



Is an eBay Auction Binding?

In the NSW Supreme Court case of Peter Smythe v Vincent Thomas [2007] NSW SC 844 it was determined that an online auction was binding on the parties.

In this case the Defendant, Mr Thomas, had a vintage Australian Wirraway Warbird Aircraft and he listed it for auction on eBay. The stipulations were that there was a reserve of \$150,000 and the auction was open for a period of 10 days.

Just prior to the auction closing the Plaintiff, Mr Smythe made a bid of \$150,000. He and Mr Thomas both received an email from eBay at the conclusion of the auction confirming that the aircraft had been sold.

Mr Thomas about this time also received interest from another party in buying the aircraft for approximately \$220,000. Understandably Mr Thomas was disappointed in the result of the auction and disputed that a contract had been formed.

Mr Thomas argued that there was no contract between him and Mr Smythe as the contracts were between Mr Smythe and eBay and Mr Thomas and eBay. Mr Thomas also submitted that by placing the product on eBay he was putting it up for sale, no different to putting an ad in the paper and that by Mr Smythe making an offer, he could either accept or reject the offer. Thirdly, Mr Thomas argued that even if there was a contract, as the details regarding payment, delivery etc had not been finalised, there was no final agreement.

The Court rejected Mr Thomas' arguments and found that there was a binding agreement. The Court held that Mr Smythe had made the bid within the specified period and the bid reached the reserve of \$150,000. As those two pre-conditions had been met there was a binding agreement and Mr Thomas was unable to at a later time, impose qualifications on the auction.

The decision in this case is a good illustration of the law keeping pace with changing commercial arrangements as a result of technology.

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