2013 IL App (1st) 122443-U

No. 1-12-2443

FOURTH DIVISION
September 26, 2013

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

AMERICAN ASHLAND, LLC,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 L 13541
	)	
MARIO M. ROBBINS, D.O.,	)	Honorable
	)	Joan E. Powell,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE HOWSE delivered the judgment of the court.
Justices Lavin and Epstein concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's judgment following a bench trial on plaintiff's complaint for breach of contract based on defendant's failure to complete the purchase of a home after defendant made the winning bid at a real estate auction is affirmed. The sales contract given to defendant to sign at the auction did not contain a counteroffer, and defendant had no right to have his attorney review the sales contract as a condition subsequent to the parties' agreement formed at the auction.

¶ 2 Plaintiff, American Ashland, LLC, filed a two-count complaint against defendant, Mario M. Robbins, D.O. Count I alleges breach of contract and count II is stated in the alternative for promissory estoppel. Both counts stem from defendant's alleged breach of written agreements titled "Registration Form" and "Terms of Sale for Purchasing Property at Auction" (Terms of Sale) by failing to execute a separate agreement titled "Sales Contract" after defendant made the winning bid at a real estate auction. Plaintiff sold the property to a third party, and the complaint seeks damages of the difference between defendant's winning bid (plus an agreed-to buyer's premium) and the price paid by the third party. Following a bench trial, the circuit court of Cook County entered a judgment in favor of plaintiff and against defendant for the full amount of damages sought in the complaint, plus costs. For the following reasons, the trial court's judgment is affirmed.

¶ 3 BACKGROUND

¶ 4 Plaintiff hired Rick Levin & Associates, Inc. (RLA) to conduct an auction of property it owned in Homer Glen, Illinois. Prior to the auction, RLA conducted an open house. Defendant attended the open house, at which he signed a document titled "Registration Form." The "Registration Form" contains a generic description of property to be auctioned by RLA as plaintiff's agent. The "Registration Form" states that if defendant bids on the property, he "agree[s] to follow and comply with all Terms of Sale in effect for this auction." The Terms of Sale contain the following relevant provisions (all emphases in original except as noted and headings omitted):

"***

2. All prospective bidders will be required to register at the auction. A CASHIER'S CHECK IN THE AMOUNT LISTED IN THE AUCTION BROCHURE (OR AUCTIONEER'S WEBSITE, WWW.RICKLEVIN.COM) FOR EACH PROPERTY IS REQUIRED TO BID AT THE AUCTION ALONG WITH A PHOTO ID ISSUED BY A GOVERNMENT AGENCY (DRIVER'S LICENSE, PASSPORT, ETC.).

***

4. Announcements made by Auctioneer staff at the auction will supersede any prior written or oral information.

5. These properties are offered for sale on, and subject to, the terms and conditions contained in the Real Estate Sales Contract ("Sales Contract") for each specific property, samples of which are available from the Auctioneer prior to the auction. The terms of each Sales Contract supersede any conflicting terms of sale contained herein. BIDDERS *AND THEIR ATTORNEYS* SHOULD REVIEW THE SALES CONTACT PRIOR TO THE AUCTION.

6. Upon the fall of the auctioneer's gavel, each high bidder shall (1) step up and present their earnest money check, and (2) with the assistance of an auction company representative, execute the Sales Contract for the respective property.

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10. **Absolute Sales**: The final high bid on properties sold during an *absolute* round of bidding (absolute sales) will be accepted by the seller at the time and place of the auction. *** **Reserve Sales**: The final high bid on properties sold during a *reserve* round of bidding (reserve sales) will be irrevocable until *5:00 p.m. Chicago time on Friday, October 7, 2011*, or as otherwise indicated in the Sales Contract for the subject property. The seller has the right to accept or reject the high bid for a reserve sale until that time and will not have any obligations or duties to any Purchaser unless and until Seller signs the Sales Contract. All winning high bidders in reserve rounds will be informed of Seller's decision either at the auction, or by telephone or Mailgram. The seller reserves the right, in their sole discretion, to 'lift the reserve,' or waive their right of

