



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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DENIED: April 1, 2016

CBCA 5040

STEPHEN D. BRADLEY,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Stephen D. Bradley, pro se, Goodyear, AZ.

Keaton Norquist, Office of Regional Counsel, General Services Administration, San Francisco, CA, counsel for Respondent.

Before Board Judges **HYATT**, **POLLACK**, and **SULLIVAN**.

**POLLACK**, Board Judge.

Appellant, Stephen D. Bradley, appeals the contracting officer's final decision denying his claim for the return of the purchase price of a used travel trailer sold to him by the General Services Administration (GSA or Government) via auction, on the ground that the Government misdescribed the condition of the vehicle. Respondent moves for summary relief, arguing that appellant failed to establish the necessary elements needed to prevail under the misdescription clause of the contract. For the reasons below, we grant respondent's motion and deny the appeal.

### Background

1. On May 28, 2015, GSA offered a Rockwood Forest River Travel Trailer for sale through its online auction website, GSAAuctions.gov. The auction announcement included the following description of the vehicle:

Travel trailer, 30x8x10 foot, Rockwood, Forest River, 2002, w/ 4x12 foot slide, GVWR [gross vehicle weight rating] 7560, 1 personnel door. Conditions of appliances/equipment unknown. Repairs required included but not limited to: gas cook stove missing, & evidence of rodent infestation. Inspection is strongly recommended. . . .

THE CONDITION OF THE PROPERTY IS NOT WARRANTED.

The announcement indicated that the vehicle was located in Sasabe, Arizona, and informed prospective bidders that arrangements for inspection of the vehicle could be made with the listed property custodian.

2. As a condition of participating in the auction, prospective bidders were required to agree to GSA's online sale terms and conditions, which included the following provisions:

#### **Inspection of Property**

Bidders agree to physically inspect the property upon which they bid or thereby waive the opportunity to conduct a physical inspection. In waiving their inspection rights, bidders bear the risk for any gross omissions regarding the functionality of items, failures to cite major missing parts and/or restrictions with regards to usage that would have been revealed by physical inspection.

#### **Condition of Property**

Condition of the 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.

### **Description Warranty & Refunds**

The Government warrants to the original purchaser that the property listed in the GSAAuctions.gov website will conform to its written description. Features, characteristics, deficiencies, etc. not addressed in the description are excluded from that warranty. GSA further cautions bidders that GSA's written description represents GSA's best efforts to describe the items 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.

### **Claims of Misdescription**

If items have been awarded but not paid for and the successful bidder feels that the property is mis-described, he/she must follow these procedures. A written claim needs to be submitted to the **Sales Contracting Officer within 15 calendar days from the date of award** requesting release of contractual obligation for reasons satisfying that of a misdescription. No verbal contact with the custodian or the Sales Contracting Officer or any other federal official will constitute a notice of misdescription.

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 email notification (the Purchaser's Receipt). If property has been removed and the claim is accepted by the Sales Contracting Officer, the purchaser must maintain the property in its purchased condition and return it at their expense to the location designated by the Sales Contracting Officer or any other federal official.

3. On June 1, 2015, appellant accepted the above terms and conditions and was therefore able to participate in the bidding process. Appellant does not state that he contacted the GSA property custodian to inquire about the condition of the trailer or to arrange for inspection of the property prior to submitting his bid.

4. By e-mail message dated June 4, 2015, the GSA sales contracting officer (SCO) notified appellant that he was the successful high bidder for the travel trailer at issue and was awarded contract number GS-09F-15-FBE-6032 in the amount of \$3460. The notice further stated that payment for the vehicle was due within two business days of the date of the e-mail message and that the property could be retrieved after appellant received his purchaser's receipt.

5. On June 5, 2015, appellant initiated a wire transfer to GSA in the amount of \$3460. On June 8, 2015, after the purchase transaction was complete, appellant received his purchaser's receipt authorizing him to remove the property.

6. On or around June 9, 2015, appellant retrieved the trailer and received a certificate to obtain title. At the time of removal, the property custodian noted the poor condition of the vehicle and advised appellant to undertake an inspection of the trailer. Appellant states that he was "unable to perform a thorough inspection" due to the lack of power on-site and the presence of, among other things, "an Africanized [b]ee infestation with an actual hive attached to . . . [the] trailer." Notwithstanding this observed condition, appellant took possession of the vehicle.

