



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: January 23, 2007

CBCA 463

SATYADEV DUGGIRALA,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Satyadev Duggiralo, pro se, Gallup, NM.

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

Before Board Judges **BORWICK**, **HYATT**, and **GOODMAN**.

BORWICK, Board Judge.

Background

Appellant, Satyadev Duggirala, was the high bidder for a Rolex watch at an on-line auction conducted by the General Services Administration, respondent. Appellant refused to consummate the sale because he believed that respondent had described two watches in the invitation for bids (IFB) and that he was entitled to receive two watches for his high bid. Upon appellant's refusal to pay for and take possession of one Rolex watch, respondent declared him in default and assessed liquidated damages, from which appellant appeals. The parties chose to proceed by record submission. We deny the appeal because respondent has established that appellant was in default and appellant has not demonstrated an item

misdescription that would relieve appellant of liability under the terms and conditions of the sales contract resulting from the auction.

Findings of Fact

On May 11, 2001, respondent assumed possession, as excess Government property, of a Rolex watch, designated in the excess property report as serial number 16233, that an official of the Government of Kuwait had presented to a United States official as a state gift. Appeal File, Exhibit 1. Respondent had the watch appraised by a registered appraiser, who valued the watch from \$2200 to \$3700. The registered appraiser also provided to respondent a description of the watch. Respondent's Record Submission Memorandum, Exhibit A (Declaration of Paul Hardiman, Property Management Specialist (Nov. 20, 2006)).

On June 5, 2006, respondent auctioned the watch on its website "www.GSAAuctions.gov." Appeal File, Exhibits 2, 3. On the IFB posted on its auctions website, respondent described the watch as follows:

WRISTWATCH, MAN'S ROLEX, T483512 AND 16233 and 62523,
OYSTER PERPETUAL DATE JUST, SILVERTONE FACE RPT#W73S0Y-
1131-0008

THE CONDITION OF THE PROPERTY IS NOT WARRANTED

Id., Exhibit 4. The watch's description was the same as the description the appraiser had furnished to GSA. *Compare* Appeal File, Exhibit 4 *with* Hardiman Declaration, Exhibit A. An accompanying picture on the website showed one watch in a Rolex box with a Rolex seal beside it. Appeal File, Exhibit 4. In addition, the item was identified by lot number W1FPB106107164 (lot 164). *Id.* In that auction, respondent also auctioned a variety of precious jewelry and watches including a woman's Rolex watch that was identified by lot number ending in "158." *Id.*, Exhibit 2.

The auction was subject to the following terms and conditions, which we set forth in pertinent part:

SALE OF GOVERNMENT PROPERTY
ONLINE SALE TERMS AND CONDITIONS

Warning: GSA reserves the right to change the online sale terms and conditions. Bidders are cautioned to periodically review these terms and conditions for possible changes.

Eligibility of Bidders. Bidders must be at least 18 years of age.

Acceptance Period. By marking the required box at the end of the online sale terms and conditions during registration and submitting a bid, the bidder agrees to the Terms and Conditions of sale and to pay for and remove the property, if the bid is accepted, by the dates and times specified in each lot.

Bidders Indebted to the Government. The bidder warrants, by accepting the online sale terms and conditions and submitting a bid, which [sic] he/she is not delinquent in paying for previous purchases of Federal personal property and any related charges. Indebted bidders will be ineligible for contract awards. Bidders will not be able to bid on items specified on this website until all debts have been cleared.

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Contract Disputes. Contracts resulting from the sale of any offer in the GSAAuctions.gov website are subject to the Contract Disputes Act of 1978 (41 USC 601-613), as amended.

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 Warranty and Refunds

Description 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.

Photographs. Photographs 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. Please contact the custodian for inspection dates and times.

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.

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Submission of Bid. Bids are only accepted in whole U.S. Dollar amounts. Do not enter dollar signs (\$) commas (,) or cents (¢). Bidding will begin and end at the dates and times specified for each lot in the GSAAuctions.gov website Please note: The times displayed at GSA Auctions® are in Central time. In addition, certain auctions are designed to extend the closing time if there is bidding activity. Bidders are urged to review the bidding rules and enhanced bidding logic at GSA Auctions® for auction details. It is the responsibility of the bidder to follow-up on the status of his/her bid.

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Consideration of Bid. It is the policy of GSA Auctions® to monitor bids and other activity to ensure the proper use of our site. The Government reserves the right to reject any and all bids. Bids can be rejected for any reason, especially those containing inaccurate, incomplete or unverifiable information, or information which is deemed to have been given in bad faith. GSA Auctions® monitors for suspicious bids. Such bids are subject to investigation and cancellation at any time. If GSA removes a bid, the bidder with the next highest bid, who is in compliance with the online terms and conditions, will become the current high bid. It is a violation of law to submit bids using a false name or any other fraudulent information, and such bids may not be processed, even if we initially accept a bid. Be aware that if you give us falsified information, we will remove you from the database and use whatever legal means and methods available to the Federal government to prosecute.

