

# Holy Gavel, It's The (Or A) Batmobile!

Like countless others, this eight-year-old was glued to the TV on Wednesday and Thursday nights in 1966 to watch *Batman* on ABC. To me, the real star of the series was not Adam West, or Burt Ward, or any of the other talented actors and actresses playing (usually well over the top) the broad range of good and bad guys. It was, instead, the sleek and striking Batmobile (which had been transformed by George Barris and his team in three weeks from the Lincoln Futura concept car that debuted in 1955).[1]

Forty plus years later, even the Batmobile, or a Batmobile can find itself involved in a lawsuit. This month's episode is *Kruse, Inc. v. Aqua Sun Investments, Inc. and George Barris*, decided on January 30, 2008 by the United States District Court for the Middle District of Florida.

According to the Court, Kruse claimed that it and Aqua entered into contracts for Kruse to auction three Hollywood Star Cars built by Barris and owned by Aqua Sun. The cars at issue were the Batmobile, the Ghostbusters Ambulance, and Dragula.

Kruse claimed that the defendants misrepresented the authenticity of these cars by stating they were originals. When the purchasers of the cars realized the cars were not originals, they demanded that Kruse return their money. Kruse demanded that Aqua refund the money, but Aqua refused. Kruse ultimately refunded the money to the purchasers, claiming that it paid \$189,750 to refund the purchase price of the Batmobile alone.

Kruse sued Barris and Aqua for the amount Kruse refunded the purchasers plus punitive damages.

The defendants denied the allegations and moved to have the case knocked out ("Pow!") on various grounds, including that Kruse's claim was barred by the doctrine of *res judicata* and that the statute of limitations had run out ("Oof!").

"The doctrine of *res judicata* bars a party from re-litigating a claim if the claim was previously litigated and decided in a different court."

"Defendants contend that the doctrine of *res judicata* bars Kruse's suit [now before the federal court] because Kruse previously litigated the same matter in the state court."

"The state court granted final judgment in favor of Barris. . . . With respect to Kruse's claim for damages, the state court held there was no factual or legal basis for Kruse's claim because it 'failed to establish by any credible evidence the amount of any damages allegedly sustained due to Barris' action or inaction at the auction.' . . . Because the facts and

evidence presented in the instant case are substantially similar to that raised in the state case, the Court finds that *res judicata* bars Kruse's contractual and misrepresentation claims against Defendant Barris with respect to the sales of the Batmobile and Ghostbusters Ambulance. However, the Dragula does not appear to have been referenced in the state court case, and there is no evidence indicating that Kruse's claims with respect to the Dragula had accrued at the time the state court case commenced. Therefore, the state court judgment does not provide a basis to apply *res judicata* to Kruse's claims against Defendant Barris with respect to the Dragula."

The Court found it lacked sufficient evidence to conclude as a matter of law that *res judicata* barred Kruse's claims against Aqua.

Turning to the limitations defenses, the Court concluded that "to the extent that Kruse's claims allege a breach of contract, they are not time barred."

However, to the extent Kruse's claims alleged misrepresentation, "the statute of limitations for Kruse to file court claims with respect to the sale of the Batmobile had already run before the underlying complaint was filed, and Kruse's tort claims on the sale of the Batmobile are time barred."

"There is no indication of the specific date on which Kruse discovered the misrepresentations with respect to the sales of the Ghostbusters Ambulance and Dragula. Without such evidence, the Court cannot conclude that Kruse's misrepresentation claims with respect to the sale of the Ghostbusters Ambulance and the Dragula are barred by the statute of limitations." (This storyline could already have won an Emmy as an episode of *L.A. Law*—Ed.).

Thus, the Court granted Barris' motion for summary judgment with regard to Kruse's claims on the sales of the Batmobile and Ghostbusters Ambulance, but allowed the case to go forward toward trial with regard to Kruse's claim against Barris on the sale of the Dragula. The Court denied Aqua's motion for summary judgment.

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This column is being written shortly after the passing of composer Neil Hefti, whose perhaps most famous work was the bouncy (albeit lyrically limited) *Batman* theme. The sight of the wondrous Batmobile streaking by accompanied by the sound of that distinctive theme was a sensory rush few viewers will likely ever forget. "Atomic batteries to power, turbines to speed" indeed!



[1] Editor's footnote: There was more than one Batmobile built by Barris, and more than one exist today. There was, however, only one original made from the Lincoln Futura concept car. For more on this see the September '08 issue of *Car Collector*, and "Ford's Concept Cars" by Paul Zazarine.

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