

2014 WL 8396450 (Colo.Dist.Ct.) (Verdict and Settlement Summary)

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WEST'S JURY VERDICTS - COLORADO REPORTS

Alzheimer Patient Buys Car, Court Sides With Car Dealer on Refusal to Return

District Court of Colorado, Fourth Judicial District, El Paso County.

Martin v. Pikes Peak Imports

**Type of Case:**

Contracts • Purchase of Goods

**Elder** & Vulnerable Adult • Financial **Abuse** & Neglect

Intentional Torts • Infliction of Emotional Distress

**Specific Liability:** Car dealer, knowing the client had Alzheimer's and dementia, sold the client an expensive vehicle and refused to rescind the contract thereafter

**General Injury:** Monetary damages

**Jurisdiction:**

State: Colorado

County: El Paso

**Related Court Documents:**

Plaintiff's amended complaint: [2011 WL 12646066](#)

Trial management order: [2014 WL 7778225](#)

Defendant's memo of law: [2014 WL 7778239](#)

Order: [2014 WL 7780673](#)

Case Name: Thomas J. Martin, as Attorney in Fact for Douglas S. Martin and as Trustee for the Irrevocable Trust of Douglas S. Martin v. Pikes Peak Imports Ltd. d/b/a Pikes Peak Acura Ltd.

**Docket/File Number:** 2012-CV-004272

**Trial Type:** Bench

**Judgment:** Defendant, \$0

**Range Amount:** \$0

Date of Incident: September 11, 2010

**Verdict/Judgment Date:** December 15, 2014

**Judge:** William B. Bain

**Attorneys:**

Plaintiff: John W. Sabo, Colorado Springs, CO

Defendant: Arthur W. Porter, Arthur W. Porter P.C., Colorado Springs, CO

**Breakdown of Award:**

**\$0**

**Summary of Facts:**

Douglas S. Martin, a male in his 70's, was reportedly informed by a doctor in January 2009 that due to his Alzheimer's and resulting dementia it was unsafe for him to continue driving. In response, Douglas reportedly gave up his driver's license and had his familiar car dealership, Pikes Peak Imports Ltd. d/b/a Pikes Peak Acura Ltd., sell his used car for him. Douglas allegedly informed the Pikes Peak sales agent why the vehicle was no longer any use to him, and Pikes Peak later sold his vehicle for about \$4,000. Thereafter, Douglas granted a Power of Attorney to a non-party.

However, Sept. 11, 2010, Douglas purchased a used vehicle from Pikes Peak. In fact, Douglas contacted and purchased his vehicle in 2010 from the exact same salesperson that had been informed in 2009 that Douglas no longer needed a vehicle due to his Alzheimer's and dementia. The total 2010 vehicle purchase cost was \$46,120.23, which included over \$3,000 for add-on type expenses. Douglas reportedly paid cash for the 2010 vehicle.

Thereafter, Douglas' brother, Thomas Martin, learned of the vehicle purchase, believed Douglas was incapable of contracting for such a purchase, and attempted to return the vehicle to Pikes Peak within a few days of the purchase. However, Pikes Peak's owner/manager allegedly refused to rescind the purchase. In late September 2010 Douglas reportedly named Thomas as his new Attorney in Fact. Thomas then delivered the subject vehicle Oct. 4, 2010, to Pikes Peak under the assertion that he was returning it.

However, Pikes Peak allegedly failed to refund Douglas his money and kept physical possession of the vehicle. In response, Thomas, as Attorney in Fact and trustee of the Martin Family Irrevocable Grantor's Trust, sued Pikes Peak, sought the rescission of the vehicle purchase contract, and alleged Douglas did not have the legal capacity to be bound by the subject purchase contract. Further, Thomas contended Pikes Peak had engaged in **abuse** of the **elderly** and extreme and outrageous conduct.

Regarding damages, Thomas sought rescission of the purchase contract and the return of the \$46,120.23 paid for the vehicle, plus exemplary damages, legal costs, interest and attorney fees.

Pikes Peak denied Thomas' claims and asserted its contract with Douglas for the 2010 vehicle purchase was valid and enforceable. Pikes Peak reported that Douglas represented himself to its salesperson on multiple occasions as completely lucid, including arranging for proper vehicle insurance, discussing purchase options and demonstrating normal test-driving skills; claimed Douglas told the salesperson that his doctors determined he could drive again; alleged did not need a valid driver's license in order to purchase a vehicle; argued Douglas' granting of Power of Attorney to another person did not remove his own personal right to conduct business; and concluded that when Thomas and Douglas returned to the dealership to discuss returning the vehicle Douglas adamantly disagreed with Thomas and stated he wanted to keep the vehicle.

Further, Pikes Peak reported that Thomas learned in July 2010 that Douglas was asserting control over an investment account valued over \$500,000 but did nothing to remove Douglas' control over it and asserted that Thomas acknowledged Douglas had the mental ability to grant Attorney in Fact powers about three weeks after the 2010 vehicle purchase. Finally, Pikes Peak asserted Douglas was never under a guardianship or conservatorship and had never been declared incompetent.

Regarding ownership of the subject vehicle, Pikes Peak stated that when Douglas returned the vehicle in October 2010 its employees verbally refused the return and told Douglas a \$20 per day lot storage fee would be incurred, alleged it made

numerous offers to Douglas and Thomas to sell the vehicle and take only minimum fees, claimed neither Douglas nor Thomas ever executed the necessary title documents that would have allowed Pikes Peak to own/sell the subject vehicle, and reported the vehicle actually increased in value in late 2010/2011 because of a general shortage of used vehicles.

Ultimately, Pikes Peak said it declared the subject vehicle abandoned, concluded over \$10,000 in storage costs had been incurred in regards to the vehicle, had the state transfer ownership of the vehicle to it, and sold the vehicle for an unknown amount. In this regard, Pikes Peak specifically contended Thomas and Douglas had failed to mitigate their damages, which could have been as little as a few thousand dollars.

The case proceeded to a bench trial. The court found in favor of Pikes Peak, denied the contract rescission request, denied Pikes Peak's request for attorney fees, and awarded nothing to any party.

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