

The Adjudicated Jaguar

Plaintiff Successfully Sues South Carolina Dealer

by Lawrence Savell

As regular readers of this column know, disputes arise regarding collector cars. Sometimes these disputes cannot be resolved without litigation.

Lawsuits obviously can be very expensive, both to bring and to defend against. Apart from the risk of an adverse monetary verdict, the attorneys' fees alone can be very significant. Some countries provide some relief by allowing successful litigants to recover the fees they paid to their lawyers from the losing party. In the US, however, we follow the traditional "American Rule"—attorneys' fees are not awarded to the winning party unless they are specifically authorized by statute or by agreement between the parties.

Car collectors should thus review any contracts they enter into to make sure that the agreements do not obligate them to pay the attorneys' fees of the other side in the event of a dispute—or at least to make sure that they get the same benefit if the collectors prevail. Second, collectors should find out (or have their attorney find out) if any applicable statutes may provide such benefit to them.

A recent case involving the award of attorneys' fees pursuant to a statute in the context of the sale of a collector car was *Jackson vs. Speed*, decided on June 23, 1997 by the Supreme Court of South Carolina.

According to the Court, J. Wrightson and Sallie T. Jackson filed a lawsuit regarding their purchase of a 1969 Jaguar and alleged misrepresentations made to them regarding the condition of the vehicle. The Jacksons' alleged fraud, revocation of acceptance, and violation of the South Carolina Regulation of Manufacturers, Distributors, and Dealers Act (the "Dealers Act").

The Jacksons alleged that they had been in the market for an older model European sports car in good condition. Mr. Jackson

had responded to a newspaper advertisement regarding the Jaguar and thereafter had conversations and meetings with the seller. The seller represented that the Jaguar was in excellent condition, had only 87,000 original miles, and had never been wrecked. The Jacksons agreed to buy the Jaguar for \$20,000.

Unfortunately, it thereafter became apparent that the representations made had not been true. When the seller refused to return the Jacksons' money, they filed the lawsuit.

At the conclusion of the trial, the jury returned a verdict in favor of the Jacksons on the Dealers Act claim. They awarded the Jacksons \$13,300 in actual damages—which was doubled to \$26,600 under the terms of the Dealers Act—and punitive damages of \$39,900. The trial judge thereafter awarded them reasonable attorneys' fees pursuant to the Dealers Act.


The defendants appealed on a variety of grounds, including arguing that the hourly attorney rate that had originally been agreed to by the Jacksons and their counsel (which was lower than what the trial court awarded) should have controlled the determination of the reasonable hourly rate.

In its decision, the Supreme Court affirmed the ruling for the Jacksons. It noted the principle that attorneys' fees generally are not recoverable unless authorized by contract or statute. However, here the Dealers Act mandated the recovery of costs, including reasonable attorneys' fees.

The Court pointed out that, when determining the reasonableness of attorneys' fees under a statute mandating the award of such fees, the original agreement between the client and his or her counsel does not necessarily control the determination of a reasonable hourly rate. Indeed, in previous cases the Court had affirmed a trial court's award of an amount greater than that due

the plaintiff's attorney under a contingency fee contract, and had affirmed an award of attorneys' fees based upon an hourly rate even though the agreement with the client had been contingency-based. As other courts had observed, courts should not automatically adopt the contingent fee or contractual arrangement in existence; instead, the fee awarded may be more or less than that provided by the original lawyer-client contract. The key is the determination of a reasonable attorneys' fee.

Instead of automatically following the existing agreement, "the court should consider the following six factors when determining a reasonable attorneys' fee: (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. On appeal, an award for attorneys' fees will be affirmed so long as sufficient evidence in the record supports each factor.

"Because the contract between respondents and their attorney did not control the trial judge's determination of a reasonable hourly rate, the trial judge did not abuse his discretion in determining the reasonable hourly rate was \$125, instead of the hourly rate of \$110 the Jacksons and their attorney had agreed to in their contract. Further, sufficient evidence on the record supports each of the [six] factors. Thus, the award is affirmed." 

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