to appeal a denial on a warranty claim that I submitted August 23, 2023, regarding [the Blue Bird bus], contract number GS0WF23FBE2105.

Although First Place Auto purchased the bus on August 8, 2023, we did not receive the bus until August 22, 2023 and didn’t see it until the following day. Once we saw the state of the paint, I immediately reach[ed] out to see if something could be done.

I have been in business since 1979 and have grown confident in the grade scale that GSA has developed and never have I seen a vehicle fall through the cracks of your grading system. I am not seeking reimbursement for the entirety of the repaint, but am simply requesting \$6000 to help partially cover it.

Notice of Appeal at 1.

In November 2023, First Place Auto filed documents with the Board describing its purchase of a *different* vehicle, for which it wants compensation, which it bought at another auction during the pendency of this appeal. Specifically, on November 8, 2023, First Place Auto filed a request with the Board asking that it be allowed “to explain the situation regarding the 2015 Ford F550 bus that was purchased on 10/10/2023 at the Bel Air Auto Auction over the Internet,” which GSA had allegedly listed as “drivable” and for which First Place Auto paid \$36,250. Apparently, the Ford vehicle needed significant repair work at a cost of \$9536.18, and First Place Auto wants GSA to buy the Ford back so that it “can go forward without the Ford expenses.” In a supplement filed on November 13, 2023, First Place Auto provided invoices for the repair work that it paid on the Ford vehicle, indicated that it is “\$5,190 out of pocket,” and requested that GSA “see [its] way to granting us that amount to make us whole.” First Place Auto’s submissions do not indicate that it submitted a claim to the GSA Sales contracting officer for those monies or received a contracting officer’s final decision on such a claim. Although the GSA counsel of record in this appeal was copied on both the November 8 and 13 filings, the GSA Sales contracting officer was not, and neither filing was directed to the contracting officer.

On November 28, 2023, GSA filed a motion for summary judgment on First Place Auto’s claim relating to the Blue Bird bus, arguing that (1) GSA had made no representations regarding the condition of the paint on the bus, precluding any kind of argument that GSA had warranted the paint; (2) GSA had expressly disclaimed any warranty; and (3) the auction contract between the parties limits any damages for an alleged mis-description of a vehicle to a refund of the purchase price in exchange for return of the vehicle in its original condition and precludes reimbursement of repair costs incurred to improve the vehicle. GSA did not address the allegations that First Place Auto raised in its November 8 and 13 submissions to the Board about problems with the Ford vehicle that it purchased on October 10, 2023. First Place Auto filed its response to GSA’s motion on February 1, 2024.

Discussion

I. Jurisdiction

First Place Auto submitted the claim involving the Blue Bird bus to the GSA contracting officer on August 23, 2023. In that claim, First Place Auto sought

reimbursement of \$5000 to “complete paint” on a vehicle (the Blue Bird bus) that it purchased at auction on August 8, 2023. The GSA contracting officer issued a final decision denying that claim on August 25, 2023, and notified First Place Auto of its right to appeal the decision to the Board within ninety days. We possess jurisdiction to entertain First Place Auto’s appeal of that final decision. *See Corrections Corp. of America v. Department of Homeland Security*, CBCA 2647, 15-1 BCA ¶ 35,971, at 175,741. Although, in its notice of appeal, First Place Auto increased the amount of its claim from \$5000 to \$6000, that increase does not affect our jurisdiction. *See ECC International Constructors, LLC v. Secretary of the Army*, 79 F.4th 1364, 1375 (Fed. Cir. 2023); *Santa Fe Engineers, Inc. v. United States*, 818 F.2d 856, 858 (Fed. Cir. 1987).

The Board has no jurisdiction to consider First Place Auto’s request, raised in its submissions in November 2023, for costs incurred to repair a Ford F550 bus that First Place Auto purchased during the pendency of this appeal. “The CDA requires that ‘[e]ach claim by a contractor against the Federal Government relating to a contract . . . shall be submitted to the contracting officer for a decision.’” *Sharp Electronics Corp. v. McHugh*, 707 F.3d 1367, 1371 (Fed. Cir. 2013) (quoting 41 U.S.C. § 7103(a)(1)-(2) (2012)). “Under the CDA, a final decision by a CO on a ‘claim’ is a prerequisite for Board jurisdiction.” *Id.* (quoting *Reflectone, Inc. v. Dalton*, 60 F.3d 1572, 1575 (Fed. Cir. 1995) (en banc)). “Without the [submission] of a claim [to the contracting officer] and the issuance of a final decision (or the failure to issue such a decision within the prescribed period of time), this Board lacks jurisdiction.” *Xcelerated Subsistence Solutions v. Department of Justice*, CBCA 5654, 18-1 BCA ¶ 37,066, at 180,423 (2017). There is no evidence in the record that First Place Auto ever submitted a claim to the GSA Sales contracting officer seeking a final decision about the Ford vehicle purchase or that the contracting officer has issued a final decision on such a claim.³ To the extent that First Place Auto wants to pursue a claim involving the Ford vehicle, it will first have to address that claim with the GSA Sales contracting officer.

The only claim properly before us is First Place Auto’s request for compensation associated with the Blue Bird bus purchased on August 8, 2023, which we consider below.

II. First Place Auto’s Blue Bird Bus Claim

First Place Auto seeks to recover costs that it incurred in repainting the bus that it purchased at auction, arguing that GSA mis-described the vehicle and that First Place Auto should not have to shoulder the repair costs. Its claim fails for the four following reasons, each of which provides an independent basis for denying First Place Auto’s claim:

³ First Place Auto has also not filed a notice of appeal of any contracting officer’s final decision relating to the Ford vehicle purchase.