> rejection, during any reserve round of bidding at the auction. If any Seller lifts the reserve, it shall be treated from that point on like an absolute sale. (Emphasis added.)
>
> ***
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> 14. Specimen Sales Contract and any other pertinent information are available on Auctioneer's website, www.ricklevin.com. All information is subject to the Sales Contract.
>
> ***
>
> 16. Every Seller and Auctioneer reserve the absolute right, in their sole discretion, to amend these Procedures, Terms and Conditions at or before the auction. To the extent there is any conflict between the provisions of these Procedures, Terms and Conditions as set forth herein and in any Sales Contract, the terms of the Sales Contract shall govern.
>
> Auctioneer has the right, in its sole discretion, *** to modify or add any terms and conditions of the auction and to announce such modifications or additional terms and conditions prior to or during the auction.
>
> All bidders acknowledge that Auctioneer *** is NOT responsible for any actions or inactions by Seller(s) regarding Seller(s) obligations under the Sales Contract and auction process.
>
> *** THESE PROCEDURES, TERMS AND CONDITIONS NEVERTHELESS ARE BINDING UPON AND MUST BE COMPLIED WITH BY ANY PERSON OR ENTITY SUBMITTING A BID. SELLER WILL BE BOUND ONLY BY THE PROVISIONS OF THE ACTUAL SALES CONTRACT AS AND WHEN EXECUTED AND DELIVERED BY EACH PARTY THERETO. "

¶ 5 Defendant attended the auction on October 5, 2011. Defendant received information at the auction that the auction was subject to a reserve. Under a reserve sale, the highest bid on the property at the auction constitutes an irrevocable offer to purchase the property for that price. The seller may accept or reject the purchaser's "offer" which remains irrevocable for the stated period of time. The seller may "lift the reserve" or waive their right of rejection, at which point

the auction is treated as an absolute sale. Under an absolute sale, the winning bid (plus an agreed to buyer's premium) "will be accepted by the seller at the time and place of the auction." During the auction at issue in this case, an RLA employee announced that the reserve had been removed. Thus, from that point forward, the auction proceeded as an absolute sale. Defendant concedes that anyone bidding on the property after that point did so with the expectation that the seller was required to accept the winning bid, plus the premium, as the final price of the property. Defendant made the winning bid on the property.

¶ 6 Defendant, per the terms of the Registration Form, tendered his earnest money check and RLA presented him with a Sales Contract. The Sales Contract RLA presented to defendant contained the following provisions that are relevant to this appeal:

> "14. Purchaser's execution and delivery of the Contract to Seller is an irrevocable offer to purchase the Property made to Seller but shall not be binding upon Seller until executed by Seller, or Seller's duly authorized agent. **Purchaser agrees that this offer shall remain irrevocable until 5:00 p.m. Chicago time on Friday, October 7, 2011**. Notification of Seller's acceptance may be given pursuant to the notice provision in this Contract or by telephone and confirmed subsequently by letter. Seller's, or a duly authorized agent of Seller's, failure to notify Purchaser on a timely basis that Seller rejects Purchaser's offer shall not constitute acceptance or rejection of Purchaser's offer, but Purchaser's offer shall then become revocable by Purchaser. Upon rejection of the offer by Seller, all deposits made by Purchaser shall be returned and this offer shall be deemed withdrawn.
>
> ***
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> 25. PURCHASER REPRESENTS THAT PURCHASER HAS BEEN ADVISED BY THE SELLER AND AUCTIONEER TO CONSULT AN ATTORNEY PRIOR TO EXECUTING THIS CONTRACT. Purchaser further

> acknowledges that he has read and understands each and every part of this Contract. There shall be no amendments or modifications to this Contract by Purchaser or its counsel.
>
> ***
>
> 38. If any provision of this Contract is invalid or unenforceable as against any party under certain circumstances, the remainder of this Contract and the applicability of such provision to other persons or circumstances shall not be affected thereby. Each provision of this Contract, except as otherwise herein provided shall be valid and enforced to the fullest extent permitted by law.
>
> 39. This Contract sets forth the entire understanding between the parties relating to the transactions described herein, there being no terms, conditions, warranties or representations other than those contained herein. This Contract may be amended only in an instrument signed by both parties hereto. ***
>
> 40. The invalidity of any covenant, grant, condition or provision of this Contract shall not impair or affect in any manner the validity, enforceability or effect of the remainder of the Contract."

¶ 7 At the auction, defendant informed RLA he wished to have his attorney review the Sales Contract. Defendant wrote to RLA in a letter dated October 7, 2011, that defendant was not willing to go forward with the purchase of the property. The letter states that after reviewing the Sales Contract, "the terms are not acceptable" and defendant "was not afforded the opportunity to discuss this matter with my attorney ***."

