Every sale made in auction is subject of contract

Q I attend several auctions throughout the year held by various auctioneers. A couple of months ago an auctioneer in his opening remarks reviewed the terms, conditions and the usual items for the auction. Then he stated that, per a new state law, there would be no such thing as a "disputed sale."

He said once an item was declared sold by the auctioneer, it was a final sale. On occasions at auctions, we have all seen the auctioneer reopen the bidding between two bidders to settle a dispute. What is this new law? Do other states also have similar laws in effect? Only one auctioneer has announced this at the auctions I attend.

A I recently gave a seminar in your section of the country during which I hit a familiar theme on this topic – the fantasy of "tie bids" and "disputed sales." The infamous "tie bid" involving bidders in an auction is nothing but an imaginary creation conjured up long ago in some auctioneer's imagination and passed through the generations to just about every other auctioneer in the country – or at least it seems to me that many of them have followed the "rule" at one time or another.

This "rule" that, after making a sale, an auctioneer has the right to reopen the bidding to two or more bidders who each think they have the highest bid for a lot is no rule at all. Instead, it is a violation of both contract law and the Uniform Commercial Code.

Here's how the scenario usually takes form. The auctioneer is calling the bids and he takes a high bid for the lot and no other bid is made. The auctioneer sells the lot for the amount of the high bid. Immediately, two or more other bidders claim they each thought they had made the high bid. The auctioneer calls the situation a "bidders' dispute" and reopens the bidding. Sometimes this second round of bidding is limited to the bidders who are, according to the auctioneer, in "dispute." The lot is then sold again to the highest bidder.

The problem is this is not what the law governing sales allows. I often refer to what I call the "ABCs of auctions" – auctions are "all 'bout contracts." Every sale made in an auction is the subject of a contract. When an auctioneer makes a contract for sale with a bidder, this agreement to sell and buy is not some flimsy make-believe arrangement that can be set aside unilaterally by anyone. The contract for sale is a legally-binding agreement that vests rights and responsibilities in both the seller and the buyer and commits them to perform all of terms of the sale.

The first mistake that auctioneers make on this issue of a "bidders' dispute" is to fail to understand the law that governs contract formation in an auction. When an auctioneer cries "sold" on a bidder's high bid, the auctioneer is acting as an agent for the seller. The result is that a contract for sale is instantly formed between the seller and the buyer. This contract has legal force.

The second mistake these auctioneers make is to believe they have some authority over a contract for sale. The

IT'S AUCTION TIME

BY STEVE PROFFITT

auctioneer's authority as an agent for the seller is to form the contract with the buyer. Once the contract has been formed, the auctioneer disappears from the selling equation. This is because the auctioneer is not a party to the contract. The parties to the contract for sale are the seller and the buyer. So, how could an auctioneer set aside a contract to which he is not even a party? He cannot.

The law provides that a contract for sale will be formed when there is a

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Word complete means complete – no ifs, ands or buts

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meeting of the seller's and buyer's minds on the important terms of the contract and the parties evince an intention to contract. This meeting of the minds occurs when an auctioneer receives a bid from a high bidder and declares the subject lot to be sold to that bidder. When a second bidder "disputes" this sale on the basis she thought she had made the highest bid recognized by the auctioneer (or a ring person thought his bidder was in when the auctioneer was dealing with someone else), the answer to this "dispute" is simple and does not involve reopening bidding.

The answer turns on the simple question – who did the auctioneer think he was selling the lot to when he knocked it down? If the answer is a bidder who also thought he was buying the lot, the requisite meeting of the minds has occurred between the seller (through the seller's agent, the auctioneer) and the buyer and the contract for sale has been formed. It matters not that anyone else thought he or she was the buyer, because the auctioneer didn't intend to sell to that bidder, so no meeting of the minds occurred and no contract for sale could be formed.

The UCC bluntly makes the same point: *"A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner."* The word "complete" means ... complete. It does not mean "maybe," "could be," "might be," "what do you want it to be," "think about it and then decide," or anything other than ... COMPLETE.

I don't know if my seminar was the source of this "new law," or whether a state board has issued a clarifying regulation on this point. It doesn't matter. There is nothing new about this "law," but I do wish all auctioneers would learn the law and follow it in their sales. That would be a good thing no matter how it is accomplished.

Well that's it for this week. So enjoy the auctions; enjoy your friends; enjoy your family; and enjoy your life ... it's the only life you have.

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