

Libel Liability

Don't Talk Your Way Into A Defamation Action

Collector car enthusiasts may deal with and call upon a wide variety of persons and businesses to help them enjoy their hobby, including dealers, restorers, repairers, insurers, warehousemen, and transporters. Unfortunately sometimes such vendors fall (or are perceived to fall) short of their promises or the standards expected of them, causing their customers disappointment, frustration, and, on occasion, anger.

Under such circumstances, the collector's first instinct usually should and will be to try to have the vendor rectify the problem. As this column has reflected, sometimes litigation is determined to be necessary to accomplish that—or to recover the costs of having some other vendor do the work.

But it is important, even under such potentially emotional conditions to keep one's cool, both physically and verbally. The worst thing one could do is to make the situation worse by giving the one who has wronged you a possible basis for claiming that you have wronged him, her, or it.

This brings us to the cautionary tale of *Isquick vs. Adams*,

a Summit County, Ohio, Court of Common Pleas jury verdict in February of this year, graciously first brought to my attention by reader (and fellow attorney) Kerry M. O'Brien of Akron. (Although I usually only report on decisions of appellate courts, I thought this case, which reportedly will be appealed, merited an exception.)

According to published news reports (regarding which I contacted counsel for both parties), B. Scott Isquick collected antique automobiles, including a 1911 Mercedes 90hp Skiff which had originally been built for the American hat maker, Henry Stetson. Isquick had bought the 90-horsepower car, which had an original sticker price of \$18,000, in 1972 for \$6,500. All that remained of the original vehicle was a chassis and wheels (some reports say the engine survived as well). After these items sat in his garage for 20 years, Isquick asked auto restoration specialist Dale Adams to restore the vehicle.

Complicated by the fact that there apparently were no manuals or repair books available dealing with the vehicle,

the restoration took 20 months, 13,000 person hours, and cost \$500,000. When complete, the Mercedes boasted a hand-made, triple-layered mahogany body designed by Adams and inspired by turn-of-the-century French carriage maker Henri Labourdette. The restored car attained speeds of 90 miles per hour. It won several awards, including being chosen Best of Class at the Meadow Brook Concours d'Elegance in Rochester, Michigan, and receiving Mercedes-Benz's Silver Laurel Trophy for "exhibit[ing] the ultimate in artistic expression...timeless beauty[, and] classic elegance."

Isquick reportedly was nevertheless not satisfied with the restoration, and apparently communicated his displeasure to others, including other car collectors. He eventually brought a lawsuit against Adams, alleging negligence. Adams counterclaimed for defamation and business interference, alleging that Isquick's negative statements caused him to lose customers, leading to the closing of his business. Although Isquick dropped his lawsuit a couple of years later, Adams proceeded forward to trial on his counterclaim.

This February, the jury ruled for Adams, awarding him \$2.5 million for slander and \$400,000 for business interference.

As of this writing, the indications are that Isquick will appeal. Post-trial motions by Isquick, including for a new trial, reduction of the damages awarded, and judgment notwithstanding the verdict, are pending.

Regardless of the ultimate outcome, however, the obvious lesson of this case is that you have to be careful what you say about someone, or a company, or a product, to others. This is particularly true when the statement falsely alleges that one is incompetent in his or her occupation, or challenges a corporation's honesty, ethics, or ability to carry on business. Truth is a defense to a libel claim. Thus, if you make statements about a person or company that could be viewed as seriously impugning their reputation, make sure that you have the evidence to support them. Attempting to couch statements as opinions does not guarantee immunity, as the courts have narrowed the scope of such protection in recent years.

If you instead make your allegations

in the context of a lawsuit (such as claims in your filed complaint), such statements generally are viewed as "privileged" and cannot be the basis for a libel claim. Similarly, if your statement is limited to advising others what a court or official entity has said about a person or company (noting the source of the statement and presenting a fair recitation of what was stated), you generally cannot be held responsible for such a report.

Of course, under our legal system, even if under the law you are completely

in the right, if you are sued you still might incur significant attorney's fees to defend yourself, which you generally cannot recover from the plaintiff.

Muffler, anyone?

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