



Negotiating Contracts Properly



Edition: 30th September 2011

One of the difficult questions trainers get asked is about negotiated contracts in relation to an auction. That is, can different bidders negotiate separate contracts with the vendor?

We must break this into 2 categories:

- The law
- Practical operations

There is little statute law that surrounds an auction, apart from the Property, Stock and Business Agents Act 2002. Most of the rules that apply to auctions have been developed over many centuries. It is an ancient craft, which has existed in English law for many centuries. Convention and common law has developed rules which apply to auctions.

When an auctioneer stands on the rostrum, he is auctioning the right to enter into a contract to purchase a property. What he is therefore auctioning is the contract itself. Therefore, on a strictly legal basis, we cannot see how more than one contract can exist during auction.

When a prospective purchaser bids at an auction he/she enters into an *implied contract* with the auctioneer that they must execute for the Sale of

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Land once the reserve is met. Furthermore, the Vendor has an implied contract with the auctioneer that they will execute a contract if the price achieved exceeds the reserve.

This is further developed when you consider that each Contract for the Sale of Land is exchanged unconditionally if exchanged under auction conditions. The contract is the basis of the auction and therefore we find it difficult in law that three contracts can exist on the one property.

Let's look at the practical operations: many persons before determining to bid at an auction, negotiate the terms and conditions of the contract. In many cases, there are different contracts that exist when an auction is being conducted. Unfortunately, this is not consistent with the law. Nevertheless, it has occurred for many centuries and has not been a problem. We suppose the legal way to look at it is that, where parties have negotiated separate contracts, each party has agreed to a variation of the agreement prior to execution.

In our opinion, if there are bidders who have negotiated terms of a contract, it should be made known at the auction that if those parties are the successful bidders the amendments will be made to the contract.

Cheers,  
**Bailey Compton** and The team at ACP/Leverage!



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