

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

C/A NO: 2018-CP-26-06346

Tammy Batten West,  
Plaintiff,

ORDER GRANTING IN PART AND  
DENYING IN PART PLAINTIFF'S  
MOTION FOR ATTORNEY'S FEES

vs.

American Honda Motor Company, Inc.,

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Feb 14 2022

Defendant.

SC Court of Appeals

This matter is before the Court pursuant to Plaintiff's Motion for Attorney's Fees pursuant to the South Carolina Enforcement of Motor Vehicle Express Warranty Act ("Warranty Act"). The Court has reviewed the relevant Court record, Plaintiff's Motion for Fees, Brief in Support and supporting exhibits, Plaintiff's Affidavits and itemized time statement, Defendant American Honda Motor Co., Inc.'s ("Honda") Opposition to Plaintiff's Motion, and Defendant's Affidavit and supporting documents. In evaluating this Motion, the Court is evaluating whether to award attorney's fees pursuant to the South Carolina Enforcement of Motor Vehicle Express Warranties Act, which provides for the discretionary award of attorney's fees to a prevailing party.

For the following reasons, the Court finds that it is appropriate to make an award of \$27,585 in attorney's fees to the Plaintiff, and therefore grants in part and denies in part Plaintiff's Motion.

**I. Case Background**

**a. Factual Background**

This is an automobile express written warranty action arising from Plaintiff's purchase of a new 2017 Honda CR-V ("2017 CR-V") on March 2, 2017 from non-party East Coast Honda, financed through South State Bank. Honda provided a written warranty with the purchase of the 2017 CR-V. Plaintiff asserted, and Honda ultimately did not contest, that she experienced various issues with driver assistance technologies in the 2017 CR-V, and that she presented the 2017 CR-

V for repairs at East Coast Honda between October 2017 and September 2018. Plaintiff was not charged for any of these repairs consistent with the 2017 CR-V's warranty.

**b. Plaintiff's Request that Honda Repurchase the 2017 CR-V**

In September 2018, Plaintiff made a formal request that Honda repurchase the 2017 CR-V consistent with the Warranty Act. The remedy for a plaintiff under the Warranty Act is defined as follows:

“If, within the term specified in Section 56-28-30, the manufacturer, through its agents or authorized dealer, is unable to conform the motor vehicle to any applicable express warranty by repairing or correcting any defect or condition which substantially impairs the use, market value, or safety of the motor vehicle to the consumer after a reasonable number of attempts, the manufacturer shall replace the motor vehicle with a comparable motor vehicle, or at its option, accept return of the vehicle from the consumer and refund to the consumer the full purchase price as delivered including applicable finance charges, sales taxes, license fees, registration fees, and any other similar governmental charges, less a reasonable allowance for the consumer's use of the vehicle. Refunds must be made to the consumer and lienholder, if any, as their interest may appear on the record of ownership kept by the Department of Motor Vehicles. A reasonable allowance for use must be that amount directly attributable to use by the consumer before his first report of the nonconformity to the manufacturer, agent, or dealer, and must be calculated by multiplying the full purchase price of the vehicle by a fraction having as its denominator one hundred twenty thousand and having as its numerator the number of miles that the vehicle traveled before the first report of nonconformity.” S.C. Code Ann. § 56-28-40.

In sum, the remedy under the Warranty Act is that the warrantor, such as Honda, must accept return of a non-conforming vehicle and refund the full purchase price of the vehicle to the consumer and lienholder (if any). This necessarily requires that the consumer and the warrantor work cooperatively to calculate the repurchase price, identify the amount owed to the lienholder, and to arrange for return of the vehicle.

**c. Honda's Pre-Suit Offers to Repurchase the 2017 CR-V**

The evidentiary record before the Court identifies that Honda made multiple offers to repurchase the 2017 CR-V prior to November 11, 2018, and that Honda's offers to repurchase the

2017 CR-V were made consistent with its obligations under the Warranty Act. The evidentiary record also indicates that Honda and Plaintiff participated in an informal dispute settlement process prior to filing suit, and that at that hearing Honda did not contest Plaintiff's request for a repurchase of the 2017 CR-V.

