



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: October 5, 2012

CBCA 2870

AMIN FARNAM,

Appellant,

v.

DEPARTMENT OF THE TREASURY,

Respondent.

Amin Chaim Farnam, pro se, Roslyn Heights, NY.

Ashley M. Bender, Office of Chief Counsel, Internal Revenue Service, Department of the Treasury, Washington, DC, counsel for Respondent.

Before Board Judges **POLLACK**, **GOODMAN**, and **ZISCHKAU**.

GOODMAN, Board Judge.

Appellant filed this appeal from the contracting officer's decision denying his claim for costs incurred in repairing a vehicle purchased at an agency auction. Respondent has moved for summary relief. We directed appellant to respond to the motion by August 31, 2012, and appellant acknowledged receipt of our order. Nevertheless, appellant has not responded to respondent's motion. As we find no material facts in dispute, and that appellant is not entitled to relief as a matter of law, we grant respondent's motion and deny the appeal.

Background

On April 24, 2012, appellant purchased a car at auction from respondent's contractor VSE Corporation (VSE). The vehicle was sold pursuant to terms and conditions that specifically state that the property is being sold "AS IS, WHERE IS," and "WITH ALL FAULTS."

In addition, the terms state: "The Government warrants to the original Purchaser that the property listed in the sales catalog for bids will conform to its description. The Government does not warrant the condition, quality, or merchantability of the property or its fitness for any use or purpose."

The terms also provide appellant with an opportunity to inspect the property: "A bidder is invited, urged, and cautioned to inspect the property prior to submitting a bid. The failure to inspect property shall not constitute cause for cancellation of sale."

The vehicle description included, among other information, the make, model, year, color, and interior of the car and included the VIN number and mileage. The description also stated that the known defects included: "Torn Lower Engine Splash, Curb Rash on Bumpers, Hood Release Inoperable, Broken Interior Panels, Check Engine Light Illuminated."

After appellant purchased the vehicle, he claims that he paid approximately \$2500 to repair the problem indicated by the illuminated check engine light, which had been noted as a known defect, and repair the windows and convertible top "to get them to working condition." On June 11, 2012, appellant requested from the contracting officer a refund of the costs of repair. On June 14, 2012, the contracting officer denied appellant's claim.

Discussion

Summary relief is appropriate only where there is no genuine issue as to any material fact (a fact that may affect the outcome of the litigation) and the moving party is entitled to relief as a matter of law. Any doubt on whether summary relief is appropriate is to be resolved against the moving party. 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.

In this case, respondent has met its burden. The vehicle was sold "as is." The only warranty contained in the general sales terms and conditions was that the vehicle would be properly described. The fact that the vehicle was accurately described by year, make, model,

and VIN number satisfies the warranty of description. *Ibarra v. Department of Homeland Security*, CBCA 1986, 10-2 BCA ¶ 34,573.

The fact that appellant had to pay for repairs to fix problems that were either specified, such as the check engine light, or were not, does not obligate respondent to reimburse appellant for these repairs. *Spicer v. General Services Administration*, CBCA 1532, 09-2 BCA ¶ 34,195 (purchaser could not be refunded or reimbursed for repairs to vehicle sold “as is”).

Decision

The appeal is **DENIED**.

ALLAN H. GOODMAN
Board Judge

We concur:

HOWARD A. POLLACK
Board Judge

JONATHAN D. ZISCHKAU
Board Judge