¶ 8 Plaintiff's complaint proceeded to a bench trial. After trial, the trial judge found that defendant received the Terms of Sale both at the open house and again prior to the auction. The auctioneer read through the Terms of Sale before bidding began. The court found that the auctioneer "mentioned no fewer than five different times very clearly" that the auction became an

absolute auction, that defendant knew what that meant, and defendant continued to bid. The court found that paragraph 14 of the Sales Contract--which embodies the seller's right to refuse the winning bid--did not control and that the announcement at the auction that the auction was an absolute sale superseded the writing. The court held that the "fall of the gavel" and the presentation of the Sales Contract to defendant was plaintiff's acceptance of defendant's offer under the terms of an absolute sale, and that defendant materially breached the parties' contract by failing to sign the Sales Contract, which was part of defendant's agreement if he bid.

¶ 9 The trial court entered judgment in favor of plaintiff. This appeal followed.

¶ 10 ANALYSIS

¶ 11 "The elements of a cause of action for breach of a contract, whether oral or written, include the existence of a valid and enforceable contract, performance by the plaintiff, breach of the contract by the defendant, and resultant damages or injury to the plaintiff. [Citation.] A valid and enforceable contract requires an offer, an acceptance, and consideration." *Sheth v. SAB Tool Supply Co.*, 2013 IL App (1st) 110156, ¶68 (2013). "The standard of review in a bench trial is whether the trial court's judgment is against the manifest weight of the evidence. [Citation.] A judgment is against the manifest weight of the evidence only if the opposite conclusion is apparent or if the finding appears to be arbitrary, unreasonable, or not based on the evidence. [Citation.] A reviewing court should not overturn a trial court's findings merely because it does not agree with the lower court or because it might have reached a different conclusion had it been the trier of fact. [Citations.]" (Internal quotation marks omitted.) *Martinez v. River Park Place, LLC*, 2012 IL App (1st) 111478, ¶14 (2012).

¶ 12 "[A] bid at an auction constitutes an offer to buy, the fall of the hammer or any other customary means constitutes the acceptance, and a contract is then made." *Well v. Schoeneweis*, 101 Ill. App. 3d 254, 258 (1981). "As stated in [*Well*], acceptance of a bid at an auction is manifested by the fall of the hammer or any other customary means. In an auction in which the seller has reserved the right to reject any and all bids, the 'customary means' of acceptance clearly is not the fall of the hammer, but rather is some other objective manifestation of acceptance." *Rosin v. First Bank of Oak Park*, 126 Ill. App. 3d 230, 236 (1984).

¶ 13 Defendant argues that the Sales Contract contained a term that contradicts the Terms of Sale and the announcement at the auction. Specifically, paragraph 14 of the Sales Contract gave the seller the right to refuse to accept defendant's winning bid; whereas, pursuant to the Terms of Sale, the auctioneer lifted the reserve at the auction and the seller relinquished its right to refuse the winning bid. Defendant argues that the trial court erred in finding that the announcement at the auction controlled, because paragraph 16 the Terms of Sale states that contradictions are resolved in favor of the Sales Contract. According to defendant, had he signed the Sales Contract, then pursuant to paragraph 16, the right of refusal clause would control over the announcement at the auction.

¶ 14 Defendant argues that because granting the seller the right to refuse the bid would constitute a different term other than the terms the parties agreed to at the auction, the Sales Contract actually constitutes a counteroffer, which defendant was not required to accept. See *Hubble v. O'Connor*, 291 Ill. App. 3d 974, 980 (1997) ("An acceptance conditioned on the modification of terms in an offer generally constitutes a rejection of the offer and becomes a

counter-offer that the original offeror must accept before a valid contract is established."). We disagree.