**d. Plaintiff's Complaint**

On November 11, 2018, Plaintiff filed suit. In her complaint, she alleged Honda breached common law warranties applicable to the 2017 CR-V, was in breach of the South Carolina Enforcement of Motor Vehicle Warranty Act, was in breach of the federal Magnuson-Moss Warranty Act, committed actions that violated the South Carolina Unfair Trade Practices Act ("UTPA") S.C. Code. Ann. §39-5-10, *et. seq.*, and committed actions that violated the South Carolina Regulation of Manufacturers, Distributors and Dealers Act ("Dealers Act"). S.C. Code. Ann. § 56-15-10, *et. seq.* The Court notes that both the UPTA and Dealers Act causes of action allow for statutorily enhanced damages and a mandatory award of attorney's fees to a prevailing plaintiff.

**e. Settlement Offers Made During Suit**

The evidentiary record indicates that Honda made multiple attempts to resolve this matter following suit. These settlement offers included monetary amounts for the repurchase of the 2017 CR-V, a process for Honda to take possession of the 2017 CR-V, and amounts designated for attorney's fees.

**f. Plaintiff's Motion for Summary Judgment on the Warranty Act**

On November 11, 2020, Plaintiff filed a Motion for Summary Judgment on the Warranty Act cause of action. Honda did not file any opposition to the Motion. The matter was heard before Judge Seals on January 27, 2021, who denied the Motion. Plaintiff then filed a Motion to Amend

or Alter the Judgment on February 8, 2021. Honda did not contest Plaintiff's Motion to Amend or Alter but simply requested that Plaintiff provide it with the monetary amounts necessary to satisfy the lien on the 2017 CR-V and that the Court order that the repurchase occur in accordance with a Proposed Process for Return. Judge Seals granted Plaintiff's Motion to Amend on March 15, 2021. On March 19, 2021, Honda sent Plaintiff's counsel a letter detailing a proposed process repurchase of the 2017 CR-V.

**g. May 17, 2021 Hearing Before this Court**

On May 17, 2021, this matter was on the jury roster for the Court of Common Pleas in Horry County. Prior to the hearing, Honda filed a Motion for Summary Judgment. In this Motion, Honda sought dismissal of Plaintiff's UPTA and Dealers Act causes of action and dismissal of Plaintiff's claims for damages arising out of any common law breach of warranty.

Plaintiff did not file any opposition to Honda's Motion for Summary Judgment prior to the hearing. During open court, Plaintiff voluntarily dismissed all causes of action other than the Warranty Act and agreed to a repurchase of the 2017 CR-V at a cost of \$34,776.51. Plaintiff further stipulated to the process of the repurchase.

**II. Applicable Law, Analysis and Findings of Fact**

**a. Statute Permitting Recovery of Attorney's Fees**

This action involves an action brought under the South Carolina Enforcement of Express Motor Vehicle Warranty Act. S.C. Code Ann. §56-28-10, *et seq.* There is no dispute that Plaintiff is the prevailing party under this Act for the non-conformities in her 2017 CR-V.

There is no dispute that Plaintiff was entitled to a repurchase of the 2017 CR-V consistent with this statute. Honda was required to accept return of the 2017 CR-V and refund the full purchase price of the vehicle to Plaintiff and South State Bank as the lienholder for the vehicle. The Court finds that Honda first offered a repurchase consistent with the statute to the Plaintiff in

October 2018, one month prior to filing suit. The Court further finds that Honda offered a repurchase of the 2017 CR-V multiple times prior to Plaintiff filing suit and multiple times after Plaintiff filed suit.

Plaintiff's Motion for Attorney's Fees is also brought pursuant to the Warranty Act.

