

MEMORANDUM

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TO: Professor Bendlin
FROM: Nicholas Primrose
DATE: November 22, 2010
RE: Howard v. Chastain, File #2010-325
Fraudulent Misrepresentation of a Watch

ISSUE

Under Arkansas common law, does Mr. Howard have a successful claim for fraudulent misrepresentation against Ms. Chastain, when she emailed him with an offer to sell a Beckham Akers Silver Lady watch, when she believed it was genuine, when he purchased the watch because he believed it to be real, and when it ended up being a fake watch worth \$12,400 less than he paid?

BRIEF ANSWER

Probably. The court will conclude that Ms. Chastain misrepresented that she had a real Beckham Akers Silver Lady watch and that Mr. Howard justifiably relied on her representation in making the purchase. Also, the court will rule that Ms. Chastain in emailing Mr. Howard induced him to purchase the watch, which he thought was real. Finally, the court will determine that Mr. Howard suffered damages because the watch was fake and worth significantly less than he paid.

FACTS

This memorandum addresses whether our client, Mr. Tim Howard, has a civil claim for fraudulent misrepresentation against Ms. Brandi Chastain when she sold him a fake Akers Silver

Lady watch. Mr. Howard, a recent Mega Millions winner, wanted to use some of his winnings on his 25th wedding anniversary, part of which included buying his wife a Akers Silver Lady watch. This matter originated when Ms. Chastain responded to a message Mr. Howard had posted on a watch enthusiasts website looking for a mint condition Akers Silver Lady watch. On July 22, 2010, Ms. Chastain emailed Mr. Howard that she was in possession of a Silver Lady in great condition, aside from the fact it ran five minutes slow. Ms. Chastain explained that her grandfather gave her it as a college graduation gift and that he loved watches; they were a hobby of his. Furthermore, she expressed that her most recent job was at Maradona Jewelers and she worked in the luxury watch department for three days. Finally, Ms. Chastain offered to sell Mr. Howard this watch for \$12,500 and included a picture of her watch.

Mr. Howard expressed his interested in seeing the watch in person, which Ms. Chastain agreed to, however she would not be available until August 20th. Since Mr. Howard was taking his wife on a cruise for their 25th anniversary, which left on August 15th, he told Ms. Chastain he would buy the watch so he had it before they left. The Akers Silver Lady made by Beckham Watches is a limited edition watch and retails at an authorized dealer for \$15,000. An important distinction on the watch is the engraving of “XXV” on the back, which Mr. Howard said he was disappointed he could not see in picture of the watch. On August 8, Mr. Howard sent to Ms. Chastain, through PayPal, \$12,500 plus \$10 for shipping and handling. In return, Ms. Chastain sent the watch through insured mail by the U.S. Postal Service, which was delivered on August 13th. When Mr. Howard and his wife returned from their cruise, he had the watch appraised by Maradona Jewelers. On September 24, Maradona Jewelers notified Mr. Howard that the watch was a fake Beckham on was appraised at \$100. Mr. Howard expressed how embarrassed he was that the watch is not real and is attempting to find action against Ms. Chastain.

DISCUSSION

The question of whether Ms. Chastain will be found liable for fraudulent misrepresentation will be decided by evaluating five elements. The five elements are “(1) a false representation of a material fact, (2) knowledge that the representation is false or that there is insufficient evidence upon which to make the representation, (3) intent to induce action or inaction in reliance upon the representation, (4) justifiable reliance, and (5) damage suffered as a result of that reliance.” *Wheeler Motor Co. v Roth*, 867 S.W.2d 446, 449 (Ark. 1993). In this memorandum, each element will be analyzed based on Arkansas common law as applied to Mr. Howard’s situation to determine whether Ms. Chastain will be held liable for fraudulent misrepresentation.

The first element for determining whether there was fraudulent misrepresentation is a false representation of a material fact. *Wheeler Motor Co.*, 867 S.W.2d at 499. A false representation of a material fact is when a seller represents a good that is different than the actual good the buyer is receiving. *Id.* at 448. In *Wheeler*, the petitioners sued a car dealership for misrepresenting that a car was new and had never been in a crash. *Id.* However, after having the car they learned it was used and had been in a crash. The court concluded that there was a false representation since the car was actually used, and not new as the car dealership originally alleged to petitioners. *Id.* at 449. Aside from a difference in new or used, even a variation in the type or year of a product can be considered a misrepresentation of a material fact. *Roach v. Concord Boat Corp.*, 880 S.W.2d 305, 307 (Ark. 1994). In *Roach*, the petitioner bought a boat from the defendant that was sold as a 1991 model, but when the boat needed repairs it was discovered that the boat was actually a 1990 model. The court concluded that “[t]he year model of the boat was misrepresented to appellant which amounts to a material misrepresentation.” *Id.*

at 307. In this case, Ms. Chastain expressed to Mr. Howard that she had a genuine, real Beckham Akers Silver Lady watch. However, when Mr. Howard had it appraised by Maradona Jewelers it was revealed that it was a fake. This constitutes a false representation of a material fact. The court will likely find the first element met. Because Ms. Chastain told Mr. Howard she had a real Beckham Akers Silver Lady, but since it was appraised as a fake the first element is met.

