



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: January 28, 2014

CBCA 3410

CARLET B. MERRELL,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Carlet B. Merrell, pro se, Dearborn Heights, MI.

Scott F. McCleary, Office of Regional Counsel, General Service Administration, Chicago, IL, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman), **SOMERS**, and **McCANN**.

McCANN, Board Judge.

Appellant contracted to purchase a vehicle from respondent at auction. He claims that the vehicle was misdescribed and refused to take possession of the vehicle. He appeals the final decision of the contracting officer that assessed him \$325 in liquidated damages. The appeal is denied.

Facts

1. On May 8, 2013, appellant was awarded a 2007 Chrysler Sebring at a GSA internet auction. Appeal File, Exhibit 4. The item information appearing on the website indicated that “repairs may be needed.” *Id.* It also showed photographs of the vehicle. Appellant did

not inspect the vehicle prior to bid. After the award, appellant did inspect the vehicle and notified the contracting officer that he wanted a refund because there were “scratches and damages” on the car that were not described in the item description or shown on the pictures. The contracting officer refunded his money less liquidated damages in the amount of \$325.

2. The terms and conditions of the sale included the following paragraphs:

Photographs

Photographs may not depict an exact representation of the bid items(s) and should not be relied upon in place of written item description or as a substitute for physical inspection. Please contact the custodian for inspection dates and times.

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 restriction with regards to usage that would have been revealed by physical inspection.

Condition of Property

Condition of 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 this warranty. GSA further cautions bidders that GSA’s written description represents GSA’s best effort to describe the item 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 restriction 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.

Discussion

The purchaser has not demonstrated entitlement to relief. The vehicle was not misdescribed and the contract warranty did not cover “[F]eatures, characteristics, deficiencies, etc. not addressed in the description.” The contract further indicated that “absence of any indicated deficiencies does not mean that none exists.” Also, the description on the website indicated that “repairs may be needed.” The purchaser was encouraged to inspect the vehicle prior to bid, but chose not to do so. He must now suffer the consequences of his inaction.

Decision

The claim is **DENIED**.

R. ANTHONY McCANN
Board Judge

We concur:

STEPHEN M. DANIELS
Board Judge

JERI KAYLENE SOMERS
Board Judge

