

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No.: 2014-CP-40-03041

RECEIVED

MAR 28 2017

SC Court of Appeals

Dick Dyer & Associates, Inc. Appellant,

vs.

Moore's Cars, LLC Respondent.

FINAL BRIEF OF RESPONDENT

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QUESTION PRESENTED

DID THE TRIAL COURT ABUSE ITS DISCRETION BY REDUCING THE APPELLANT'S CLAIM FOR ATTORNEY'S FEES BASED ON ITS INTERPRETATION OF WHAT CONSTITUTES A REASONABLE FEE IN LIEU OF A SIMPLE APPLICATION OF THE LODESTAR ANALYSIS PRINCIPLES?

STATEMENT OF THE CASE

Respondent, Moore's Cars, LLC, (Moore's), is a company situated in Florence County, South Carolina. Dennis Moore owns a one-hundred percent interest in Moore's. In 2001, Thomas Moore, the late father of Dennis Moore, purchased a vehicle from the Appellant Dick Dyer & Associates, Inc. ("Dick Dyer"). As a condition of the sale, Thomas Moore executed a standard Export Prohibition and Indemnity Agreement. This agreement was established by Mercedes-Benz USA, LLC ("MBUSA") and governs the Appellant. Further, the agreement forbids the Respondent or transferee from selling the vehicle out of the United States for thirteen months.

Thomas Moore paid for the vehicle from his own account. The vehicle was titled in the name of Moore's. This practice was allowed by Dennis Moore as a benefit to his father.

The subject vehicle was sold by Moore's to a California company and subsequently sold by that buyer to an overseas company. Due to the transfer being made within the time period prohibited by the Export Prohibition and Indemnity Agreement, the Appellant was forced to pay \$6,644.00 in export fees or charge backs to MBUSA. The Appellant then sought reimbursement from the Respondent. Moore's refused to reimburse the Appellant.

Dick Dyer sued Moore's Cars for breach of contract and violation of the Dealers Act. Moore's Cars filed a timely answer. Dick Dyer filed an amended complaint in June of 2014. Moore's Cars filed a timely amended answer. Moore's contended that the vehicle was purchased by his father not the corporate entity. Dennis Moore denied that the company was responsible for the fees.

The matter came before the Honorable L. Casey Manning for a hearing on the merits on January 30, 2015. After approximately six months, Judge Manning rendered a decision in favor of Dick Dyer. The total judgment was double the actual damages, attorney's fees and certain costs of suit pursuant to the Dealers Act.

Moore's Cars submitted a motion to reconsider and that was denied by Judge Manning in September of 2016. Dick Dyer submitted a motion for attorney's fees in excess of \$30,000.00. Moore's Cars responded to the motion with an itemized challenge to the fees and the parties argued before the Judge. After consideration of the brief and arguments presented, Judge Manning ruled in favor of the Dick Dyer, but he amended the Order submitted by Dick Dyer to reduce the attorney's fees to \$8,000.00. Judge Manning did not specify the reason for the adjustment. In October 0f 2016, Dick Dyer filed a motion to alter or amend seeking additional attorney's fees. After consideration of Dick Dyer's argument, the Court denied Dick Dyer's motion to alter or amend. The Appellant filed a notice of appeal in December of 2016.

ARGUMENT

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY REDUCING THE APPELLANT'S CLAIM FOR ATTORNEY'S FEES BASED ON ITS INTERPRETATION OF WHAT CONSTITUTES A REASONABLE FEE IN LIEU OF A SIMPLE APPLICATION OF THE LODESTAR ANALYSIS PRINCIPLES.

The case law is clear and unequivocal on the authority given to the lower court in determining reasonable attorney's fees. The specific amount of attorney's fees awarded pursuant to a statute authorizing reasonable attorney's fees is left to the discretion of the trial judge and will not be disturbed absent an abuse of discretion. South Carolina Dept. of Transp. v. Revels, 411 S.C. 1, 766 S.E.2d 700 (2014). An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support. Fontaine v. Peitz, 291 S.C. 536, 354 S.E.2d 565 (1987).

The attorney's fees provision of the Dealers Act is codified in the Code of Laws at Section 56-15-110(1) and declares:

Any person who shall be injured in his business or property by reason of anything forbidden in this chapter may sue therefore in the court of common pleas and shall recover double the actual damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

Dick Dyer presented \$30,882.50 in attorney's fees and \$843.65 in costs in a dispute involving a \$6,641.00 violation of the provisions of the Dealers Act. Moore's challenged the attorney's fees initially during an oral argument on February 4, 2016, before the trial judge and later by brief as requested by the trial judge (R. pp. 67-71).

The Dealers Act does not provide an exact methodology to determine what is reasonable as attorney's fees under the Act, so the trial court has some discretion in

awarding the appropriate fees. When awarding attorney's fees, the trial court must consider the following six factors: (1) the nature, extent, and difficulty of the legal services rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee customarily charged in locality for similar services; and (6) the beneficial results obtained. Williamson v. Middleton, 374 S.C. 419, 640 S.E.2d 57 (Ct. App. 2007).

The Appellant incorrectly stated that Moore's did not dispute Dick Dyer's attorney's fees under the provisions of Williamson. Moore's presented an oral argument and a brief alleging the fees were unreasonable and unfair to the Respondent. A few of the issues presented in the lower court were as follows:

Time Devoted to the Case

Moore's Cars presented an itemized challenge to the billing submitted by Dick Dyer (R. p. 69, lines 11-42). The parties took one deposition that took less than three hours. The hearing on the merits concluded before lunch. Despite the limited nature of the court proceedings, Dick Dyer submitted 112.30 hours in litigation time. These hours were composed of seven hours of drafting an order, several hours dedicated to requesting continuances, and nearly two hours researching a non-existent Florence County Probate Record. While the lower court did not engage in an itemized reduction of the Appellant's time presented, the Court clearly took the issue into consideration.