7. On June 30, 2015, appellant delivered the trailer to a recreational vehicle repair shop located in Mesa, Arizona. On July 1, 2015, appellant left for a one-month vacation. By e-mail message dated July 7, 2015, the repair facility notified appellant of a number of deficiencies in and on the trailer – including a missing furnace, severe water damage, and an inoperable air conditioning unit – and provided a quote for the cost of repairs.

8. By e-mail message dated August 5, 2015, appellant contacted the GSA SCO alleging that the Government had misrepresented the condition of the trailer in failing to provide a complete description. Appellant alleged that the vehicle was missing its furnace, had a broken air conditioning unit, and was water damaged. Appellant noted the deficiencies were "easily identifiable but were undisclosed." Appellant requested cancellation of the sale and a full refund.

9. By e-mail message dated August 14, 2015, the SCO denied appellant's claim, concluding that, pursuant to the Claims of Misdescription clause, the claim was untimely and that the property was not misdescribed.

10. By e-mail message dated August 25, 2015, appellant responded to the SCO's denial letter, again noting the deficiencies earlier identified in the vehicle and further alleging that the trailer had an inoperable manual slide. As to the timeliness of his claim to GSA, appellant stated that he could not deliver the trailer for repair inspection until he had first

addressed the infestation issues.<sup>1</sup> Moreover, appellant stated, “We left for vacation on the 1<sup>st</sup> of July for the month. It was upon our return I could finally deal with all the issues with this trailer.” As to the contract provisions governing the sale cited by the SCO in the denial letter, appellant stated, “[t]he numerous pages of rules and regulations . . . reference[d] are burdensome to say the least” and it would be the rare case that “even one consumer [would] be aware of, know and understand all the minutia of the rules and regulations contained in your contracts.”

11. By e-mail message dated September 15, 2015, the SCO rendered a final decision concerning appellant’s claim. As in his initial denial letter, the SCO determined that appellant’s failure to comply with the misdescription notice provision, and the fact that the property was not misdescribed, precluded his claim.

12. Appellant filed a timely notice of appeal with the Board on October 23, 2015. We have jurisdiction pursuant to the Contract Disputes Act (CDA), 41 U.S.C. §§ 7101-7109 (2012).

13. On December 28, 2015, GSA submitted its motion for summary relief.

### Discussion

We begin our analysis with the familiar principles applicable to motions for summary relief. Recently, in *Turner Construction Co. v. Smithsonian Institution*, CBCA 2862, et al., 15-1 BCA ¶ 36,139, we explained:

Summary relief is appropriate when the moving party is entitled to judgment as a matter of law, based upon undisputed material facts. *URS Energy & Construction, Inc. v. Department of Energy*, CBCA 3632, 15-1 BCA ¶ 35,949, at 175,683. The moving party bears the burden of demonstrating the absence of genuine issues of material fact and all justifiable inferences must be drawn in favor of the non-movant. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). A material fact is one that will affect the outcome of the case. *Anderson*, 477 U.S. at 247. “[T]he party opposing summary judgment must show an evidentiary conflict on the record; mere denials or conclusory statements are not sufficient.”

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<sup>1</sup> Appellant indicated to the SCO that he undertook cleaning of the trailer before addressing the infestation, fumigated the “entire unit several times,” and again “clean[ed] and “scrub[bed] down” the trailer.

*Mingus Constructors, Inc. v. United States*, 812 F.2d 1387, 1390-91 (Fed. Cir. 1987).

*Id.* at 176,394.

Appellant asserts he is entitled to the return of the \$3460 paid for the purchase of the trailer because “GSA failed to disclose the true nature” of the vehicle and he would not have bid on the trailer “had the true nature of disrepair . . . been truthfully disclosed.” Appellant is complaining about the condition of the trailer. The contract specifically states that the condition of the property is not warranted and, further, that the absence of any indicated deficiency does not mean that none exists. The bidder is warned to ascertain the condition through inspection. Appellant made no inspection before submitting his bid. Although GSA warrants that the items purchased in its auctions are the items they are stated to be, it expressly disavows, in multiple provisions of the sale terms and conditions, any warranty of condition. *Everett M. Myers v. General Services Administration*, CBCA 940, 08-1 BCA ¶ 33,841; *Chris Ward v. General Services Administration*, GSBCA 16473, 05-1 BCA ¶ 32,881. We find that under the circumstances in this case, appellant’s claim must be denied. *See Joseph M. Hutchison v. General Services Administration*, CBCA 752, 08-1 BCA ¶ 33,804.

