

Vokes v. Arthur Murray, Inc.

Court of Appeal of Florida, 1968
212 So.2d 906

FACTS Mrs. Audrey E. Vokes, a widow of fifty-one years and without family, purchased fourteen separate dance courses from J. P. Davenport's Arthur Murray, Inc., School of Dance (<http://www.arthurmurray.com/>). The fourteen courses totaled in the aggregate 2,302 hours of dancing lessons at a cost to Mrs. Vokes of \$31,090.45. Mrs. Vokes was induced continually to reapply for new courses by representations made by Mr. Davenport that her dancing ability was improving, that she was responding to instruction, that she had excellent potential, and that they were developing her into an accomplished dancer. In fact, she had no dancing ability or aptitude and had trouble "hearing the musical beat." Mrs. Vokes brought action to have the contracts set aside. The plaintiff's complaint was dismissed for failure to state a cause of action, and she appealed.

DECISION Judgment reversed.

OPINION Pierce, J. It is true that "generally a misrepresentation, to be actionable, must be one of fact rather than of opinion." [Citation.] But this rule has significant qualifications, applicable here. * * *

"A statement of a party having * * * superior knowledge may be regarded as a statement of fact although it would be considered as opinion if the parties were dealing on equal terms."

It could be reasonably supposed here that defendants had "superior knowledge" as to whether plaintiff had "dance potential" and as to whether she was noticeably improving in the art of terpsichore. And it would be a reasonable inference from the undenied averments of the complaint that the

flowery elogiums heaped upon her by defendants as a prelude to her contracting for 1,944 additional hours of instruction in order to attain the rank of the Bronze Standard, thence to the bracket of the Silver Standard, thence to the class of the Gold Bar Standard, and finally to the crowning plateau of a Life Member of the Studio, proceeded as much or more from the urge to "ring the cash register" as from any honest or realistic appraisal of her dancing prowess or a factual representation of her progress.

Even in contractual situations where a party to a transaction owes no duty to disclose facts within his knowledge or to answer inquiries respecting such facts, the law is if he undertakes to do so he must disclose the whole truth. [Citations.] From the face of the complaint, it should have been reasonably apparent to defendants that her vast outlay of cash for the many hundreds of additional hours of instruction was not justified by her slow and awkward progress, which she would have been made well aware of if they had spoken the "whole truth."

INTERPRETATION Because of his superior knowledge, Davenport's statements regarding Mrs. Vokes' dancing ability and potential may be taken as statements of fact.

ETHICAL QUESTION Did Arthur Murray, Inc., act in an unethical manner by attempting to retain business by this conduct, or were its employees trying to make Mrs. Vokes feel better about herself? Explain.

CRITICAL THINKING QUESTION Is this the type of dispute that courts should decide? Explain.