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.

Notification of Sale Results. Successful bidders will be notified by email and must contact the regional sales office within 2 business days from the date & time the award email notification was sent. Bid results will not be furnished via telephone or fax. It is the bidder's responsibility to follow-up on the status of his/her bid and to ensure that his/her email address and all registration data are kept accurate and up-to-date. If at any time, your information changes, it is your responsibility to update the appropriate information at GSA Auctions®. Warning: If any emails are undeliverable and returned due to an inaccurate email address, GSA may remove such registrants from the database.

Payment and Removal Timeframes. Property must be paid for within 2 business days and property removed within 10 business days from the time & date of the award email notification of sale results, unless otherwise specified in the contract.

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All sales are final.

Removal. SUCCESSFUL BIDDERS ARE CAUTIONED THAT THEY ARE RESPONSIBLE FOR LOADING AND REMOVAL OF ANY AND ALL PROPERTY AWARDED TO THEM FROM THE EXACT PLACE WHERE THE PROPERTY IS LOCATED, AS INDICATED FOR EACH ITEM ON THE GSAAUCTIONS.GOV WEBSITE. The Purchaser will make all arrangements and perform all work necessary to effect removal of the property, to include loading, packing and transportation of the property.

Title to Property. Buyers of motor vehicles will receive a GSA Form 27A, "Purchaser's Receipt and Authority to Release Property," and a Standard Form (SF) 97, "The United States Government Certificate To Obtain Title To A Vehicle." SF 97 is not a title; it is evidence of title only for authority to obtain title to a vehicle by the purchaser. Buyers of property other than motor vehicles will receive only the GSA Form 27A. Unless otherwise provided in the Invitation, title to the property sold hereunder shall vest in the Purchaser as and when removal is effected.

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Default. Bidders are cautioned to bid only on items they are prepared to pay for and remove in accordance with the online sale terms and conditions of this sale. Failure to pay for and remove all items awarded within the specified time could result in termination of the contract. The bidder will also be subject to paying liquidated damages. The following supersedes Clause No. 9 of the SF 114C.

If you are awarded an item on GSA Auctions®, you have a responsibility to pay for the item or lot that you were awarded within 2 business days from the date & time the award email notification was sent and promptly remove it before 10 business days from the date & time the award email notification was sent, unless otherwise specified in the contract. If you fail to meet either of these two conditions, you will be in violation of the online sale terms and conditions of your contract with the Government and will be considered "in default".

As a defaulted bidder, you will be responsible for the payment of liquidated damages, an administrative fee for the processing and re-handling of the item for which you neglected to pay for and/or remove. The charge will total 20% of the price that was the award amount or \$200, whichever is greater.

Further, if an item or lot has been paid for but only a portion of the lot has been removed, you will still be considered “in default”, and you will not be entitled to a partial refund (the difference of 20% or \$200).

In the event of a default, a bidder will lose all rights to place bids for other items for sale on GSA Auctions® until liquidated damages have been paid and the payment processed (see below)

Defaulted bidders will only be allowed to “browse” items. At the time that liquidated damages are paid, the bidder will be given access to begin bidding on items.

Liquidated Damages. Liquidated damage payments paid by credit cards are processed by GSA’s Finance office on Monday and Thursday of each week (excluding holidays). If a credit card is used in payment of liquidated damages owed, it can take up to 4 business days to process this payment and clear a user’s GSA Auctions® account. Avoid if at all possible, incurring liquidated damages.

Blocked from Bidding. In the event bidders provide false information or default for non-payment or non-removal, they will lose all rights to place bids for other items. They will only be allowed to “browse” the items. At such time the bidder cures his/her default, he/she will be unlocked and be given access to begin bidding on items.

....

Subject to the General Sale Terms and Conditions (Standard Form 114C, April 2001) and the Special Requirements and Conditions applicable to any item offered on the GSAAuctions.gov website, I offer and agree to purchase the item(s) at the price(s) for each item(s) as indicated.

Appeal File, Exhibit 3.

Appellant submitted a high bid of \$3525. Appeal File, Exhibits 5, 12. The next high bid was \$3469. *Id.*, Exhibit 5. On June 12, 2006, respondent issued to appellant, as the high bidder, a notice of award for the watch and advised him that payment was due by June 14, 2006, and that he must take possession of the watch by June 21. *Id.*, Exhibit 6.