“(D) Any consumer who finally prevails in any action brought under this chapter, may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of cost and expenses (including attorney's fees based on actual time expended) and other such costs which are directly attributable to the nonconformity of the motor vehicle determined by the court to have been reasonably incurred by the plaintiff for or in connection with the commencement and prosecution of such action, unless the court in its discretion determines that such an award of attorney's fees would be inappropriate.” S.C. Code Ann. § 56-28-50(D).

In evaluating this statute, this Court is required to conduct a plain reading of this statute. In doing so, this Court finds the following. First, the Court has the discretionary authority to determine whether to award any attorney's fees to a prevailing plaintiff. Second, there is no requirement under the statute that a prevailing plaintiff automatically receive an award of attorney's fees, regardless of the amount. Third, the Court is only required to make an award of attorney's fees that were reasonably incurred as necessary under the Act. Finally, even if the Court determines an amount of reasonably incurred fees, the Court has the discretion not to make an award of attorney's fees.

The Court finds that the applicable provisions of the Warranty Act are almost identical to applicable section of the federal Magnuson-Moss statute.<sup>1</sup> 15 U.S.C. §2310(d)(2). The Court

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<sup>1</sup> (2) “If a consumer finally prevails in any action brought under paragraph (1) of this subsection, he may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of cost and expenses (including attorneys' fees based on actual time expended) determined by the court to have been reasonably incurred by the plaintiff for or in connection with the commencement and prosecution of such action, unless the court in its discretion shall determine that such an award of attorneys' fees would be inappropriate.” 15 U.S.C. §2310(d)(2).

notes that the Court of Appeals has confirmed that the decision whether to award attorney's fees to a prevailing plaintiff under the Magnuson-Moss statute is within the discretion of the trial court. *Mockabee v. Wakefield Buick, Inc. and First Citizens Bank*, 298 S.C. 386, 380 S.E.2d 848 (Ct. App. 1989).

**b. Legal Standard for Awarding Attorney's Fees**

When a prevailing party can receive attorney's fees pursuant to contract or statute, well-settled South Carolina case law sets forth a six-factor test for the Court to calculate the appropriate amount of attorney's fees awarded.

“(1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services.” *Baron Data Systems v. Loter*, 297 S.C 382, 377 S.E.2d 296 (1989).

The Court is also required to consider all these factors in establishing reasonable attorneys' fees. *See Darden v. Witham*, 263 S.C. 183, 209 S.E.2d 42 (1974). The award of fees, if any, are made payable to the party, not the lawyer. *Jackson v. Speed*. 326 S.C. 289, 486 S.E.2d 750 (1997) (citing *Prevatte v. Asbury Arms*, 302 S.C. 413, 396 S.E.2d 642 (Ct. App. 1990)). In reviewing the evidentiary record in this case, the Court finds that the evidentiary record supports an award of \$27,585 for attorney's fees and costs based on the six *Baron* factors.

**c. Analysis of the *Baron* Factors in Determining Reasonable Attorney's Fees**

i. Nature of the Case

The Court finds this case was not of extremely complex nature. However, this matter involved numerous legal issues requiring Plaintiff's counsel's extensive preparation for litigation.

ii. Time Necessarily Devoted to the Case

To recover attorney's fees when a statute authorizes the permissive or mandatory recovery of fees, Plaintiff's counsel has the burden of providing an itemized affidavit of fees that shows the

work related to the claims where statutory recovery of fees is allowed. *Taylor v. Nix*, 307 S.C. 551, 557, 416 S.E.2d 619, 623 (1992). Counsel has submitted an affidavit where he asserts spending 182.8 hours on this case from his first meeting with Plaintiff in September 2018.

The Court has reviewed counsel's affidavit and time sheets that he submitted to the Court. At the onset, the Court is concerned by counsel's initial line in his affidavit, which states "Include I was not churning the file." While this statement in and of itself does not create a direct concern that counsel was conducting additional unnecessary work on the case, it does suggest a more detailed look at every entry submitted by counsel.

