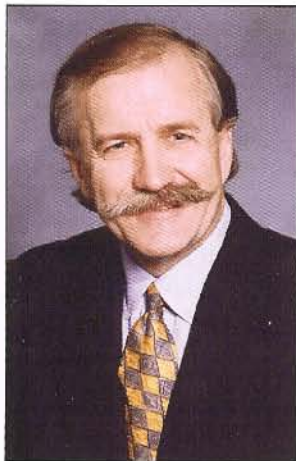


seller beware at auction



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MOST PEOPLE ARE FAMILIAR WITH THE WARNING “CAVEAT EMPTOR,” OR “BUYER beware,” especially at horse auctions. Recently, some courts have extended the concept to include the seller. In other words, “seller beware.” Specifically, an “as is” clause in an auction catalog may not mean “as is” if the seller makes representations that are false and misleading.

At a recent horse auction, the high bidder questioned the sale after the hammer fell. The buyers contended that the seller told them that the horse had never received any injections, had no problems and that he was 100 percent. Shortly after the sale, the horse showed signs of lameness and after being examined by a veterinarian, was found to have had surgery to remove calcium deposits and received numerous injections a few months prior to the sale. The buyer filed suit, claiming the seller committed fraud by failing to disclose information about the surgery and subsequent injections. At his deposition, the seller admitted that he told the buyers that the horse “hadn’t been injected . . . all summer” but maintained “that don’t mean he never had one shot. He might have had one.” The seller denied saying anything about prior surgeries.

Prior to the sale, buyers were given a catalog of horses, which contained a “NOTICE TO BIDDERS- TERMS AND CONDITIONS OF SALE” form, stating that horses were sold “as is,” should be examined immediately after being struck down and that any challenge to a condition, alleged warranty or representation must be made to the sales manager immediately. In addition, “the Company neither assumes nor bears any responsibility to any bidder for the accuracy of any statement of fact or opinion appearing in this catalog or made by the auctioneer in reference to any horse. All such matters are the sole responsibility of the person or persons consigning the horse to the sale. The Company does not make any representations or warranty with respect to the merchantability, fitness for a particular purpose, condition. . . soundness. . . or any other quality or characteristic of any horse.”

Buyers signed a confirmation of sale in which they agreed to be bound by the terms of the sale.

The court decided that the “as is” clause in the sale catalog and incorporated into the confirmation of sale document was applicable as between the buyer and auctioneer, not the seller. The “as is” clause was not intended to insulate sellers against their misrepresentations or concealment of information they were required to disclose. Sellers and consignors were obligated to disclose to buyers whether a “latent defect such as a broken bone, OCDs, chronic illness, etc. or if any unusual treatment such as surgery has been performed on any of the horses.”

The court also distinguished seller’s statements from mere “puffing” (sales talk), ruling that the statements amounted to “specific knowingly false statements of fact on which reliance is placed.” The statement that the horse had not had any injections was “patently false,” especially when taken in the context that seller failed to disclose information about the horse’s surgery. The court decided that there was sufficient evidence of fraud and misrepresentation to have a jury trial.

The lesson to be learned from this case is simple. Do not misrepresent your horse. If you do, you may end up getting the horse back, plus paying damages. Also, if the auction company requires disclosure of certain defects, make sure you disclose them. The “as is” clause will only protect you if you don’t hide known defects and don’t misrepresent the facts. If you do, when the auctioneer’s hammer comes down on your horse, “Seller Beware.”

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