



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: August 28, 2008

CBCA 999

GREG CARLSON,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Greg Carlson, pro se, Phoenix, AZ.

Robert W. Schlattman, Office of Regional Counsel, General Services Administration,
Lakewood, CO, counsel for Respondent.

Before Board Judges **STERN**, **POLLACK**, and **GOODMAN**.

STERN, Board Judge.

Mr. Greg Carlson (appellant) appeals the denial by a contracting officer of the General Services Administration (GSA or respondent) of his claim for \$1837.64, for the costs to repair a truck that he purchased at a GSA auction. GSA moves to dismiss the appeal on the basis that it fails to state a claim upon which relief can be granted.

Background

Appellant purchased a 2001 Ford F250 XLT pickup truck at a cost of \$12,400 at an online GSA auction. The truck was described as having a cracked windshield and some scrapes and scratches. The GSA description also stated, “Absence of Any Indicated Deficiency Does Not Mean None Exist” and “The Condition of the Property is Not Warranted.” The truck also was advertised as available for inspection. The “Online Sale Terms and Conditions” stated,

BIDDING

....

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.

....

Oral Statements and Modifications.

Any oral statement or representation by any representative of the Government, changing or supplementing the offering or contract or any condition thereof, is unauthorized and shall confer no right upon the bidder or purchaser. Further, no interpretation of any provision of the contract, including applicable performance requirements, shall be binding on the government unless furnished or agreed to, in writing by the Contracting Officer or his designated representative.

....

CONTRACT DISPUTES

....

Description Warranty.

. . . If a misdescription is determined by the Contracting Officer of the sale 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.

....

Claims of Misdescription.

....

When items are awarded but removal may or may not have occurred, the successful bidder must (1) submit a written notice to the Sales Contracting Officer within 15 calendar days from the date of award prior to removal that the property was mis-described, (2) if removed, maintain the property in the purchased condition until it is returned, and (3) if your mis-description claim is accepted by a Contracting Officer and if the property has already been removed, return the property at your own expense to a location specified by the Sales Contracting Officer.

Mr. Carlson alleges that when he took possession of the vehicle, on August 29, 2007, he saw that the truck had major damage to the rear bed and bumper. Mr Carlson alleges that the contracting officer told him to get an estimate of the damage and that he would “take care of it.” Appellant has placed an estimate in the record for damages amounting to \$1837.64. Mr. Carlson seeks this amount of damages based on the alleged misdescription of the condition of the vehicle and the alleged statement of the contracting officer.

Respondent seeks dismissal of the claim on the following bases:

- GSA did not warrant the condition of the vehicle.
- The description of the vehicle may have been incomplete but it was not incorrect, and that even if it was misdescribed, appellant has no remedy since appellant did not notify GSA of the misdescription until September 18, 2007, more than fifteen days after the award to appellant on August 4, 2007.

Discussion

This motion to dismiss is more appropriately designated as one for summary relief as it seeks denial of the appeal as a matter of law, even assuming the facts as alleged by the opposing party are correct.

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 seek \$1837.64 for the costs of repairs to the truck. For the purpose of deciding this motion we assume that the facts alleged by appellant are accurate.

Auctions conducted by GSA are governed by the rules set forth in the terms and conditions that accompany the solicitation. Bidders, like appellant, must agree to these rules to participate in the auction. Thus, the rules become binding on all bidders. *Darren R. Gentilquore v. General Services Administration*, GSBCA 16705, 05-2 BCA ¶ 33,117.

The terms and conditions advised Mr. Carlson to inspect the vehicle prior to bidding. Mr. Carlson did not heed this advice. The rules also provided that any statements made by a GSA employee were not authorized and would not give Mr. Carlson any rights. Thus, even if true as alleged, the statements made by the contracting officer were not binding on GSA and provide no basis for relief to appellant. *Larry J. McKinney v. General Services Administration*, GSBCA 16720, 05-2 BCA ¶ 33,119.

Mr. Carlson also alleges that the truck was misdescribed, or that the full extent of damage was not disclosed. Again, the terms and conditions clearly set forth the remedy available to appellant in this circumstance. The only remedy is refund of the purchase price if the purchaser notifies the contracting officer within fifteen days of award or removal of the property from the government location. Upon such notification, the property must be returned to the Government. "Repair of the property and assessment of damages against the Government is not an option." *Patrick C. Sullivan v. General Services Administration*, CBCA 936, 08-1 BCA ¶ 33,820.

Appellant did not notify the contracting officer of the alleged misdescription within the fifteen day period. In addition, the property was not returned. Appellant seeks the costs of the repairs to the vehicle. Mr. Carlson is not entitled to this relief under the terms and

conditions to which he agreed.

Decision

Respondent's motion is granted. The appeal is **DENIED**.

JAMES L. STERN
Board Judge

We concur:

HOWARD A. POLLACK
Board Judge

ALLAN H. GOODMAN
Board Judge