¶ 15 In this case, because there is no dispute that defendant was bound by the Terms of Sale or that the auction was an absolute sale, plaintiff accepted defendant's offer when the auctioneer's gavel fell. "A counter-offer rejects an offer only when made *before* a contract is formed. Here, the contract was formed when [defendant's] offer was accepted ***. The mirror image rule is therefore not relevant." *Hubble*, 291 Ill. App. 3d at 980. Although the Terms of Sale required the winning bidder to execute the Sales Contract upon entering the winning bid, the execution of the Sales Contract was not a prerequisite to the formation of the parties' contract to purchase the property. "At the private auction of real estate *** the contract is made upon the fall of the hammer: the bidder agrees to buy and to pay the amount of his bid; the owners agree to sell and convey at that price. The only remaining question is the terms of sale. *** The publicly proclaimed terms of sale are binding upon both parties." *Well*, 101 Ill. App. 3d at 258. "Any written contract would be nothing more than a memorialization of what had taken place at the auction." *Id.*

¶ 16 In the absence of contractual language to the contrary, the law in existence at the time the contract is executed is considered part of the contract. *Dubey v. Public Storage, Inc.*, 395 Ill. App. 3d 342, 351 (2009). There is no conflict with the law concerning contract formation at auctions and the actual terms the parties agreed to in this case. The Terms of Sale states that the property is offered for sale on, and subject to, the terms and conditions contained in the Sales Contract. The Terms of Sale does not state that the sale of the property is "conditioned on" the

successful execution of the Sales Contract. This reading of the parties' agreement is consistent with the requirement in the Terms of Sale that upon the fall of the auctioneer's gavel, each high bidder *shall* execute the Sales Contract for the respective property. This language reflects the understanding that the contract is complete upon the fall of the gavel, and all that is left is to memorialize the agreement.

¶ 17 As to the parties' agreement, the retention of the reserve clause in the Sales Contract does not reflect the parties' agreement, formed at the auction as a result of the auctioneer's announcement and defendant's continued bidding, that the auction was for an absolute sale. That fact does not change the outcome. Plaintiff offered the property for sale subject to terms and conditions contained in a Sales Contract for the specific property. The Terms of Sale advised bidders that the Sales Contract was available on the auctioneer's website and to review the Sales Contract for the specific property prior to the auction. Defendant testified he did not review the Sales Contract prior to the auction.

¶ 18 Regardless of whether the Terms of Sale described this contract as merely a "sample," the testimony at trial was that the Sales Contract the auctioneer presented to defendant at the auction was the same Sales Contract posted on the auctioneer's website in advance of the auction. The auctioneer added handwriting to reflect the winning bidder, the winning bid, the calculation of the buyer's premium, and the calculation of the earnest money required in addition to the earnest money defendant paid to the auctioneer pursuant to the Terms of Sale. There is no dispute that the seller initially offered the property for sale with a reserve. That "type" of sale is reflected in the Sales Contract prepared *before* the auction. The parties expressly agreed that the seller

reserved the absolute right to lift the reserve at the auction. The seller lifted the reserve and defendant continued to bid. Defendant knew that the auction was changed and knew the consequences of an auction for absolute sale. Thus, when defendant entered the winning bid, defendant completed a contract for the sale of the property. The act of executing the Sales Contract was a matter pertaining to the memorialization of the contract and not to its creation. See *Farley v. Roosevelt Memorial Hospital*, 67 Ill. App. 3d 700, 704 (1978) (citing *Welsh v. Jakstas*, 41 Ill. 288 (1948)).

¶ 19 The Terms of Sale states that "[t]o the extent there is any conflict between the provisions of these Procedures, Terms and Conditions as set forth herein and in any Sales Contract, the terms of the Sales Contract shall govern." Defendant asserts this clause represents the parties' understanding that the Sales Contract may differ from the terms stated in the Registration Form or announced at the auction. We find no conflict between the Terms of Sale, including the lifting of the reserve at the auction, and the Sales Contract. The parties expressed their intent that, at the auction, the seller could amend the terms in the written Sales Contract prepared before the auction by lifting the reserve and waiving the right of rejection embodied in paragraph 14 of the Sales Contract. The Terms of Sale expressly granted the seller that right. When defendant received the Sales Contract after making the winning bid, after the seller changed the type of auction, it was the parties' express intent that, at that time, the reserve provision in the Sales Contract was a nullity. We find no need for evidence that defendant subjectively believed that, had he signed the written contract, the reserve clause would be null and void.

