

HEATHCOTE BALL V. BARRY [2000] EWCA Civ 235

FACTS OF THE CASE:

1. This was an appeal in the Northampton County Court judgment issued on 6 August 1999 by HH Judge Harris, who sentenced the plaintiff against the defendant for £27,600. The appeal presents a question of popular concern and value with respect to the consequence of a "reserved" offer per auction.
2. On 25 June, two Alan smart engine analyzers were auctioned for sale. Due to certain responsibilities in relation to VAT payment by manufacturers, the new machine was sold by Customs and Excise.
3. The cost of the manufacturers' latest machines was £14,521 each. Customs and Excise had told Mr. Cross to market the machinery without reservation and on that basis approved it for sale.
4. The plaintiff who had a car business saw the machine delivered on 20 June to the auction house. Mr. Cross was visiting, saying he would sell the machines without reserve on the 25th of June.
5. On the day of the auction, Mr. Cross addressed the people who had gathered and said the machine was being sold on behalf of the VAT office and each was worth €14000. He began the bidding by quoting €5000 but there was no response. He then fell to €3000 and still did not get replies. Finally, the plaintiff quoted €200 each. He told the public to apply the bid.
6. Mr. Cross withdrew the machines from the sale explaining that, he could not sell the machines for worth €200. Had there been no auction and a reserve basis for selling the machines, their worth would have been more than €200. After few days he sold the machine to someone else for €750 each.
7. The plaintiff filed a suit against Mr. Cross and claimed damages on the basis that he was highest bidder.

ISSUES RAISED:

1. Was there a collateral contract between the auctioneer and the highest bidder?
2. Could Mr. Cross sell the machines to some other party, even after the receiving the highest bid?
3. Whether there was a principal-agent relationship between Mr. Cross and the Vendor?
4. Whether the sale between the agent and the highest bidder would be completed if the agent accepted the bidding price?
5. What amount of damages should the plaintiff recover from the defendant?

ANSWER TO THE ISSUES:

1. Mr. Cross the auctioneer made an offer to the general public to come and bid for the machines that were being sold without reserve. The general public signified their willingness to bid and purchase the machine on 25th June. Mr. Cross refused to sell the machine to the plaintiff on the ground that €200 for each machine was a very less price. Rather he sold the machine later at €750 for each. The plaintiff was under a general and reasonable expectation that as there was no other bidding the machines belonged to him. In the case of *Warlow v Harrison*¹, it was argued that merely holding an auction does not amount to promise on the part of the auctioneer to sell the goods. There was no collateral contract between the auctioneer and the highest bona fide bidder.

There was a collateral agreement between the auctioneer and the highest bona fide bidder. Mr. Cross offered the general public to come and bid for the machines. The public accepted his offer and reached the place of bidding. There was an agreement between the general public and the Mr. Cross that whoever bids the highest would get the possession of the machines. Contractual relationship existed between the Vendor and Mr. Cross.

2. The sale of the goods is completed once the auctioneer bangs his hammer. It is important to note that there is no consider for the promise of the auctioneer. Calling for bidding cannot amount to consideration as the bidder has not promised to do anything

¹ (1859) 1 E & E 309

and he can withdraw the bid before the fall of his hammer (*Payne v Cave*²). But we cannot deny the fact that both the auctioneer and the bidder derives some value from the good. For the auctioneer it's the sale of the particular machine and for the bidder it's the particular machine.

After receiving the highest bid from the plaintiff for €200 for each machines, Mr. Cross could not sell the machines to some other parties. Mr. Cross should have notified the plaintiff before selling them to the third party. It was the general and reasonable expectation of the plaintiff that machines would be sold to him as he was one to bid the highest.

3. According to section 182 of the Indian Contract Act it is clear that there existed a Principal-Agent relationship between Mr. Cross and the Vendor. Mr. Cross had been appointed to deal on-sell the machines on behalf of the vendor to the third party and the Vendor had appointed him to do the particular work. If the Agent is acting on behalf of the disclosed principal then he is not liable on the contract existing between the bidder and the principle. Therefore, if there are the highest bid and a contract is formed it is between the highest bidder and the principle. There exists a collateral agreement between the Agent and the highest bidder.

According to section 182 of the Indian Contract Act, there existed a Principle-Agent relationship between Mr. Cross and the Vendor. Mr. Cross was acting as an agent on behalf of the vendor to sell the machines to the general public.

