

UCC and Bid-Retractions: What Does This Mean for Your Digital Business?

Digital technology is at the center of today's economic development and consequently a topic many auction professionals must be discussing. While there is no doubt that the pandemic is amplifying the adoption of new technologies, online strategies and advancements have been changing our auction industry for a number of years.

The auction industry's conversion from live events to digital platforms will require additional policies and procedures for managing the many challenges that a professional auctioneer can handle quickly and deftly during a live auction.

This article will review one of the challenges using digital technology in lieu of live bidding.

What do you do when your online bidding platform allows the high bidder to retract their bid at the last second? Many times this action, unknowingly, puts a bidder who has left the auction, understanding they have been out-bid, in an uncomfortable and uninformed position.

I am a bit of a uniform commercial code (UCC) law nerd and recognize that it provides some of the most comprehensive (albeit, confusing at times) written governance for the auction industry. So this is probably the perfect time to review one of my favorite sections, 2-328 Sale by Auction.

§ 2-328. Sale by Auction.

(1) In a sale by auction if goods are put up in lots each lot is the subject of a separate sale.

(2) A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

(3) Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an

auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract his bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.

(4) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at his option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale.

In subsection (3) the UCC law clearly states a bidder has the right to retract their bid at any time prior to the auctioneer announcing the item sold. Most professional auctioneers will have many opportunities during their career to mediate a bid retraction during a live auction for any number of reasons. A bidder was bidding on the wrong item, they did not understand the price they were offering, they thought it was a lot price instead of choice and many others. In almost every instance a polite and respectful auctioneer is able to find the backup bidder, confirm the last bid and continue with the sale. This mediation process and negotiation happens in the blink of an eye and typically to the satisfaction of all parties involved. Most auctioneers will say this is simply "a day at the office."

Now to insert a frantic bidders call following a recent online-only auction.

"What kind of a crazy show are you running up there!? I've just received an invoice for something I never bought... I don't think I even bid on it...well, I may have bid on it...but I was never the high bidder... and I sure don't want it now... I already bought a different one anyway... and by the way, my mother has passed away and I've left the country."

This is a more humorous example of a fairly common phone call I have come to expect following most online-only auctions. My response is what you may expect; I listen calmly, explain the bidding platform and how the online system works. If I think the bidder is in a listening mood, I may provide some UCC information as support. I then confirm they do not want the item. I have found, with the proper approach, many bidders, who have become the

winning bidder by way of a bid retraction, have a change heart and decide they would still like the item. If they do not want the item, the bidder is provided a refund with no further questions. Then, simply call the next bidder in line and attempt to resell the item.

Some auctions have a few of these instances and other auctions have many. While this next example does not solely involve a bid retraction, the process is similar.

We recently conducted two online-only auctions on back-to-back days for Neiman Marcus. One auction was in Washington, DC and the other in Washington state. A lovely doctor called me after the auctions to inform me that she was in Washington, DC and placed a number of bids on the sale in Washington state. There were approximately 80 items totalling more than \$15,000 on her invoice. It did not take long to assess the futility of collecting on this invoice. So we got to work; finding, calling, texting, waiting, negotiating, and hopefully selling the majority of the items in time to meet the removal deadlines.

As our auction schedule grew so did the phone calls, emails, and texts. I began to wonder where all of these problems were coming from? Why are bid retractions suddenly a time consuming project each week?

Then it hit me. These are the same type of buyers we have been working with for 60 years, with the same issues and miscommunications we work through in the blink of an eye during a live auction.

Retracting a bid prior to the auctioneer announcing an item sold is the law and needs to be accommodated during live and online-only auctions. Just like our live auctions, we attempt to correct any miscommunications and mistakes one at a time. I believe the incident rate of mis-bids is similar during an online-only auction to a live auction, but we do not have the luxury of trained auctioneers and cashiers to act as customer service professionals and make quick and efficient corrections.

We continue to add procedures and work flow charts to our online auction events to make accommodations for these new customer service opportunities. In most cases, there is no better recourse than one-on-one conversations and remember fondly the speed and skill of the professional auctioneer who has been making these moments look easy for decades.

The advent of digital technology and online bidding platforms continues to make in-roads to the auction industry. As an industry professional, I believe it is vital that we continue to review the needs of our clients and trends of our customers. And as we gain experience in digital platforms it is becoming more clear that the role of the live auction staff is not easily replaced with computers and programs. Situations like bid retractions and online bidders' mistakes ensures that customer service and support will continue to play a critical role in the success of our industry.