"[A contract is] not ambiguous if the court can determine its

> meaning without any guide other than a knowledge of the simple facts on which, from the nature of the language in general, its meaning depends; contracts are not rendered ambiguous merely because the parties do not agree upon their proper construction. [Citation.] In such a case, the intent of the parties must be determined from the language of their agreement alone. [Citation.] Any particular interpretation that only the plaintiff may have envisioned at the time the contract was executed is immaterial." *American States Insurance Co. v. A.J. Maggio Co., Inc.*, 229 Ill. App. 3d 422, 426-27 (1992), superseded by statute on other grounds, *Gallagher v. Union Square Condominium Homeowner's Ass'n*, 397 Ill. App. 3d 1037, 1043 (2010).

¶ 20 We may ascertain the parties' intent from the simple (and undisputed) facts of the conduct of the auction and the language in the Terms of Sale. Similarly, then, we do not find that a manual deletion of the reserve provision in the Sales Contract was required given the parties' express intention that the terms of the sale might be modified at the auction, and the parties' agreement (by their conduct) to an absolute sale of the property. Therefore, we also reject defendant's argument that, had he signed the sales agreement, the reserve clause would have controlled over the oral removal of the reserve at the auction because the parties agreed to resolve any conflicts in that way. There was no conflict with the Sales Contract to resolve, because the parties agreed to an absolute sale at the auction and the purpose of the Sales Contract was not to create a contrary agreement, but to memorialize the agreement reached at the auction.

> "A court will not *** construe a contract in such a way to render a result contrary to the intention of the parties.
>
> > In construing a written instrument, its letter should be controlled by its spirit and purpose, bearing in mind that the terms employed are servants and not masters of an intent, and are to be interpreted so as to subserve, and not to subvert,

> such intent. [Citation.]" (Internal quotation marks omitted.) *J.E.L. Realtors, Inc. v. Mettille*, 111 Ill. App. 3d 987, 990 (1982).

¶ 21 Defendant also argues that the deletion of the reserve clause leaves the Sales Contract silent as to whether the auction was with reserve. The auction was made absolute with the lifting of the reserve at the auction. The contract for the sale was formed at the completion of the auction for an absolute sale. No terms as to whether the auction was with reserve would be necessary and in fact would be superfluous. Defendant's argument that the Sales Contract prohibited him from changing the written contract--to remove the reserve clause--is similarly unavailing. The contract that was presented to defendant to sign contained a null and void reserve clause. Defendant had no need to change the contract to avoid the effect of the reserve clause because the parties agreed to an absolute sale at the auction. That agreement is found in the auctioneer's announcement lifting the reserve and defendant's continuing to bid on the property.

¶ 22 To the extent the parties' agreement formed at the auction for an absolute sale for defendant's winning bid, and the terms in the Sales Contract presented to defendant to memorialize that intent, do conflict, such conflict is insufficient to defeat the formation of the contract at the auction or to relieve defendant of his obligation under the parties' agreement. In *Farley*, the plaintiff entered a written agreement with the defendant giving the plaintiff the right to purchase certain property in exchange for consideration payed to the defendant (option agreement). *Farley*, 67 Ill. App. 3d at 701-02. The parties attached an unexecuted Real Estate Sale Contract for the property to the option agreement. *Id*. at 702. The agreement stated that if

the plaintiff exercised the option, the parties would immediately sign the Real Estate Sale Contract attached to the option agreement. *Id*. The plaintiff attempted to exercise the option, but along with notice to the defendant of the exercise of the option, the plaintiff sent an incorrect form of the Real Estate Sale Contract which "varied in form from the one attached to the option agreement in material respects." *Id*. at 703. Based on the different form of contract, the defendant contended that the attempt to exercise the option constituted a counteroffer. *Id*. at 704.

¶ 23 The *Farley* court found that the plaintiff properly exercised the option and did not make a counteroffer. *Farley*, 67 Ill. App. 3d at 704. The court found that the plaintiff had fully complied with the contractual requirements for him to exercise the option by giving notice to the defendant and, when the plaintiff did so, "such notice constituted an affirmation that the parties were bound by the provisions of the form of Real Estate Sale Contract attached to the option agreement *** whether or not [it] was executed." *Id*.

