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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
)
Danny K. Wright, II,)
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Plaintiff,)
)
vs.)
)
Ralph Craft, d/b/a Craft Auto Mart,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Docket No.: 03-CP-40-5556

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ORDER ON POST APPEAL FEES

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INTRODUCTION

This case was tried January 31 through February 4, 2005. On February 4, 2005 the jury returned verdicts in favor of Danny Wright as follows:

Negligence - \$25,578 actual damages and \$12,789 punitive damages;

Unfair Trade Practices Act (UTPA) - \$25,578 actual damages;

Motor Vehicle Dealer's Act - \$51,156 (doubled pursuant to statute) actual damages and \$12,789 punitive damages.

After trial, Mr. Wright moved to have the UTPA verdict trebled pursuant to S.C. Code Ann. § 39-5-140. The Court required Plaintiff to elect his remedy before the motion would be considered. Once the election was made, the Court trebled the UTPA verdict resulting in actual damages of \$76,734. Attorney fees of \$70,650 and costs of \$4,656.59 were also awarded to Plaintiff. The case was subsequently appealed. The Court of Appeals affirmed the jury's verdict. Plaintiff sought attorney fees and costs for the appeal. The Court of Appeals awarded \$1602.91 towards the costs and expenses pursuant to SCRAP Rule 222. Plaintiff now seeks an order for the remainder of fees and costs incurred during the appeal.

DISCUSSION

The jurisdiction of the circuit court to hear matters after the issuance of the remittitur is well established. For example, once the remittitur is issued from an appellate court, the circuit court acquires jurisdiction to enforce the judgment and take any action consistent with the appellate court's ruling. See Muller v. Myrtle Beach Golf & Yacht Club, 313 S.C. 412, 414-15 438 S.E.2d 248, 250 (1993). Circuit Courts are vested to hear motions for statutory attorney fees and trial costs after the remittitur has been issued. Id.; Bunkum v. Manor Props., 321 S.C. 95,

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98-99, 467 S.E.2d 758, 760 (Ct. App. 1996); Martin v. Paradise Cove Marina, Inc., 348 S.C. 379, 559 S.E.2d 348 (Ct. App. 2001).

ATTORNEY FEES

In determining reasonable attorney fees, the court should consider six factors: (1) nature, extent, and difficulty of case; (2) time necessarily devoted to case; (3) professional standing of counsel; (4) contingency of compensation; (5) customary legal fees for similar services; and (6) beneficial results obtained. Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750 (1997). Consideration should be given to all six criteria in establishing reasonable attorney's fees; none of these six factors is controlling. In making its determination, the trial court should articulate each of the six factors. Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989); Blumberg v. Nealco, Inc., 310 S.C. 492, 427 S.E.2d 659 (1993).

1. Nature, Extent and Difficulty of the Legal Services Rendered

This case involved significant issues on the past history of the automobile, the warranty for the vehicle, repair history, and the representations made by sales personnel during the purchase of the vehicle. Handling of this case required counsel to thoroughly understand South Carolina lemon laws, unfair trade practices, and other consumer related activity. The appeal raised several of these issues and addressed over seven alleged errors.

2. Time and Labor Necessarily Devoted to the Case

Plaintiff's counsel spent 105 hours working on this case from the appeal through the filing of the supplemental brief for attorney's fees. This includes travel time and other court time attendant to the appeal. In contrast to the trial during which 270 hours were spent, some of the appeal time is excessive and repetitive and has been reduced accordingly. The time spent by Plaintiff's counsel found to be reasonable is 95 hours.

3. Professional Standing of Counsel

Plaintiff's counsel is a respected member of the South Carolina bar and the Charleston County bar. He receives referrals of consumer type cases, specifically automobile warranty and automobile fraud, from other attorneys. Counsel has been successful in a number of consumer cases similar to the current one. He is an experienced trial lawyer in consumer law cases.

4. Contingency of Compensation

While contingency of compensation is an appropriate factor considered in awarding attorney's fees, the contingency to be considered is whether the party on whose behalf the

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services were rendered will be able to pay the attorney's fee if an award is not made, not whether Plaintiff and counsel have a contingency contract. Glasscock v. Glasscock, 304 S.C. 158, 403 S.E.2d 313 (1991). The evidence before the Court is not conclusive on this issue.

5. Fee Customarily Charged in the Locality for Similar Legal Services

This Court previously determined that fees at the rate of \$250 per hour for out of court time and \$300 per hour for in court time were reasonable.

6. Beneficial Results Obtained


Plaintiff's counsel provided a beneficial result. Plaintiff was successful on appeal in defending the trial court rulings and the verdict of the jury including punitive damages.

Based upon the foregoing, attorney fees in the amount of \$23,750 are awarded. Reasonable costs were awarded by the Court of Appeals and a motion fee of \$25.00 in costs is awarded.

ORDER

Therefore based upon the foregoing, Plaintiff is also awarded attorney fees in the amount of \$23,750 and costs in the amount of \$25.00. The Clerk of Court is directed to enter this additional judgment accordingly.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Circuit Court Judge

May 6, 2008
Columbia, South Carolina

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