In conducting this detailed review of the affidavit and time sheets, it presents several challenges in determining the time necessarily devoted to the case. First, there are no specific references in the timesheets to the Warranty Act cause of action, versus the other causes of action initially identified and then dismissed by counsel. It is difficult for the Court to determine the amount of time reasonably incurred in the prosecution of the Warranty Act cause of action.<sup>2</sup> Second, Plaintiff's time sheets indicate that counsel spent approximately 37 to 42.4 hours in preparing the fee motion, affidavit, and supporting materials. This amount of time appears to be substantial considering the circumstances of this case.

The affidavit and time sheets do support a finding that counsel spent 20.9 hours prior to the commencement of this lawsuit. During that period, Honda offered Plaintiff a repurchase of the 2017 Honda CR-V consistent with the Warranty Act. The Court finds that this time was necessary and reasonably incurred in assisting Plaintiff with an understanding of the applicable

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<sup>2</sup> The South Carolina Supreme Court has affirmed decisions by the trial court reducing claims for attorney's fees under similar circumstances. *Maybank v. BB&T Corp.*, 416 S.C. 541, 787 S.E.2d 498 (2016) (affirming a reduction of attorneys' fees asserted to claims where statutory recovery of fees was not permitted).

law, reviewing Plaintiff's concerns with the 2017 CR-V, assisting Plaintiff with the informal dispute settlement process, and providing guidance to Plaintiff on the repurchase process. The Court finds that this is a reasonable and necessary amount of time incurred in this matter for the benefit of the Plaintiff.

iii. Standing of Counsel

The Court has reviewed counsel's website, affidavit, and reported opinions. The Court finds that Plaintiff's counsel is an experienced practitioner in consumer protection actions, including Warranty Act cases, in cases in South Carolina courts. The Court notes that he has received several favorable appellate rulings in the Court of Appeals and the South Carolina Supreme Court on various consumer protection cases. The Court has considered counsel's experience and history in evaluating the beneficial results he obtained for Plaintiff in this matter, the appropriate hourly rate for the calculation of attorney's fees, and the time necessarily spent on this case.

iv. Contingency of Compensation

The Court has reviewed the affidavit submitted by Plaintiff and by counsel. It appears that counsel has taken this matter upon the basis of recovering attorney's fees from Honda following either a settlement or an order on a motion for fees.<sup>3</sup> As discussed more fully in this Order, the Court is responsible for determining the reasonable and appropriate fees in this matter. *Jackson v. Speed*. 326 S.C. 289, 307-308, 486 S.E.2d 750, 759 (1997).

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<sup>3</sup> Were this matter truly taken on a contingency basis of the total recovery, counsel would ordinarily receive between 35% and 40% of the recovery obtained by Plaintiff.

v. Beneficial Results Obtained

The Court finds that counsel provided a beneficial result in Plaintiff receiving offers for a repurchase of the vehicle prior to suit. The Court therefore finds that counsel's assistance in preparing this matter for suit provided Plaintiff a beneficial result.

vi. Customary Legal Fees for Similar Services

Plaintiff contends an hourly rate of \$450 per hour is a reasonable hourly rate for this matter. Plaintiff has provided two affidavits from attorneys in Horry County who state that, in this locale, \$450 is a reasonable hourly rate for this case.

**III. Conclusion and Order**

IT IS THEREFORE ORDERED, that Plaintiff's Motion for Attorney's Fees is GRANTED IN PART and DENIED IN PART. Based on this Court's analysis of applicable law and the evidentiary record, Plaintiff's counsel is entitled to an award of \$27,585 for attorney's fees reasonably incurred in this matter. Defendant shall have thirty (30) days from the entry of this Order to make payment of this amount to Plaintiff.

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The Honorable Paul M. Burch

Chesterfield, South Carolina

Dated: June 25, 2021



## Horry Common Pleas

**Case Caption:** Tammy Batten West VS American Honda Motor Company Inc

**Case Number:** 2018CP2606346

**Type:** Order/Other

So Ordered

s/Paul M. Burch, Judge #2048