4. It is the general phenomenon that during bidding the vendor and any person on his behalf shall not take part during the bidding. The property must be sold to the highest bidder even if its value is not equivalent to the Market value (*Warlow v Harrison*). In the case of *Harris v Nickerson*³ it was very clearly pointed out that when there is a sale without 'reserve' then there exists a contractual agreement between the auctioneer and the highest bona fide bidder. It is accepted and believed by that the goods will be sold the person who bids the highest. By referring to the case of *Warlow v Harrison* it is clear that an action would lie against the auctioneer if he knocks down the sale, to sell it to the highest bidder without reserve.

As the agent was acting on behalf of the principal and there existed only a contractual agreement between the auctioneer and the plaintiff, the sale would not be

² (1789) 3 TR 148

³ (1873) LR 8 QB 286

completed if the agent accepted the bidding price. Even though there is no contract between the vendor and the bidder, the sale of machines will be completed only when the Principle gives his assent. As explained in the case of Warlow v Harrison.

5. The machines were given by the vendor to the auctioneer at €14251 each and the auctioneer thought of selling them at the cost of €14000 each. The auctioneer received a bid of €200 for each machine from the plaintiff. The auctioneer sold the machine for €1500, €750 for each machine. It is important to put the plaintiff in the position where the contract would not have been broken. The plaintiff would have access to two new machines for his business. There is evidence to suffice that the machines were given by the Vendor to the Auctioneer at the cost of €14251. After the day of the bidding, the machines were sold at the cost of €1500 to some other party, and the plaintiff was not notified of the same. The plaintiff lost both the machines costing €28000. He wanted to use these two machines in his business and not trade them. Therefore, the total amount that the plaintiff should be given is €27600. (The difference between the market value of the machine and the bidding price by the plaintiff).

It can be argued that the plaintiff should get €1500 because that is the amount at which the machine was finally sold. But it needs to be taken into consideration that the machines were put up for bidding, and the plaintiff took part in the bidding. He thought of using the machine for his business purpose and that's why he went to bid for it. By selling the machine to the third party, the auctioneer has denied to sell the machine to the plaintiff and therefore he is bound to recover the machine at its market price difference the price at which it was bid for.

RULE OF LAW WHICH APPLIES:

1. Section 2: Interpretation Clause:

- (1) When a person signifies to another his willingness to do something or abstain himself from doing something, with a view to obtain the assent of the other person, he is said to make an offer.⁴

⁴ Section 2(a) of Indian Contract Act, 1872

- (2) When at the desire of the promisor, the promisee or any other person does an act or abstains himself from doing an act, or promises to do some act or abstains from doing, such an act or abstinence is called consideration.⁵
- (3) When every promise and every set of promises forms the part of consideration it is known as Agreement.⁶

2. Section 182 : Definition of Agent and Principal⁷:

An Agent is the person who has been employed to do any act for another party or to represent and deal on behalf of another with the third party. The person for whom such act or dealing is done is known as the Principal.

3. Section 57(2) : Damages for Non- Delivery⁸:

It states that sale by auction is complete when the auctioneer announces its completion by the fall of hammer. The bidder may retract his bid before the fall of hammer.

CONCLUSION:

It is clear that if the Auctioneer offers and invites the general public to bid at the auction he cannot reject the highest bid. He is entitled to sell to the person who makes the highest bidding and he should notify him in case he is not willing to sell him the goods. Mr. Cross being the auctioneer was liable to sell the machines to the plaintiff, even if the bidding was done at a very low price. There exists a contractual agreement between the Agent and the bidder. The auctioneer agrees and invites the bidder to bid on the goods at the auction and therefore there is an agreement between the two.

There is a consideration from both the Auctioneer and the bidder. The bidder's bid can be accepted until and unless it is withdrawn and benefit to the auctioneer as the bid goes higher. It is on the consideration that both parties agree to come into an agreement. It is important to understand that the final contract is between the Principle and the bidder. The auctioneer merely acts as an agent between the two. His main work is to get the highest bid and form a contractual

⁵ Section 2(d) of Indian Contract Act, 1872

⁶ Section 2(e) of Indian Contract Act, 1872

⁷ Section 182 of Indian Contract Act, 1872

⁸ Section 57(2) of The Sales of Goods Act, 1979

relationship between the principle and the highest bona fide bidder. The principle or any party related to the sale of particular goods cannot take part in the bidding.

Therefore, it can be concluded by saying that there existed a contractual agreement between Mr. Cross and the Plaintiff. It was based on this agreement that the Plaintiff took part in the bidding. Mr. Cross was liable to sell the machines to the Plaintiff for €400. By selling the machines to the third party he was liable to pay damages to the plaintiff to the amount of €27600.



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