



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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DENIED: May 10, 2017

CBCA 5397, 5398

T. K. HUGHES AUTO SALES, INC.,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

T. K. Hughes, President of T. K. Hughes Auto Sales, Inc., Richmond, VA, appearing for Appellant.

Michael J. Noble, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Board Judges **SOMERS**, **RUSSELL**, and **O'ROURKE**.

**SOMERS**, Board Judge.

On April 13, 2016, appellant, T.K. Hughes Auto Sales, Inc. (T.K. Hughes), bought from the General Services Administration (GSA) two vehicles at auction. Several months after consummating this transaction, T.K. Hughes claims that the vehicles contained rust on the undercarriage, and that it is entitled to a \$1500 per vehicle reduction in the purchase price. A GSA contracting officer denied the claims, and T.K. Hughes appealed from those decisions.

GSA moves for summary relief in each of these appeals. As we find no material facts in dispute, and that appellant is not entitled to relief as a matter of law, we grant GSA's motions and deny the appeals.

### Background

On April 13, 2016, appellant purchased two vehicles at a GSA auction. Among the auction's terms and conditions of sale was the following provision, entitled "Limited Description Warranty":

Clause No. 2 of Standard Form ("SF") 114C is deleted and replaced by this Limited Description Warranty. The Government warrants to the original purchaser that the property listed in the Invitation for Bids will conform to its description. Condition is not guaranteed. If a mis-description is determined before removal of the property, the Government will keep the property and refund any money paid. If a mis-description is determined after removal, the Government will refund any money paid if the purchaser takes the property at his or her own expenses to a location specified by the contracting officer. No refund will be made unless the purchaser submits a written notice, claiming a mis-description, to the contracting officer within 15 calendar days of the date specified for removal and maintains the property in the same condition as when removed.

....

This warranty is in place of all other guarantees and warranties express or implied. The Government does not warrant the merchantability of the property or its fitness for any use or purpose. The amount of recovery under this provision is limited to the purchase price of the mis-described property. The purchaser is not entitled to any payment for loss of profit or any other money damages, special, direct, indirect or consequential.

The auction also incorporated by reference the general sales terms and conditions of SF 114. Condition no. 1 of SF 114 (Inspection) states:

The bidder is invited, urged, and cautioned to inspect the property prior to submitting a bid. Property will be available for inspection at the places and times specified in the invitation.

On April 13, 2016, T.K. Hughes presented the winning bids for two vehicles, one at a price of \$13,750 and the second for \$13,250. Each bill of sale signed by T.K. Hughes stated, “I agree that I have examined the vehicle and accept the vehicle in its present condition.”

Appellant asserts that after it purchased the vehicles, it discovered that both vehicles had rust on the undercarriage. On June 13, 2016, T.K. Hughes submitted written claims to the contracting officer in which it sought a \$1500 per vehicle refund off the purchase price, alleging that GSA had failed to disclose the rust.

GSA’s contracting officer denied the claims, stating that the vehicles were not mis-described. In addition, appellant failed to present its claims within fifteen calendar days following removal of the property on April 13, 2016, as required by the contract.

On July 2, 2016, T.K. Hughes submitted its appeals to the Board. In its notices of appeal, appellant stated:

I consider it an obligation of the GSA to announce rust on their vehicles offered for sale, as it is always done at other GSA sales. I purchased four GSA vehicles from Greenville, NC auction on 6/23/16 and I did not buy a single rusty vehicle; they not only announced rust on the screen, they announced rust-rust (sic) and many of those where [sic] not as rusty as the two vehicles I purchased at Tidewater; I feel that a refund on those vehicles in the amount of \$1500 each is only fair to me the unsuspecting buyer.

GSA moved for summary relief. T.K. Hughes opposes the motion.

### Discussion

Summary relief is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to relief as a matter of law. *E.g.*, *Celotex Corp. v. Catrett*, 477 U.S. 317 (1974); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Amir Aghdam v. General Services Administration*, CBCA 4673, 15-1 BCA ¶ 36,104 at 176,268. The moving party shoulders the burden of proving that no genuine issue of material fact exists. *Sullivan v. General Services Administration*, CBCA 936, 08-1 BCA ¶ 33,820, at 167,400.

GSA has met its burden. The GSA contract governs disposition here, and its terms specify the limited remedies available to appellant. *See Spicer v. General Services Administration*, CBCA 1532, 09-2 BCA ¶ 34,195, at 168,993. Pursuant to the terms of the contract, each vehicle was sold “as is.” These terms and conditions provide only a limited

description warranty. The warranty provided as follows: “The Government warrants . . . that the property listed . . . will conform to its condition. Condition is not guaranteed.” “[T]he term ‘mis-description’ connotes an inaccurate - meaning an erroneous or incorrect - description of something with which the describer is familiar.” See *Fred M. Lyda v. General Services Administration*, CBCA 493, 07-2 BCA ¶ 33,631, at 166,572 (citing *McKinney v. General Services Administration*, GSBCA 16720, 05-2 BCA ¶ 33,119, at 104,128). The Board will deny relief for a mis-description where “a bidder conducts an inspection and fails to notice a problem, and when a bidder decides not to conduct an inspection and so does not see a problem.” *Hanke v. General Services Administration*, GSBCA 14097, 97-2 BCA ¶ 29,247, at 145,491.

Here, T.K. Hughes alleges the existence of undercarriage rust on the purchased vehicles, which, according to appellant, “is usually announced on the condition report or at the block and it was not . . . .” As the contracting officer correctly concluded, however, T.K. Hughes has not established that a mis-description occurred. Rather, T.K. Hughes asserts that the condition of the cars had not been fully disclosed. Failure to disclose the vehicles’ condition does not amount to a mis-description. See *Spicer*, at 168,994. Likewise, where, as here, the bidder had the opportunity to examine the vehicle and did so, the Board will not find for an appellant on the grounds of mis-description. *Lyda*, 07-2 BCA at 166,572.

Even assuming that T.K. Hughes could establish mis-description, appellant failed to timely submit its claims. Under the terms and conditions of the sales contracts, “No refund will be made unless the purchaser submits a written notice, claiming a mis-description, to the contracting officer within 15 calendar days” of the date the vehicles have been removed, or no later than April 28, 2016. Appellant did not submit its claims until June 13, 2016. As we have noted previously, “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.” *Bradley v. General Services Administration*, CBCA 5040, 16-1 BCA ¶ 36,327, at 177,113 (quoting *Hutchinson v. General Services Administration*, CBCA 752, 08-1 BCA ¶ 33,804 at 167,341). Because appellant failed to submit its claims within fifteen calendar days, the contracting officer properly denied the claims as untimely.

Finally, T.K. Hughes cannot obtain the relief it seeks, specifically a \$1500 reduction in the purchase price for each vehicle. Under the contract, GSA would pay T.K. Hughes the full price paid for the vehicles, but only if T.K. Hughes timely submitted its claims and had returned the vehicles, in unaltered condition, to a location designated by the contracting officer. The damages sought by T.K. Hughes are not contemplated under the terms of the contract. See, e.g., *DustNSew, LLC. v. General Services Administration*, CBCA 4769, 16-1 BCA ¶ 36,284, at 176,949.

Decision

Respondent's motion for summary relief is granted. The appeal is **DENIED**.

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JERI KAYLENE SOMERS  
Board Judge

We concur:

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BEVERLY M. RUSSELL  
Board Judge

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KATHLEEN J. O'ROURKE  
Board Judge