The Difficulty of the Case

The matters presented lack the complexity to warrant the time presented. The case revolved around the violation of a written agreement that prohibited the sale of a vehicle outside of the country by the buyer or assignee. The facts were mostly undisputed. Thomas Moore purchased the vehicle in the name of Moore's Cars. Moore's Cars sold

the vehicle to another party. That party sold the vehicle out of the country within the prohibited period. This act resulted in the Appellant being charged an export fee of \$6,644.00. The relative simplicity of these facts led to a case that did not require extensive discovery or a long trial. Despite the relative simplicity of the subject matter, the Appellant presented \$30,000.00 in attorney's fees.

The Contingency of Compensation

The alleged violation of the export agreement by Moore's cost the Appellant \$6,644.00 in export fees. A successful presentation of the case by Dick Dyer under the Dealer's Act led to double those damages. This ruling by the lower court led to a judgment less than \$15,000.00 (R. p. 17, line 5). The Appellant then presented attorney's fees in excess of \$30,000.00. Approval of these fees would have led to Moore's owing nearly \$45,000.00 for a violation that cost the Appellant \$6,644.00.

Lodestar Analysis

In light of the arguments presented, the lower court ruled in favor of Dick Dyer for attorney's fees and allowed the Appellant to draft the order. Prior to signing, the lower court purposefully reduced the attorney's fees from \$30,000.00 to what it determined to be a more reasonable amount of \$8,000.00. The Appellant submitted a motion to alter or amend and requested that the Court apply lodestar principles. The lower court rejected the attorney's fees submitted by the Appellant for the second time (R. pp. 23-24). While the lower court did not specify the reason for the reduction, the trial judge clearly did not agree that the lodestar analysis would lead to a proper result based on the review of the case.

The action of the lower court is not an error of law or an abuse of the lower court's discretion. The Dealers Act does not mandate how reasonable attorney's fees

should be calculated. The Appellant's argument is based on how a comparable fee-shifting statute has been viewed by the appellate courts. In Layman v. State, 376 S.C. 434, 658 S.E.2d 320 (2008), the Court considered reasonable attorney's fees under the specific state action statute of S.C. Code Ann. Section 15-77-300. The relevant statute allows for the prevailing party to receive attorney's fees in state initiated actions. The Court in Layman ruled that lodestar analysis was proper under that specific statute. "We turn next to the method of calculating attorneys' fees in this case, and hold that the lodestar analysis is the proper method for determining and award of "reasonable" attorneys' fees under the state action statute." Layman v. State, 376 S.C. 434, 658 S.E.2d 320 (2008).

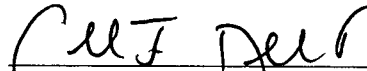
Unlike the state action statute, the Dealers Act has unique qualities like double the damages that would require additional consideration when determining reasonable attorney's fees. The governing law has not created a specific requirement that the Court use a lodestar analysis on Dealers Act, so the Appellant relies on presumption that the Dealers Act should be handled like the principles put forth in Layman. The lower court rejected this argument and used its available discretion to yield a more reasonable result. This act was not an abuse of discretion and fits within the overriding principle set forth in Layman. "Regardless of any theoretical preference for one method of fee calculation over another, the overriding benchmark for awards of attorneys' fees under both the state action statute and the general principles of the common fund doctrine is that the attorneys' fees must be "reasonable." Layman v. State, 376 S.C. 434, 658 S.E.2d 320 (2008). The Court considered the Appellant's request for \$30,000.00 in fees and determined that the amount was not reasonable based on its experience with the case.

Absent a clear requirement, the determination by the lower court was not an abuse of its discretion.

CONCLUSION

For the reasons stated herein and all other grounds appearing in the record, this Court should affirm the judgment of the Circuit Court.

Respectfully submitted,



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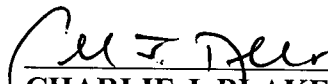
vs.

Moore's Cars, LLC..... Respondent.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b),
SCACR.

March 27, 2017



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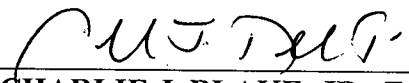
vs.

Moore's Cars, LLC..... Respondent.

CERTIFICATE OF SERVICE

I certify that I have served the Final Brief of Respondent and Certificate of Counsel on Appellant's Attorney by depositing copies of the same in the United State Mail, postage prepaid, on March 27, 2017, addressed to the following address:

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March 27, 2017

VIA FEDEX TO:

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
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Re: Moore's Cars, LLC, et al adv. Dick
Dyer & Associates, Inc.
C/A#: 2014-CP-40-3041
Our File No.: 14182CBPF

Dear Ms. Kitchings:

Please find enclosed original Final Brief of Respondents, Certificate of Counsel, Certificate of Service showing these were served on Appellant's counsel by mail. Also enclosed are fifteen (15) bounded copies of Final Brief of Respondents.

With kindest regards, I am

Very truly yours,

CHARLIE J. BLAKE, JR.

CJB:jea

Enclosures

cc: J. Gregory Studemeyer, Esquire (w/ enclosures)
Dennis M. Moore, Moore's Cars

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