



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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DENIED: October 24, 2023

CBCA 7692

WESLEY McBRIDE,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Wesley McBride, pro se, Accokeek, MD.

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

Before Board Judges **BEARDSLEY** (Chair), **VERGILIO**, and **SULLIVAN**.

**BEARDSLEY**, Board Judge.

This appeal arises out of the purchase of a vehicle from a General Services Administration (GSA) online auction. The appellant alleges that GSA misdescribed the vehicle by failing to disclose the fact that the vehicle had been in a major accident and was only eligible for a salvage title. GSA moved for summary judgment, asserting that the misdescription claim was untimely filed and that there was no misdescription. We grant GSA's motion and deny the appeal because the misdescription claim was untimely filed.

### Background

GSA posted a vehicle for sale on its online auction website, listing the vehicle in the “Cars, SUVs, Vans, Buses and Ambulances” section. The pertinent terms and conditions of the sale included the following “Claims of Mis-description” clause in addition to many clauses specifying that GSA did not warrant the condition of the property:

#### **Claims of Mis-description**

When items are awarded and payment has been received, regardless of the removal status (removal may or may not have occurred), the successful bidder must submit a written notice to the Sales Contracting Officer within 15 calendar days from the date of payment e-mail (the Purchaser’s Receipt).

GSA specifically stated in the vehicle’s description that the “[v]ehicle [was] sold as is[,] where is[,] and may contain defects not immediately detectable,” and “[p]hysical inspection [was] highly recommended.” “Deficiencies, when known, have been indicated in the property descriptions. However, absence of any indicated deficiencies does not mean that none exists.”

On November 10, 2022, the sales contracting officer/property disposal specialist<sup>1</sup> awarded the vehicle to the appellant. On November 14, 2022, the appellant received his receipt for his purchase of the vehicle and arranged to pick up the vehicle on December 6, 2022. On December 8, 2022, more than fifteen days after receiving his receipt, the appellant submitted his claim, notifying the sales contracting officer that the vehicle had been misdescribed and that he wanted to return the vehicle for a refund.

The appellant asserts that GSA misdescribed the vehicle because GSA failed to disclose the fact that the vehicle had been in a major accident, was repaired, and was only eligible for a salvage title.<sup>2</sup> The appellant points to a CARFAX report in the appeal file to assert that GSA knew the condition of the vehicle at the time of the sale and knew the vehicle was only eligible for a salvage title, yet failed to list it under the “Salvage/Scrap Vehicles”

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<sup>1</sup> The appellant asserted that GSA did not identify the sales contracting officer, making it impossible for the appellant to timely file his claim. The auction listing and the November 10 notice of award, however, both identify the sales contracting officer.

<sup>2</sup> Obtaining a new title in Maryland of a salvaged vehicle requires a safety inspection, and the new title will be branded according to the vehicle’s condition, such as “Rebuilt salvage.” <https://www.dmv.org/md-maryland/salvaged-vehicles.php> (last visited Oct. 23, 2023).

section of the GSA auction website. The CARFAX report found in the appeal file, however, is dated February 11, 2023—several months after the sale of the vehicle. The appellant nevertheless argues that GSA would have known the condition of the vehicle if it had done minimal research, such as obtaining a CARFAX report. The appellant also asserts that GSA should have terminated the contract because the appellant did not pick up the vehicle timely.

GSA filed a motion for summary judgment, arguing that the misdescription claim was untimely and that the appellant failed to establish a misdescription. GSA argued that it did not know that the vehicle was in a serious accident or could only be issued a salvage title and it did not warrant the condition of the vehicle.

### Discussion

“GSA must show that ‘it is entitled to judgment as a matter of law based on undisputed facts.’” *Stephane Alrivy v. General Services Administration*, CBCA7666, 23-1 BCA ¶ 38,337, at 186,156 (quoting Rule 8(f) (48 CFR 6101.8(f) (2022)) and citing *Monbo Group International v. Department of Health & Human Services*, CBCA 7326, et al., 23-1 BCA ¶ 38,270, at 185,814). “‘We construe a pro se litigant’s pleadings liberally,’ but such lenience does not affect ‘a pro se litigant’s burden of proof or our [assessment] of the factual record.’” *Id.* (quoting *House of Joy Transitional Programs v. Social Security Administration*, CBCA 2535, 12-1 BCA ¶ 34,991, at 171,975).

