

Legal Alert

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QUESTION: AM I STUCK WITH THIS STUPID DEAL AFTER I CLICKED THE “BUY IT NOW” BUTTON?

ANSWER: YOU SHOULD THINK BEFORE YOU CLICK!

You can buy \$400,000 diamond rings on the internet by clicking a button. Heck, you can even buy houses and real estate online without having seen them. That doesn't mean that it is a good idea, however. Take the case of Julie Rohr, for example.

“This diamond ring doesn't shine for me anymore”

Julie Rohr sold her engagement ring on eBay to Evangelos Armiros for \$100,000! *Armiros v. Rohr* (No. 1 CA-CV 16-0755, Ariz.App., 3-8-18). The problem was that the ring's market value was more like \$389,000. Julie immediately had seller's remorse!

“In February 2014, Julie listed a 10.17 carat diamond ring for sale on eBay for \$100,000 using the “Buy It Now” option.” (The court doesn't tell us why she was selling her engagement ring so close to Valentine's Day.) Evangelos emailed Julie about the ring. She emailed him the Gemological Institute of America report number. Evangelos and Julie agreed to “meet face-to-face” in Arizona to complete the sale. So, Evangelos clicked the “Buy It Now” button and purchased the ring.

Later that evening another eBay user emailed Julie and offered \$150,000 for the ring. The new purchaser said his \$150,000 offer made it “well worth cancelling the deal with [Evangelos].”

Julie accepted the \$150,000 offer and tried to cancel her contract with Evangelos stating, “I made a mistake in my listing price.” Evangelos denied the cancellation request and maintained that he had a valid contract to purchase the ring for \$100,000.

Not long after that, Evangelos sued Julie and her husband Daniel for breach of contract. (Apparently Julie and Daniel were still married, even though she had sold the engagement ring that he gave her nine years earlier.)

Evangelos also sued the guy who bought the ring for \$150,000 but the buyer settled and paid Evangelos \$60,000.

Daniel tried to get out of the lawsuit “arguing that although he had originally purchased the ring as an engagement ring for Julie in 2005, he currently had no property interest in the ring and was not a party to Julie and Evangelos's eBay transaction.” (“This diamond ring doesn't mean what it did before.”)

Did that click on the “Buy It Now” button create a binding contract?

The eBay user agreement stated, “You agree to comply with all the above when accessing or using our Services.” In the “Purchase Conditions” section of the eBay agreement buyers agree that they will have a “legally binding contract” when they buy an item or have the winning bid on the item. Once a user clicks the “Buy It Now” button he or she becomes the buyer who is “obligated” to complete the deal and pay the seller.

The trial court found that Julie and Evangelos agreed to be bound by the eBay user agreement. The court also ruled “that listing an item under the ‘Buy It Now’ option obligates the seller to sell the item to the ‘Buy It Now’ buyer for the listing’s specified price.” So the court held that: “The written contract is an unambiguous manifestation of mutual assent.” Julie had offered to sell for \$100,000 and Evangelos had accepted the offer but Julie repudiated the contract. She had breached the binding written contract!

Repudiating the ill-informed electronic contract left Julie owing Evangelos \$135,250!

Evangelos said that the Uniform Commercial Code gave him the right to recover “the difference in market value at the time of breach and the contract price for the ring.” (A.R.S. § 47-2713(A).) The court said that “the law of contracts has always been that for a purchase and sale contract, the measure of damages is benefit of the bargain.”

Both parties hired gemologists as expert witnesses. They relied on “Rapnet, an international network that producers and wholesalers use to sell diamonds at diamond exchanges.” The gemologist for Evangelos found three rings on Rapnet ranging from \$372,000 to \$402,000 that were similar to Julie’s ring. He concluded that a ring listed for \$389,000 was probably the same ring that Julie sold. He testified that the value of the ring at the time of sale was \$389,000. Julie’s gemologist didn’t testify as to the ring’s market value, but agreed that the diamond listed on Rapnet for \$389,000 was the same diamond that Julie had sold. Even though he did not give an opinion on the ring’s market value, he testified that prices on two-carat diamonds on Rapnet varied up to 25 percent. (Julie’s ring was 10.17-carat.)

Daniel, who apparently was still Julie’s husband, testified that he and Julie had gone to New York to pick out an engagement ring. “Julie picked the ring she liked and Daniel purchased it for \$166,765.” Daniel said he gave Julie the ring before they were married and therefore it was Julie’s separate property and he shouldn’t be a defendant in the lawsuit. The judge agreed and dismissed him.

The judge started with the listing price value of \$389,000 and reduced it by 25 percent to \$291,750. He then found that the platinum setting and smaller diamonds added \$3,500 to the value and the ring’s total fair market value when Julie breached the agreement was \$295,250. The court subtracted from the \$295,250 the \$60,000 Evangelos got from the other buyer and the \$100,000 that Evangelos had agreed to pay for the ring. Therefore, the court awarded Evangelos damages of \$135,250.

Be careful what you click for!

Clicking buttons with your mouse can result in a binding written contract. Before you enter into an electronic transaction, make sure you know the value of what you are selling or buying. Make sure the item exists and that the seller is able to deliver it and the buyer is able to pay for it.

Use a little common sense before you click that button, or better yet pick up the phone and call me.