

# THE CASE OF THE FRAUDULENT FIREBIRD

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Since the days of collector chariots, the concept of *caveat emptor* – “let the buyer beware” – has been ingrained in the minds of prospective customers. When, however, a seller misrepresents the qualities of a vehicle, modern law may afford the deceived buyer relief through a lawsuit for fraud.

On August 7, 1987, Linda Tuckerman purchased for her son, Chad, a 1968 Pontiac Firebird from Paul Doles. The Firebird had been driven by Doles' son, Paul Jr.

Tuckerman had heard about the Firebird from a magazine advertisement placed by Paul Jr. The advertisement contained the following statement:

“1968 FIREBIRD, totally restored, 350, Crane Cam, 4 bbl, auto, newly rebuilt engine 2500 miles ago, new tires, paint, most metal, exhaust, burglar alarm, much more, \$5000 or best offer . . .”

While test driving the car Chad heard a rattling noise and questioned Paul Jr. about it. Paul Jr. explained that the automobile's exhaust system had been knocked loose after “I hit a, uh . . . bump when I was up at Lake Erie.” Tuckerman later offered, and Doles accepted, \$4500 for the car.

As Chad drove the Firebird home, the “exhaust” rattle grew louder. The automobile eventually broke down.

Mechanics informed Tuckerman that the noise was a “spun rod,” that the engine had not been recently rebuilt, and that the car had not been totally restored. Tuckerman had the automobile restored to the condition represented in the advertisement.

Linda Tuckerman sued Doles alleging, among other claims, fraud. She sought \$3052, representing the difference between the value of the automobile as

represented and the value as received. A referee heard the case.

Tuckerman testified that the advertisement had led her to believe that “the car had been totally restored to . . . its original condition” and that the “newly rebuilt engine had 2500 miles, about.” She also testified that, in response to specific questions about the extent of the restoration work, Paul Jr. had stated that “everything had been done to the car other than what he pointed out to Chad.”

The referee upheld Tuckerman's claim for fraud. He concluded she justifiably relied on the advertisement and on Doles' personal representations of the condition of the automobile.

The trial court adopted the referee's report. Doles appealed.

On June 13, 1990, the Court of Appeals of Ohio, Second Appellate District, Montgomery County, affirmed the trial court's ruling.

The Court of Appeals noted that, under Ohio law, there are several necessary elements to an action for fraud. First, there must be a *representation* or, where there is a duty to disclose, a concealment of a fact. Second, the fact must be *material* (i.e., critical) to the transaction. Third, the representation must be made *falsely* or with disregard and recklessness as to whether it is true or false. Fourth, the representation must be made with the *intent* of misleading another into relying on it. Fifth, there must be justifiable *reliance* upon the representation. Finally, there must be an *injury* proximately caused by the reliance.

The intent to deceive may be presumed where a person makes affirmative statements about the condition of an automobile that imply knowledge, when in fact he has no knowledge whether his assertion is true or false.

The law does require persons to exercise vigilance to protect their interests. However, one may rely upon representations that appear reasonable. Where the means of obtaining information are not equal, one may rely on the representations of another who supposedly has superior information.

The Court of Appeals found evidence to support the trial court's conclusion that Doles had misrepresented material facts upon which Tuckerman had justifiably relied. The advertisement had stated, and a reasonable reader would have believed, that the Firebird was “totally restored” and had a recently rebuilt engine. These representations were false.

The court further noted that Paul Jr. had explicitly told Chad, in response to the latter's specific inquiries, that the source of the rattle was a loose exhaust system. In fact, Paul Jr. had not known the true source of the rattle. Nevertheless, he had offered an explanation that sounded reasonable considering his superior knowledge of the automobile and its history. Based on his explanation, Tuckerman was not required to undertake an exhaustive (no pun intended) independent investigation of a problem Paul Jr. had readily explained away.

As the court concluded, while the law requires customers to practice prudence, it will not shield persons who practice fraud from accountability for their statements.

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