

BETWEEN

EH LTD
APPLICANT

AND

US
RESPONDENT

Date of Order:

18 July 2016

Referee:

Referee Perfect

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that the respondent, US, is to pay the sum \$173.50 directly to EG on or before 8 August 2016.

Facts

[1] US bid on and won an auction for a 1999 Audi in February 2016 on Trade Me, using a Trade Me account in her own name. Her winning bid was for \$2515.00 and was her first bid in the auction in which two other prospective purchasers were bidding strongly, on what had been a \$1 reserve auction.

[2] When EH Ltd attempted to contact her about her purchase, she did not reply and when Trade Me subsequently attempted to contact her, they were unable to make contact either.

[3] EH Ltd relisted the car about a month later, again with a \$1 reserve, and it sold for \$1670.00. EH Ltd claims damages for the \$845.00 price difference, \$103.50 re-grooming costs, \$20.00 petrol for more test drives, and \$50.00 wages for staff for weekend test drives on the second auction.

[4] It transpires that US is a 17 year old high school student. In having an account on Trade Me, she was in breach of Trade Me's terms and conditions which require users to be 18 years of age, and be able therefore to enter into legally binding contracts.

Issues

[5] The issues to determine are:

- a) Is the contract enforceable under the Minor Contract Act 1969 ('MCA')?
- b) What, if any, compensation for EH Ltd would be just in all the circumstances?

Is the contract enforceable under the Minor Contracts Act 1969 ('MCA')?

[6] Section 6(1) of the MCA states that every contract entered into by a minor is unenforceable against the minor but otherwise has the effect as if the minor were of full age. However, while the presumption is that contracts with minors are unenforceable against the minor, the Tribunal has the discretion to partially or fully enforce the contract, cancel the contract or order compensation under section 6(2) of the MCA.

[7] In exercising this discretion, the Tribunal must consider, as per section 6(3):

- (a) The circumstances surrounding the making of the contract:

(b) The subject-matter and nature of the contract:

(c) In the case of a contract relating to property, the nature and the value of the property:

(d) The age and the means (if any) of the minor:

(e) All other relevant circumstances.

[8] The circumstances surrounding the formation of the contract in this case are not those of a considered, negotiated bargain. US won the auction at the push of a button. She had not previously bid on the auction, has no means to purchase a car, let alone spend over \$2500.00 on one, and says she did not think she would win the auction. There had been strong competition on the auction immediately before she placed her bid, so while it was certainly unwise to act on her opinion that she would not win the auction, the opinion itself was not without some basis.

[9] On the other hand, US, simply by having a Trade Me account, was representing herself as being 18 years of age or older and having the capacity to enter into legally binding contracts. There was no way for EH Ltd to tell that she was a minor and because of the terms and conditions of Trade Me, they had every right to expect that she was an adult. Her error in bidding on the auction was compounded by her failure to communicate in a timely manner.

[10] The contract can no longer be enforced, as EH Limited relisted the car when it was unable to contact US. The placing of a bid in an online auction, is perhaps one of the very best examples of the sort of contract that the Minors Contract Act is designed to protect minors from being bound by, it being an instant and impersonal way to enter into a contract in which the consequences are not necessarily clear. For that reason I would not be enforcing this contract if the car had not been resold.

[11] However, because it is also impossible for the seller to ascertain who they are selling to and they are entitled to expect Trade Me's terms and conditions to protect them in this regard, I consider compensation to be appropriate in these circumstances.

What, if any, compensation for EH Limited would be just in all the circumstances?

[12] Due to US's age and all the circumstances surrounding the formation of this contract, as outlined above, I do not consider it appropriate to award the full amount of damage to which EH Limited may be due under an ordinary breach of contract claim. In any event, it is arguable as to whether or not the difference in price claimed of \$845.00 represents a 'reasonable' loss.

[13] It is unknown whether the two other bidders on that auction would have purchased the car, but I note that even if US had been in communication soon after the auction finished, EH Limited has said that they would not have offered the car to the other bidders as a matter of principle (because it can appear that a seller was bidding on their own auction in these circumstances to push the price up).

[14] However, in an ordinary situation where damages are claimed for breach of contract, the seller must attempt to mitigate its losses and get as close to the previous contract price as it is able to. Contacting the other two bidders was one possible option (even if EH Ltd preferred not to) as was relisting the vehicle with a reserve closer to the original sale price, particularly when the first option was not taken. While I accept that the car may have sold for much less because it was being relisted, and buyers may have assumed there was therefore something wrong with it, it is not sufficiently clear that a much better price could not have been achieved.

Conclusion

[15] I therefore do not include a loss component in the compensation to be awarded, but look at the actual costs EH Ltd expended in re-selling the vehicle. Those claimed are \$103.50 for grooming the vehicle again, staff costs of \$50.00 for weekend test drives and \$20.00 petrol for further test drives. While the latter two amounts are not supported by evidence, it makes sense that they would be incurred and the costs are reasonable. I set the compensation at the sum of those expenses, being \$173.50.