First, GSA did not make any representations in its “Condition Report” or elsewhere about the condition or quality of the paint on the Blue Bird bus, precluding a claim of mis-description. Although GSA warranted that any auctioned vehicle would “conform to its written description,” the GSA Auctions terms and conditions expressly provided that “[f]eatures, characteristics, deficiencies, etc. not addressed in the description are excluded from this warranty.” Exhibit 9 at AF034. “[M]ere ‘[f]ailure to disclose’ . . . a vehicle characteristic ‘does not amount to a mis-description.’” *Stephane Alrivy v. General Services Administration*, CBCA 7666, 23-1 BCA ¶ 38,337, at 186,156 (quoting *T.K. Hughes Auto Sales, Inc. v. General Services Administration*, CBCA 5397, et al., 17-1 BCA ¶ 36,747, at 179,110); see *Frances Spicer v. General Services Administration*, CBCA 1532, 09-2 BCA ¶ 34,195, at 168,994 (failure to disclose vehicle’s condition does not amount to a mis-description); *Fred M. Lyda v. General Services Administration*, CBCA 493, 07-2 BCA ¶ 33,631, at 166,572 (mis-description connotes an affirmative inaccurate description of something, not an omission). The closest that GSA ever comes to disclosing any information about the paint on the bus is by (correctly) identifying that the bus is blue. That is far from a representation of the quality of the vehicle’s paint. First Place Auto has not identified any affirmative misrepresentation by GSA about the Blue Bird bus.

Second, GSA disclaimed any warranty of the condition of the vehicle, first in its general terms and conditions and then again in the “Condition Report” for the Blue Bird bus. See Exhibits 2 at AF03, 7 at AF021, 9 at AF035. The word “condition” refers to “the state of something, esp. with regard to its appearance, quality, or working order,” <https://www.encyclopedia.com/social-sciences-and-law/law/law/condition> (last visited Feb. 21, 2024), which includes the quality of the paint on a vehicle. Accordingly, GSA’s contract provisions plainly disavowed any warranty of the quality of the Blue Bird bus paint. “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.” *Godwin Anagu v. General Services Administration*, CBCA 5626, 17-1 BCA ¶ 36,812, at 179,413. GSA met that requirement here, and its warranty disclaimer precludes the Government’s liability for damages for the poor paint quality of the bus.

Third, First Place Auto waived its right to claim mis-description by failing to inspect the Blue Bird bus before bidding on it, even though it had an opportunity to do so. The notice for the auction that included the Blue Bird bus identified “preview dates” for potential bidders to inspect the vehicles that would be auctioned on August 8, 2023. As previously mentioned, the “Inspection” clause in the Standard Form 114C terms and conditions, which indicates that “[p]roperty will be available for inspection at the places and times specified in the Invitation,” “invite[s], urge[s], and caution[s]” bidders “to inspect the property prior to submitting a bid.” https://www.gsa.gov/system/files/SF_114C.pdf (incorporated into Exhibit 2 at AF03). As seen in a video of the Blue Bird bus that First Place Auto submitted as evidence in this appeal, it is clear that the defects in the paint on the bus were so obvious to

the naked eye that First Place Auto would easily have identified them had it inspected the bus before bidding. “[A] successful bidder cannot establish that an item was misdescribed if the bidder complains of a problem that a bidder could have reasonably discovered during an inspection.” *Kenneth G. Hanke v. General Services Administration*, GSBCA 14097, 97-2 BCA ¶ 29,247, at 145,490; *see John C. Cruden*, GSBCA 9331, 89-1 BCA ¶ 21,348, at 107,622 (1988) (finding that a bidder cannot recover for allegedly undisclosed deficiencies “that [he] could readily have ascertained for himself in advance of the sale by inspecting the car”). If “a bidder decides not to conduct an inspection,” it assumes liability for defects that it could have detected. *Hanke*, 97-2 BCA at 145,491; *see 3 Daughters Painting Co. v. General Services Administration*, CBCA 6724, 20-1 BCA ¶ 37,669, at 182,880 (“When appellant chose to place a bid without inspecting the vehicle[,] he waived his right to assert that the vehicle was mis-described.”).

Fourth, the type of damages that First Place Auto claims—that is, reimbursement of the costs of repainting the Blue Bird bus—is barred by its agreement with GSA. Under that agreement, if there is an actionable mis-description, the purchaser’s sole remedy is a refund of the purchase price. Exhibit 2 at AF03-04. That remedy is available, though, only if the purchaser “maintains the property in the same condition as when removed” and returns it to GSA in that condition. *Id.* at AF03; *see Nancy McBroom v. General Services Administration*, CBCA 5575, 17-1 BCA ¶ 36,804, at 179,385 (“Appellant cannot make changes to the vehicle and maintain a claim for misdescription.”); *Antonio Zuco v. General Services Administration*, GSBCA 11873, 93-2 BCA ¶ 25,734, at 128,027 (“Under the terms of the contract, the buyer does not have the option to repair the car and seek the cost of repairs.”). Having repainted the Blue Bird bus, First Place Auto cannot now return it for a refund, and its agreement expressly precludes recovery of any “special, direct, indirect, or consequential damages.” *Id.* at AF04. For this reason, First Place Auto cannot recover its repainting or repair costs. *See, e.g., T.K. Hughes Auto Sales*, 17-1 BCA at 179,110; *DustNSew, LLC v. General Services Administration*, CBCA 4769, 16-1 BCA ¶ 36,284, at 176,948-49.

Decision

For the foregoing reasons, GSA’s motion for summary judgment is granted. First Place Auto’s claim is **DENIED**.

Harold D. Lester, Jr.

HAROLD D. LESTER, JR.
Board Judge

We concur:

Allan H. Goodman
ALLAN H. GOODMAN
Board Judge

Marian E. Sullivan
MARIAN E. SULLIVAN
Board Judge