¶ 24 In this case, when defendant continued to bid when plaintiff lifted the reserve, and entered the winning bid, the fall of the gavel constituted affirmation that the parties were bound by the Terms of Sale, including the announcement at auction of an absolute sale, whether or not the Sales Contract was executed. In *Farley*, "[t]he option agreement required neither that the contract be executed as a condition precedent to the acceptance of the option nor that it was to be executed concurrently with the exercise of the option. Instead, the option provided only that if it was exercised, the plaintiff and the [defendant] would immediately sign the form of contract." *Id*. Similarly, here, the Terms of Sale did not condition an agreement to sell the property on the execution of the Sales Contract. Nor do the Terms of Sale state that the Sales Contract is to be

executed concurrently with the winning bid. Instead, the Terms of Sale states that "[u]pon the fall of the auctioneer's gavel, each high bidder shall (1) step up and present their earnest money check, and (2) with the assistance of an auction company representative, execute the Sales Contract for the respective property." The execution of the Sales Contract "was neither necessary to complete the transaction nor to bind the parties to its terms." *Id*. See also *Rosin*, 126 Ill. App. 3d at 234-35 ("[A] bid at an auction constitutes an offer to buy, the fall of the hammer or any other customary means constitutes the acceptance, and a contract is then made. [Citation.] Unless a contrary intent is manifested, bids at an auction embody terms made known by advertisement, posting or other publication of which bidders are or should be aware, as modified by any announcement made by the auctioneer when the goods are put up. [Citations.]") (Internal quotation marks omitted.).

¶ 25 Plaintiff did not manifest a contrary intent by presenting the Sales Contract drafted before the auction still containing the reserve clause. The parties manifested their intent that plaintiff might lift the reserve at the auction and, by continuing to bid, defendant manifested his intent to proceed with the auction as an absolute sale. The *Farley* court's reasoning is equally applicable to this case. Here, the contract formed at the conclusion of the auction "was self-contained; *** it incorporated, without the need to refer to an executed [Sales Contract], the complete terms and conditions of the sale. The agreement to purchase became operative upon the [conclusion of the auction.] Nothing material to the transaction was added by the requirement that following the [auction], the parties would execute the [Sales Contract]. *** Another way of looking at the provision calling for the execution of [the Sales Contract] is that it was nothing more than a

ministerial act to be accomplished subsequent to the plaintiff's acceptance, for the purpose of record-keeping. It neither added to nor subtracted from the promises and covenants each party had already *** obligated himself to perform at the point when the [auction ended.]" *Farley*, 67 Ill. App. 3d at 704-05 .

¶ 26 The *Farley* court also held that "in forwarding *** a signed copy of an incorrect form, the plaintiff did not alter his acceptance of the terms and conditions." *Farley*, 67 Ill. App. 3d at 705. "While the established rule is that where an option is granted, the exercise must in every respect meet and correspond with the offer, that rule should not be so inflexibly applied that it cannot accommodate an acceptance which mirrors the offer, but where a ministerial procedure was not carried out because of the mistake of one of the parties." *Id*. In this case, plaintiff drafted a Sales Contract that contained a reservation clause that the parties agreed plaintiff could lift during the auction. Defendant accepted this change in term when he continued to bid at the auction knowing that the auction was for an absolute sale. When the auctioneer completed the Sales Contract with the bidder's information, the auctioneer neglected to strikeout the reservation clause. This was a mere ministerial mistake which is of "no significance." *Id*.

> "The objects of courts of equity, as well as courts of law, is the enforcement of contracts rather than their evasion, and where a valid contract exists for a sale of land a court of equity will enforce it as a matter of right where it was fairly and understandingly entered into and no circumstances of oppression and fraud appear." *Id*. at 705-06 (quoting *In re Estate of Frayser*, 41 Ill. 364, 371-72 (1948)).

¶ 27 In this case, the contract for the sale of the property was fairly and understandingly entered into by both parties when plaintiff lifted the reserve and defendant made the winning bid

at an auction for an absolute sale. We note as well, any mistake in failing to strikeout the reserve clause in the Sales Contract was mutual, because at that time, the auctioneer was acting as the agent of both the seller and the buyer. *Sims v. Broughton*, 225 Ill. App. 3d 1076, 1080 (1992) ("an auctioneer is considered an agent for both the seller and the purchaser"); *Rosin*, 126 Ill. App. 3d at 236. See also *People v. Donelson*, 2013 IL 113603, ¶ 20 (2013) ("contracting parties' mutual mistake may be rectified by recourse to contract reformation ([citation]), where they are in actual agreement and their true intent may be discerned."). In this case, the parties were in actual agreement at the conclusion of the auction for an absolute sale for the amount of defendant's bid plus a buyer's premium and the parties did not intend that plaintiff could reject defendant's bid. Plaintiff did not make a counteroffer, and defendant was bound by the parties' agreement.

