



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: March 17, 2008

CBCA 936

PATRICK C. SULLIVAN,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Patrick C. Sullivan, pro se, Union City, NJ.

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

Before Board Judges **GILMORE**, **STERN**, and **McCANN**.

STERN, Board Judge.

Patrick C. Sullivan (appellant) appeals the decision of the contracting officer for the General Services Administration (GSA or respondent) denying his claim for the costs to repair the gas tank on a vehicle he purchased at a GSA auction. GSA moves for summary relief.

Background

Appellant purchased a 1990 Chevrolet Astro van at the GSA auction at a cost of \$505. The vehicle was described as follows:

1990 CHEVROLET ASTRO VAN, COLOR BLUE, 5 DR., AT, 2WD, AC, AM/FM RADIO, HUB CAPS, INTERMITTENT WIPERS, PB, PS. REPAIRS REQUIRED BUT NOT LIMITED TO: AC INOPERABLE, RUST, BODY DAMAGE, BRAKES, DENTS, INTERIOR DAMAGED, OIL LEAKS, TIRES, TRANSMISSION, REAR DOOR WILL NOT OPEN, CEILING LINER FALLING DOWN, LH HEADLAMP NOT WORKING, RH TURN SIGNAL NOT WORKING, LR WINDOW LATCH BROKEN. EST. MI 59,130

Appeal File, Exhibit 4.

The terms and conditions of sale agreed to by Mr. Sullivan included the following:

Condition of Property is not warranted. Condition No. 2, "Condition and Location of Property," of Standard Form 114C is deleted in its entirety. Deficiencies, when known, have been indicated in the property descriptions. However, absence of any indicated deficiencies does not mean that none exists.

Description of Warranty and Refunds

Description of Warranty. The Government warrants to the original purchaser that the property listed in the GSAAuctions.gov website will conform to its written description. If a misdescription is determined before payment, the contract will be cancelled without any liability to the bidder. 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 Sales Contracting Officer. The Refund Claim Procedure described below will be strictly followed for filing a claim. 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.

Refund Claim Procedure. To file a refund claim for misdescribed property, (1) submit a written notice to the Sales Contracting Officer within 15 calendar days from the date of award prior to payment or 15 calendar days from the date of removal that the property was misdescribed, (2) if removed, maintain the property in the purchased condition until it is returned, and (3) if removed, return the property at your own expense to a location specified by the Sales Contracting Officer. Written claims need to be filed to the Sales Contracting Officer, no verbal contact with the custodian or the Sales Contracting Officer will constitute a notice of misdescription.

Refund Amount. The refund is limited to the purchase price of the misdescribed property.

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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 3.

Appellant alleges that he discovered several defects in the vehicle, including a hole in the oil pan, inoperable brakes, and a severe gas leak subsequent to purchase and after he had taken possession of the vehicle. He claims that it was not possible to determine the severity of the gas leak until the vehicle was filled with gas. Appellant claims that the gas tank needs to be replaced and seeks the cost of that repair. (That cost is not set forth in appellant's complaint.)

GSA seeks summary relief on the basis that, as a matter of law, appellant cannot recover.

Discussion

We are guided by the well-established rules applicable to summary relief motions. 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. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). Any doubt on whether summary relief is appropriate is to be resolved against the moving party. *Celotex*

Corp. v. Catrett, 477 U.S. 317, 325 (1986). The moving party shoulders the burden of proving that no question of material fact exists. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970).

Appellant seeks the unstated amount of costs of repairing the gas tank on the vehicle he purchased from GSA. However, the terms and conditions of sale were clearly set forth: even in the event of a misdescription of the vehicle, the only remedy to the purchaser is a refund of the purchase price. All other warranties are excluded. Entitlement to such a refund is dependent upon notice to the sales contracting officer within fifteen days of award or removal of the property from the government location. Return of the property to the Government is also required. Repair of the property and assessment of damages against the Government is not an option under the terms that were agreed to by the buyer and seller. See *Gavin L. Rouse v. General Services Administration*, GSBCA 15993, 03-1 BCA ¶ 32,210; *Dan Parish v. General Services Administration*, GSBCA 16025, 03-1 BCA ¶ 32,211.

It is well established that “the language of a contract must be given that meaning that would be derived from the contract by a reasonable [sic] intelligent person acquainted with the contemporaneous circumstances.” *Hol-Gar Manufacturing Corp v. United States*, 351 F.2d 972, 975 (Ct. Cl. 1965). When the contract language is unambiguous, a court’s inquiry ends, and the plain contract language controls. *Textron Defense Systems v. Widnall*, 143 F.3d 1465, 1469 (Fed. Cir. 1998).

Here the contract is clear. Appellant’s only remedy would have been to return the automobile. This he did not do. He cannot recover for repair of the fuel tank. This was not part of the bargain with respondent.

Decision

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

JAMES L. STERN
Board Judge

We concur:

BERYL S. GILMORE
Board Judge

R. ANTHONY Mc CANN
Board Judge