#### 1. Timeliness

The parties are bound by the terms and conditions of the sale, which required the appellant to submit his claim within fifteen days from the date he received the receipt of purchase. The appellant failed to timely submit his claim. “We have consistently held that where a party fails to timely file its claim under clauses such as the [Claims of Misdescription] clause, the claim must be denied, even if misdescription is otherwise established.” *Eurasia Partners, LLC v. Department of Treasury*, CBCA 3229, 14-1 BCA ¶ 35,576, at 174,352 (citing *Everett M. Myers v. General Services Administration*, CBCA 940, 08-1 BCA ¶ 33,841, at 167,477; *Joseph M. Hutchinson v. General Services Administration*, CBCA 752, 08-1 BCA ¶ 33,804, at 167,341; and *Danny R. Mitchell v. General Services Administration*, GSBGA 16122, 04-1 BCA ¶ 32,511, at 160,827-28). “Failure to comply with the fifteen-day notice provision in GSA’s standard online Terms and Conditions precludes recovery.” *Alliance Business Enterprises LLC v. General Services Administration*, CBCA 1101, 08-2 BCA ¶ 33,994, at 168,118 (citing *Hutchinson*, 08-1 BCA at 167,341).

There is, however, a “single exception to the fifteen-day rule . . . namely where, through misrepresentation of either a fraudulent or material nature, the Government induces

the purchaser to enter into the contract.” *Alliance Business Enterprises LLC*, 08-2 BCA at 168,119. “[T]o constitute [fraudulent] misrepresentation, the Government had to represent as true certain elements which it knew were false.” *Id.* (quoting *Hutchinson*, 08-1 BCA at 167,341). There is no evidence advanced here that would establish that GSA knew the vehicle had been in a major accident, only qualified for a salvage title, or should have been listed in the salvage section. The CARFAX report on which the appellant relies to prove GSA knew these elements was issued after the sale. Moreover, the appellant did not justifiably rely on the vehicle listing. Material misrepresentation “requires the party claiming misrepresentation to establish that it justifiably relied upon the false information.” *Eurasia Partners, LLC*, 14-1 BCA at 174,353 (citing *Morris v. United States*, 33 Fed. Cl. 733, 744-47 (1995)). The disclaimer language included in the sale terms and conditions gave ample warning to the appellant that the actual condition of the vehicle, including deficiencies, may be unknown, making reliance on the sale listing to reveal the condition of the vehicle unreasonable. *Hutchinson*, 08-1 BCA at 167,341. Instead, the appellant had the opportunity to determine the condition of the vehicle by physical inspection or by obtaining a CARFAX report. The appellant did not do either before purchasing the vehicle at his own risk.

## 2. The Appellant’s Breach

The appellant asserts that he breached the terms of the contract by failing to pick up the vehicle by the time set forth in the terms and conditions. While the appellant may have breached the contract when he failed to pick up the vehicle as required, it is the non-breaching party (GSA) who may choose to continue the contract or terminate it. *See Yates-Desbuild Joint Venture v. Department of State*, CBCA 3350-R, et al., 18-1 BCA ¶ 36,959, at 180,085 (2017) (citing *Cities Service Helex, Inc. v. United States*, 543 F.2d 1306, 1313 (Ct. Cl. 1976) (“[T]he injured party [has] the right to end the agreement” but can “choose between canceling the contract and continuing it.”)). In other words, just because the contracting officer could have terminated the contract for default, the contracting officer was not required to do so. Moreover, the appellant would not have been in a better position if he had received a termination for default, and his claim would still be untimely.

### Decision

GSA’s motion for summary judgment is granted. The appeal is **DENIED**.

Erica S. Beardsley

ERICA S. BEARDSLEY  
Board Judge

We concur:

*Joseph A. Vergilio*  
JOSEPH A. VERGILIO  
Board Judge

*Marian E. Sullivan*  
MARIAN E. SULLIVAN  
Board Judge