

**IN THE DISTRICT COURT
AT AUCKLAND**

CRI-2013-004-007273

THE QUEEN

v

CRAIG JAMES RUTHERFORD

Hearing: 21 November 2013
Appearances: A McClintock for the Crown
J Wiles for the Defendant
Judgment: 21 November 2013

NOTES OF JUDGE C J FIELD ON SENTENCING

[1] Mr Rutherford, you have pleaded guilty and are to be sentenced today in respect of 11 informations laid under the Fair Trading Act 1986, in that you engaged in conduct liable to mislead the public as to characteristics of goods with the respect to the price of goods, namely motor vehicles. Essentially, what you were doing was engaging in, what has been correctly termed as, shill bidding for vehicles on sale through Trade Me. All but one of the 11 charges you face involve this kind of shill bidding that I have referred to.

[2] The background to this is that you were, at one point, an employee of Repo Cars. Part of your job entailed listing cars on the Trade Me website for sale by auction and contacting the winners of the auctions to provide payment instructions. The primary business of Repo Cars was selling used motor vehicles, it had a physical car yard in Auckland but primarily used online auctions on Trade Me to sell its vehicles. All of the auctions had a \$1 reserve. It was a significant business that Repo Cars carried on in this way, through Trade Me.

[3] Shill bidding, of course, is the practice of a vendor selling goods on an online auction under one username but bidding on them with another username or through other users controlled by the vendor. This practice artificially raises the market price of the product and contaminates the auction process as the informant has submitted. It is specifically banned by Trade Me's terms and conditions.

[4] You used seven Trade Me memberships to place shill bids on cars and they are set out in the caption summary. By bidding in this way, you aimed to protect Repo Cars from selling vehicles below their actual reserve price which is not disclosed to buyers. Repo Cars also sold vehicles on behalf of other motor vehicle dealers who would demand a certain minimum price. Your shill bidding ensured that the minimum price was met in accordance with Repo Cars' policy and maximised the profit or minimised the loss to Repo Cars.

[5] Now it has been submitted on your behalf that you were under some pressure to achieve a minimum price for the vehicles that were sold in this way. Certainly, I can accept that there was some pressure on you to obtain a minimum price but that did not, in my view, of course include the ability to act in the way that you did quite illegally and, I may say, immorally. However, the practice was detected. Trade Me launched their own investigation at considerable cost to the company. As, of course, this kind of activity on the Trade Me site can materially influence its own credibility as an auction site.

[6] I should, at this point, refer to the victim impact statement which Trade Me has provided to the Court. In this, it sets out the way in which the Trade Me operation has been run, the way in which your activities have impacted on the good reputation of the company. The fact that you say that this kind of activity is rife within the industry, of course, only points up the need for deterrence and denunciation when the Court is considering the appropriate penalty.

[7] So the aggravating features of the offending are quite plain, they involve your activity over a period of time. The objectives of the Fair Trading Act are designed to facilitate a fair competition. It is consumer focused and your conduct certainly harmed consumer's interests. Your conduct, of course, also undermined competition

from legitimate vendors in the same field as yourself and, of course, I have already referred to the detrimental effect that your activities have had on Trade Me.

[8] The informant has submitted a range of fines that it submits might be appropriate in your case. You are an individual, of course, and not being charged as a company where the maximum potential penalty is far greater. The informant submits that a starting point for fines in your case would be somewhere between \$18,000 and \$23,000 and with appropriate deductions for your plea, and any other matters in mitigation, an end figure of somewhat less than that.

[9] I have had regard to the facts of this case and I have read the authority submitted to me by counsel. I have considered that the appropriate starting point in your case is a fine of \$20,000 having regard to the aggravating features to which I have referred. From that, there can be a number of deductions made. You do have an unblemished record in this sense and you are entitled to claim credit for your good record up until now. Further, you have co-operated with the authorities and the Court has not had to embark on a potentially lengthy and costly defended hearing. Further, you have some personal circumstances which I think can also be taken into account. From that \$20,000 starting point, therefore, I am prepared to deduct \$3000 for those factors.

[10] That would leave a fine of \$17,000 from which I will deduct 25 percent or thereabouts for your plea, that is some \$4000, leaving an available fine of \$13,000. When considering the end sentence, the Court must have regard to s 40 Sentencing Act 2002 which provides that "in determining the amount of a fine, the Court must take into account the financial capacity of the offender," and to that end, you will recall, I adjourned this matter until today so that a financial statement could be provided to the Court.

[11] You have provided that statement and I think it is fair to say that whilst you can afford to pay what I would regard as a reasonable fine, your financial position could be much better. From that \$13,000 then, there should be a deduction and, in

my view, the total effective sentence having regard to all the matters I have referred to, is a total fine of something over \$12,000.

[12] You are obviously not in a position to pay that fine immediately but I can detect from the material supplied a sum of, perhaps, \$200, discretionary spending on the gym fees, \$200 to which you are applying towards existing Court fees and fines of some \$200 odd dollars so that will go in the very near future. It seems to me that you would be in a position to meet a fine of \$12,100 over a period of time, payable monthly, perhaps at the rate of \$400 or \$500 per month.

[13] I deal with you then in this way. On each of the 11 informations, you are fined the sum of \$1100. I have considered the possibility of reparation, but the figures submitted to me is illustrative only of the effort and expense to which Trade Me has been put and I will not direct that reparation be paid in this case. In the end, the sentence, as I say, is the fine of \$1100 on each information.



C J Field
District Court Judge