The second element for determining whether there was fraudulent misrepresentation is that there was knowledge that the representation was false or that there is insufficient evidence upon which to make the representation. *Wheeler Motor Co.*, 867 S.W.2d at 449. Specifically, the court will look at whether the defendant knew or believed that they were making a false representation. *Templeton v. United Parcel Serv., Inc.*, 216 S.W.3d 563, 568 (Ark. 2005). The first way to meet this element is that there was knowledge that the representation was false. In *American Standard Jewelry Company v. Hill*, 117 S.W. 781, 782 (Ark. 1909), a jeweler who knowingly represented the “kind, character, and quality” of a piece of jewelry falsely was found guilty because he knew he was making a false representation. The second way to meet this element is if there was insufficient evidence upon which to make the representation. In *Barringer v. Hall*, 202 S.W.3d 568, 571 (Ark. Ct. App. 2005), the court concluded that the defendant did not have enough evidence to claim the piece of property he sold to the petitioners had a septic system on it. The petitioners were able to prove that the defendant “had insufficient information upon which to make such a statement” pointing out that “there was neither a septic tank nor lateral lines on the property.” *Barringer*, 202 S.W.3d at 573. Therefore his statement was considered to be a false statement of material fact.

In response to the first part of the second element, Ms. Chastain could argue that even though the watch is a fake, she did not knowingly make the false representation. Contrary to *Barringer*, Ms. Chastain could also argue that she did have sufficient information and knowledge to make the representation because her grandfather was a watch enthusiast and she would trust him to give her a real Akers Silver Lady. However, using *Barringer*, Mr. Howard can argue that since Ms. Chastain knew the watch ran five minutes slow, that should be prove that the watch was not a real Akers Silver Lady. Furthermore, using *American Standard Jewelry*, Mr. Howard could argue that Ms. Chastain worked at a Maradona Jewelers in the luxury watch department and she would know the different qualities between a real and fake Beckham watch. When balancing the second element, the court will likely find that Ms. Chastain had insufficient evidence to claim the watch as a real Beckham Akers Silver Lady and the second element will be met.

The third element of fraudulent misrepresentation is that the defendant intended to induce action or inaction by the plaintiff in reliance upon the representation. *Wheeler Motor Co.*, 867 S.W.2d at 449. A seller who is misrepresenting facts, knowing the buyer would rely on them to purchase the goods has an intention to induce action. *American Standard Jewelry*, 117 S.W. at 782. Specifically, in *American Standard Jewelry*, the court concluded that the seller was misrepresenting facts knowing the buyer would rely on them to purchase the jewelry. *Id.* In *Wal-Mart Stores, Inc. v. Coughlin*, 255 S.W.3d 424, 432 (Ark. 2007), the court expressed that the defendant intended to induce the plaintiff to act in reliance on false misrepresentations. In *Wal-Mart*, the defendant, a former executive of Wal-Mart, was sued for fraudulent conduct with regards to his fiduciary duties and financial schemes. *Wal-Mart Stores, Inc.*, 255 S.W.3d 424. The court concluded in *Wal-Mart* that the defendant had clear intent to have the plaintiff rely on

his representations and trust that he was responsible with his fiduciary duties, which constituted the third element of intent to induce action. *Wal-Mart Stores, Inc.*, 255 S.W.3d at 432.

Ms. Chastain could argue that she never intended to induce Mr. Howard to purchase the watch or rely on her representation. Contrary to *Wal-Mart*, Ms. Chastain is not an expert on watches and never intended Mr. Howard to believe her as one. Using *American Standard Jewelry*, Mr. Howard could prove that Ms. Chastain knew he was looking for an Akers Silver Lady watch, and that by emailing him with an offer she intended to induce him to rely on her representation. Similar to *American Standard Jewelry*, by knowing that Mr. Howard was looking for a real one, he would purchase Ms. Chastain's watch if she falsely represented it as a genuine Beckham watch. Finally, Mr. Howard could argue that since Ms. Chastain sent him a picture of the watch this caused further reliance and she had a clear intention to induce him into purchasing the watch. When balancing the third element, the court will likely find that since Ms. Chastain initiated the offer that she intended to have Mr. Howard purchase the watch on reliance that it was a real Beckham Akers Silver Lady and the element will be met.

The fourth element of fraudulent misrepresentation is that there is justifiable reliance upon the representation by the plaintiff. *Templeton*, 216 S.W.3d at 568. Specifically, actual reliance means that the plaintiff acted or did not act by reason of the defendant's misrepresentation. *Seeco, Inc. v. Hales*, 22 S.W.3d 157, 172 (Ark. 2000). Similarly, it was decided that the buyer of goods should have to make an investigation of the goods if to his knowledge and intelligence he might be deceived. *Lancaster v. Schilling Motors, Inc.*, 772 S.W.2d 349, 351 (Ark. 1989). In *Lancaster*, the plaintiff sued the defendant for falsely representing the damage to a car he purchased. The court concluded that a buyer's reliance on the representation does not need to be investigated, and ordinarily the buyer should not have to

test the truth of the seller. *Lancaster*, 772 S.W.2d at 351. In *Tyson Foods, Inc. v Davis*, 66 S.W.3d 568, 580 (Ark. 2002), the court concluded that since the defendant heard rumors and information, that should have put him on notice not to rely on the representation. *Tyson* is a fraudulent inducement case, where the defendant said he relied on the assurances of the plaintiff in altering his property to fit the needs of hog farming. While the court would not overrule the credibility of witnesses, it did say that if the defendant were put on notice that a representation might be false that would void the justifiable reliance element. *Tyson Foods, Inc.*, 66 S.W.3d at 172.