Here, the description GSA provided included clear language describing the condition of the vehicle’s appliances and equipment “unknown” and alerting appellant to significant potential repairs including, *but not limited to*, a missing stove and rodent damage. Importantly, the Description Warranty & Refunds clause expressly excluded from the warranty any deficiencies not identified (in this case, the defective air conditioning unit and manual shift and the missing furnace). Where the sales terms and conditions plainly alert the appellant of the risks of purchase, there is “no remedy . . . based on a warranty as to condition.” *Hutchison*, 08-1 BCA at 167,341; *see also Myers*, 08-1 BCA at 167,477-78 (“In these auction sales, where both the buyer and the seller are ignorant of the true condition of the item sold, the buyer assumes the risks and uncertainties inherent in purchasing a used item.”).

“The Description Warranty clause in [an auction sale] contract allows a purchaser to recover his money where the vehicle has been misdescribed and where the purchaser has submitted written notice of an actionable misdescription of the vehicle within fifteen days from the date the vehicle was removed from the auction site.” *Hutchison*, 08-1 BCA at 167,340. Appellant’s contract contained such a clause, which expressly provided:

The Government warrants to the original purchaser that the property listed in the GSAAuctions.gov website will conform to its written description.

*Features, characteristics, deficiencies, etc. not addressed in the description are excluded from that warranty. . . . Therefore, gross omissions regarding the functionality of items, failures to cite major missing parts and/or restrictions with regards to usage may occur.* [Emphasis added.]

In this instance, the property was not misdescribed. “Misdescription requires the Government to have made an error in describing what has been offered for sale.” *Hutchison*, 08-1 BCA at 167,341. Here, the Government accurately described what it offered for sale – a 2002 Rockwood Forest River Travel Trailer *requiring repair* – and appellant does not dispute that this is what he received (i.e., he does not challenge the accuracy of the description). Appellant, instead, bases his mis-description claim on the fact that the property was in worse condition than he expected. However, “[t]he fact that the condition of the vehicle . . . [was] not what appellant expected or desired is not synonymous with a misdescription.” *Id.* As such, appellant cannot prevail on a claim of misdescription in this case.<sup>2</sup>

Finally, even if we were to find a misdescription, which we do not, appellant’s claim is untimely. As we noted in *Hutchison*, “the failure to submit a claim within the requisite time-frame of fifteen days defeats any claim a purchaser might otherwise have under the Description Warranty clause.” 08-1 BCA at 167,341 (citing *McNutt Used Cars v. General Services Administration*, GSBCA 16398, 04-2 BCA ¶ 32,668; *Danny R. Mitchell v. General Services Administration*, GSBCA 16122, 04-1 BCA ¶ 32,511). Here, pursuant to the Claim of Misdescription clause, appellant was required to submit such claim within fifteen calendar days of receiving his purchaser’s receipt. Appellant received his purchaser’s receipt on June 8, 2015, and was therefore required to submit his claim by June 23, 2015. Appellant did not notify the SCO of his claim until August 5, 2015 – fifty-eight days from the date he received the purchaser’s receipt.

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<sup>2</sup> Appellant’s additional arguments alleging a misdescription of the trailer’s vehicle identification number (VIN) and year model are also without merit. The VIN and model year listed on the Arizona Department of Transportation certificate of title appellant received (submitted as an exhibit with appellant’s response) and the VIN and model year listed on the certificate to obtain title are identical.

Decision

Based on the foregoing, respondent's motion for summary relief is granted. The appeal is **DENIED**.

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HOWARD A. POLLACK  
Board Judge

We concur:

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CATHERINE B. HYATT  
Board Judge

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MARIAN E. SULLIVAN  
Board Judge