¶ 28 We also reject defendant's argument that he is not obligated under the parties' agreement because he was entitled to have his attorney review the Proffered Sales Contract and was entitled to reject the Sales Contract pursuant to the attorney review provision. "If a contract with an attorney approval clause is accepted before an attorney's approval, the acceptance is construed as a qualified or conditional acceptance of the terms of the contract. [Citation.] The purpose for attorney approval clauses is to provide the purchaser or seller, who is not knowledgeable in real estate matters and who enters into a real estate transaction before his attorney has reviewed the matter, a chance to cancel the contract before final acceptance." *Denis F. McKenna Co. v. Smith*, 302 Ill. App. 3d 28, 31-32 (1998). We do not construe the contract language in this case to confer the same rights on defendant as did the attorney approval clause in *McKenna*. In that case,

the provision read as follows: "[T]his contract is *contingent* upon the approval hereof as to form by the attorneys for Purchaser and Seller within 5 business days after Seller's acceptance of this contract." *Denis F. McKenna Co.*, 302 Ill. App. 3d at 30. Here, the language at issue in the Sales Contract states that defendant represents that he has been advised by plaintiff and the auctioneer to consult an attorney prior to executing the Sales Contract. Similarly, in *Hubble*, 291 Ill. App. 3d at 977, the contract at issue contained the following language: "This contract is contingent upon the approval hereof as to form by the attorney(s) ***." The *Hubble* court found that "[t]he offer contained a condition subsequent, *i.e.*, if either attorney disapproved of the contract within a certain period, the contract would become void." *Hubble*, 291 Ill. App. 3d at 979-80. See also *Patel v. McGrath*, 374 Ill. App. 3d 378, 381 (2007) (provision providing that: "The respective attorneys for the Parties may approve, disapprove, or make modifications to this Contract, other than stated Purchase Price, within five (5) business days after the Date of Acceptance" constituted a condition subsequent within the offer).

¶ 29 Notably, the provisions at issue in this case do not make the parties' obligations contingent upon approval by their respective attorneys. Nor do the Terms of Sale or the Sales Contract state that either parties' attorney has the right to approve, disapprove, or modify the parties' agreement. The contract language at issue here does not confer any rights on either party. Paragraph 5 of the Terms of Sale nor paragraph 25 of the Sales Contract states that upon any disapproval the parties' agreement is void. The contract terms do not give the parties' attorneys the right to modify the agreement. To the contrary, the Sales Contract states that: "There shall be no amendments or modifications to this Contract by Purchaser or its counsel."

¶ 30 In sum, we find that the language at issue here is not sufficient to create a condition subsequent to the formation of the contract. Moreover, we find that the term at issue in the Sales Contract would not be a proper basis to refuse to complete the sale. As we have found, the Sales Contract merely memorializes the parties' agreement reached at the auction and the failure to delete the reservation clause did not constitute a counteroffer, but rendered that clause a nullity. Defendant had no right to refuse to consummate the sale of the property on the advice of counsel.

¶ 31 Finally, defendant's argument that he is relieved from performing because plaintiff failed to notify him of its acceptance of his winning bid within the time prescribed is without merit. The provision for notification of acceptance of the winning bid applied only to reserve sales. Plaintiff exercised its right to lift the reserve, at which time the auction became an auction for an absolute sale. Defendant was bound by the Terms of Sale. Under the Terms of Sale, "[t]he final high bid *** will be accepted by the seller at the time and place of the auction." Plaintiff had no obligation to "notify" defendant it had accepted his bid during an auction for an absolute sale.

¶ 32 3. Conclusion

¶ 33 Defendant was subject to the Terms of Sale when he bid on property at an auction. Plaintiff, pursuant to its rights under the Terms of Sale, changed the terms of the sale during the auction and defendant accepted by continuing to bid. Therefore, defendant became obligated to complete the sale of the subject property upon entering the winning bid at the auction for the absolute sale of real estate. Plaintiff accepted defendant's offer to buy at the winning bid price at the fall of the auctioneer's gavel. Nothing in the language of the parties' written agreement gave defendant a right to refuse to complete the sale on the advice of counsel for any reason.

Therefore, the trial court's judgment is not against the manifest weight of the evidence.

Accordingly, the trial court's judgment is affirmed.

¶ 34 Affirmed.