However, in *Seeco*, a class action suit, the court concluded that since the Seeco had sent letters to defendants about royalty payments it was reasonable for them to rely on them, even if it was to their detriment. *Seeco*, 22 S.W.3d at 172. It was also concluded that defendant's believed that Seeco was working in their interest. *Id.* Furthermore, in *Roach*, the court determined that since the year of the boat was misrepresented as a 1991, the buyer justifiably relied on the salesman's word. *Roach*, 880 S.W.2d at 307. A buyer should be able to rely with good faith on the representations made by a salesperson, without having to do an investigation.

Similar to *Tyson*, Ms. Chastain could argue that Mr. Howard should not have relied on her representation because much like the rumors, it should have been a red flag that the watch ran five minutes slow. Much like *Lancaster*, Ms. Chastain could argue that Mr. Howard should have done an investigation of the goods since she never included a picture of the back with the special "XXV" engraving, and that Mr. Howard should have been put on notice that he might be deceived. Not only would it have been inexpensive to do an investigation, but also it would have saved Mr. Howard from any detriment. Finally, Ms. Chastain could argue that Mr. Howard should not have relied on her representation because it is reasonable that someone might try to

sell a fake watch on the Internet, and unlike in *Lancaster*, the truth of the seller should be questioned.

Using *Seeco*, Mr. Howard can argue that since Ms. Chastain was on a watch enthusiast website and emailed him initially, not only could her representation of the watch be reasonably relied on, but that Ms. Chastain had his best interest in mind. Similar to the third element, Mr. Howard can once again argue that since Ms. Chastain had worked in a luxury watch department it was reasonable to rely on her representation as being true. Mr. Howard can also claim that contrary to *Lancaster*, he should not have to investigate the representation since Ms. Chastain provided a picture of the watch and never gave him a reason to feel deceived. Mr. Howard could argue that since Ms. Chastain was willing to let him examine the watch in person, she was not lying about it being real. Finally, using *Lancaster*, Mr. Howard can show that ordinarily a buyer does not have to test the truth of the seller. When weighing the justifiable reliance element, the court will probably side with Mr. Howard since there was little reason for him to feel like he was being deceived and it is reasonable to rely on Ms. Chastain's representation and accompanying picture as being truthful. Therefore, this element is probably met.

The fifth element of fraudulent misrepresentation is damage suffered as a result of the reliance. *Wheeler Motor Co.*, 867 S.W.2d at 449. Furthermore, in *Tyson*, the court laid the groundwork for awarding damages to either give the "benefit of the bargain" or "out-of-pocket". *Tyson Foods, Inc.*, at 580. In *Roach*, the court acknowledged that since the price paid for the misrepresented boat was \$13,760, but the actual list price was \$13,200 that damages existed. *Roach*, 880 S.W.2d at 307. The "benefit of the bargain" damages would award Mr. Howard the difference between what he paid and the actual value, which would be \$12,400. However, the court will probably award Mr. Howard the "out-of-pocket" damages, a full refund of everything

he paid, \$12,500. Because the watch Mr. Howard purchased for \$12,500 was only worth \$100, he suffered significant damages. The court will likely find this element met.

CONCLUSION

Using the five elements of fraudulent misrepresentation outlined in *Wheeler* and discussed in multiple other cases, the court will probably rule in favor of finding Ms. Chastain liable for fraudulent misrepresentation. The court will conclude that the first element of a false representation of material fact was met because the watch was a fake, not the genuine Beckham Akers Silver Lady that Ms. Chastain claimed she was selling. The second element is most likely met because Ms. Chastain did not have sufficient evidence to represent the watch as being real; she trusted that since her grandfather was a watch enthusiast it would be genuine. The court will also conclude that the third element is met because Ms. Chastain, by sending the email, had the intention to induce Mr. Howard to purchase the watch based on her misrepresentation. The fourth element is going to be the most challenging one to prove, however, ultimately the court will find that it was met. At no point did Mr. Howard have reason to believe he was being deceived, thus, he should not have had to investigate the representation for truth. Also, since Ms. Chastain sent Mr. Howard a picture and she explained her previous employment with luxury watches, it is justifiably reasonable that Mr. Howard would rely on her representation. Finally, Mr. Howard met the fifth element because he suffered money damages. In conclusion, it is probably that Mr. Howard will win the case against Ms. Chastain for fraudulent misrepresentation and most likely be awarded a full refund of what he paid.