

2011 WL 12646066 (Colo.Dist.Ct.) (Trial Pleading)
District Court of Colorado.
El Paso County

Thomas J. MARTIN, et al,
v.
PIKES PEAK IMPORTS, LTD., et al.

No. 2012CV4272.
September 26, 2011.

Amended Complaint and Jury Demand

Name John W. Sabo, III, Address: 128 South Tejon Street, Suite 310, Colorado Springs, CO 80903, Phone No. (719) 634-6620, Fax No. (719) 634-3142, Atty Reg. # 4022, E-mail: jwsabo@bestlawllp.com, for plaintiffs.

COMES NOW, Plaintiffs, by and through their attorneys, Beltz, Edwards, Sabo & West, LLP (John W. Sabo, III), and hereby Complain against the Defendant as follows:

1. Plaintiff, Thomas J. Martin, hereafter "Tom Martin," is the attorney in fact for Douglas S. Martin and the trustee for the Douglas S. Martin Irrevocable Trust.
2. Pikes Peak Imports, Ltd., doing business as Pikes Peak Acura, Ltd., is a corporation organized and existing under the laws of the state of Colorado.
3. All matters complained of herein occurred in El Paso County Colorado. Therefore, venue is proper in said county.
4. In or around January of 2009, Douglas S. Martin, hereafter "Doug Martin," was informed that due to Alzheimer's' disease and the resulting dementia, which had been previously diagnosed, it was not safe for him to drive a vehicle, and as a result, his driving privileges in Colorado were revoked, and his drivers' license was punched with a hole to indicate its revocation.
5. At the time of the revocation of his driving privileges, Doug Martin owned a late model Acura.
6. In January of 2009, Doug Martin, with the assistance of friends took his existing Acura to Pikes Peak Acura for sale since he could not drive any more. Upon information and belief, Defendant was informed of the reasons for the sale of said vehicle at the time it was delivered to the dealership for sale.
7. Said vehicle was sold by Pikes Peak Acura and proceeds of the sale were sent to Doug Martin in April of 2009.
8. In September of 2010, as a result of his dementia from Alzheimer's disease, Doug Martin took a taxi to Pikes Peak Acura to purchase a vehicle.
9. Despite the prior sale of the unusable vehicle for Doug Martin, and the knowledge that Doug Martin could no longer drive, on September 11, 2010, Defendant sold to Doug Martin a 2009 Acura TL for a price of \$38,683. In addition, ignoring their knowledge of his obvious mental impairment, the Defendant tacked on an additional charge of \$389 for a credit bureau report, even though Doug Martin was paying cash, and further "sold" him a "service contract" for \$1189, a "maintenance contract" for \$689, "TIRE & WHEEL" for \$689 and "PRE PAID OIL" for \$699, all for a total of \$46,120.23. A copy of the Used Vehicle Order is attached hereto as Exhibit 1.

10. Within a few days after the sale, Dave W. Home, a friend and at that time holder of Doug Martin's power of attorney, attempted to return the vehicle to Pikes Peak Acura because of Doug Martin's incapacity. Acura told Mr. Home he could not return the vehicle.

11. At the end of September or first of October, Tom Martin came from his home in Florida to assist his brother in dealing with his Alzheimer's. At that time, Dave Home indicated he would defer to Tom Martin the power of attorney.

12. On October 4, 2010, Tom Martin delivered the vehicle to Pikes Peak Acura and turned over the keys, indicating he was rescinding the purchase because of Doug Martin's incapacities.

13. Shortly thereafter, despite the fact that Defendant has possession of the vehicle, and knowing that it had been delivered to them in rescission of the agreement to purchase and that Doug Martin was incapable of entering into a contract because of his Alzheimer's, Pikes Peak Acura sent the title to the vehicle to Doug Martin.

14. On or about November 4, 2010, undersigned counsel returned the title documents to Pikes Peak Acura with the letter attached hereto as Exhibit 2.

15. Despite the fact that Defendant took possession of the vehicle, and knew that Doug Martin was not capable of contracting for or driving such vehicle, Pikes Peak Acura returned the title documents to undersigned counsel by delivery by personal service. Nevertheless, Pikes Peak Acura retained possession of the vehicle.

16. The actions of the Defendant in selling the vehicle to Doug Martin and refusing to accept the rescission of the contract were intentional, knowing and in reckless disregard of the rights of Doug Martin.

17. The contract for the purchase of the vehicle is void since Doug Martin had no capacity to enter into it, and since it had been rescinded by Tom Martin in October of 2010.

18. The claim against Pikes Peak Imports, Ltd. dba Pikes Peak Acura, Ltd. has been assigned to the Douglas S. Martin Irrevocable Trust, Thomas J. Martin, Trustee, for the purpose of qualifying Doug Martin for VA benefits.

19. Defendant now owes Tom Martin either as attorney in fact for Doug Martin, or as trustee for the Douglas S. Martin Irrevocable Trust the sum of \$46,120.23 together with interest thereon at the legal rate.

20. The actions of Defendant and its agents in selling the vehicle to Doug Martin, and in refusing the rescission of the contract, and in acting as they have since the return of the vehicle in October of 2010, constitute **abuse** of the **elderly**, and extreme and outrageous conduct, entitling the Plaintiffs to damages.

WHEREFORE, Plaintiffs pray that this Court enter judgment against Defendant for the amount paid to them for the vehicle, for damages for outrageous conduct and violations of Doug Martin's rights as an **elderly** person, and as a consumer, under the consumer protection code, together with the costs of this actions, attorneys' fees, and such other further relief as the Court deems proper.

Respectfully submitted this 26th day of September, 2012.

EDWARDS & SABO, LLP

Signature on file pursuant to Rule

John W. Sabo, III, #4022

Attorney for Plaintiffs

Plaintiffs' addresses:

Thomas J. Martin

1714 Bermuda Ct

Safety Harbor, FL 34695

JURY DEMAND

Plaintiff demands that this case be tried to a jury of six.

Respectfully submitted this 26th day of September, 2011.

EDWARDS & SABO, LLP

Signature on file pursuant to Rule

John W. Sabo, III, #4022

Attorney for Plaintiffs

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