On June 16, in an e-mail message to respondent's contracting officer and one of respondent's sales officials, appellant said that because of what he assumed were two different model numbers--16233 and 62523--in the description, he believed that in lot 164 respondent had sold two Rolex watches, a man's and a woman's watch. He wrote he did not want the man's watch unless he had also purchased a woman's watch. Appeal File, Exhibit 7. The contracting officer in a return e-mail message denied that there was a misdescription. *Id.* Exhibit 8.

On June 19, the contracting officer in her final decision stated that the number 16233 identified the watch as a Rolex watch and that the other numbers were "tag numbers," with the number 16233 being the number that identified the Rolex watch. Appeal File, Exhibit 9. She also noted that the photograph showed one wristwatch and that the written description mentioned one man's wristwatch, not the plural noun "wristwatches." For those reasons, the contracting officer denied there was a misdescription and gave appellant until 2:00 p.m., June 20, to make payment. The contracting officer advised appellant that if payment were not made by that time, respondent would consider appellant in default of the contract. *Id.*

Appellant immediately responded to the contracting officer, insisting that the Government had offered two watches for sale in lot 164. Appeal File, Exhibit 10. On June 21, respondent declared appellant in default of the contract and assessed liquidated damages of \$705. Appellant paid the liquidated damage amount on July 8. *Id.*, Exhibit 13.

Appellant filed an appeal at the General Services Board of Contract Appeals (GSBCA) on July 12, which was docketed as GSBCA 16926. On September 22, 2006, the parties chose to submit their dispute on the written record under GSBCA Rule 111 and the GSBCA so ordered. *Satyadev Duggirala v. General Services Administration*, GSBCA 16926 (Sept. 25, 2006). On January 6, 2007, pursuant to statutory requirement, the GSBCA and six other civilian agency boards of contract appeals were merged into the Civilian Board of Contract Appeals (CBCA). On January 8, the case was re-docketed as a CBCA case and assigned CBCA docket number 463. On January 12, the parties completed their record submissions.

Discussion

Section 847(c)(2)(B) of the National Defense Authorization Act for Fiscal Year 2006 provides:

In the case of any such proceedings pending before an agency board of contract appeals other than the Armed Services Board of Contract Appeals or the board of contract appeals of the Tennessee Valley Authority, the

proceedings shall be continued by the Civilian Board of Contract Appeals, and orders which were issued in any such proceeding by the agency board shall continue in effect until modified, terminated, superseded, or revoked by the Civilian Board of Contract Appeals, by a court of competent jurisdiction, or by operation of law.

Pub. L. No. 109-163, 119 Stat. 3136, 3393 (2006). We thus continue our record submission order issued in GSBCA 16926, and decide this matter on the record.

The assessment of liquidated damages is a government claim, for which respondent has the burden of proof. *Walter R. Moody v. General Services Administration*, GSBCA 16736, 06-2 BCA ¶ 33,326. Respondent has met its burden because the record is clear that appellant did not pay for and take possession of the man's Rolex watch that respondent said it had sold to appellant in lot 164.

Appellant alleges that he was not required to complete his purchase from respondent because the multiple numbers in the item description established that GSA had auctioned two Rolex watches--a man's watch and a woman's watch--in lot 164. Under the terms and conditions of sale appellant was required to pay for and take possession of the watch within the time frames specified to avoid the imposition of liquidated damages. Under those same terms and conditions, the contract would be cancelled without liability to the bidder only when there was a misdescription. *See Michael Griffin v. General Services Administration*, GSBCA 16729, 06-1 BCA ¶ 33,274.

Here the record demonstrates that there was no misdescription. The auction description specified one man's Rolex watch. The photograph showed only one watch and was consistent with the written description. Standing alone, the multiple numbers in the description could not reasonably have been understood by appellant to refer to two watches, particularly a second, woman's watch, in light of the written description referencing a single man's watch and separate auction lot numbers for the sale of a woman's watch. Indeed, a survey of Rolex enthusiast web sites should have quickly revealed to appellant that the number 16233 was the model number of the Rolex watch and the number 62523 described the identification number of the bracelet. *See, e.g.,* for example http://www.watchbasics.com/rolex_prices.htm.

In believing that respondent had described two watches in lot 164, appellant made a unilateral mistake in judgment for which the relief of reformation is not available. *McClure Electrical Constructors v. Dalton*, 132 F.3d 709, 711 (Fed. Cir. 1997).

Respondent has met its burden in establishing its right under the contract to declare the contract in default and to assess liquidated damages. Appellant has not established a misdescription in the IFB that would relieve him of liability for liquidated damages.

Decision

The appeal is **DENIED**.

ANTHONY S. BORWICK
Board Judge

We concur:

CATHERINE B. HYATT
Board Judge

ALLAN H. GOODMAN
Board judge