

# THE COMMANDEERED COMET

Anyone who has sued or been sued can testify to the fact that litigation is expensive. For both plaintiffs and defendants, "justice" often comes (if they even believe it does) at a high price.

Not surprisingly, therefore, the question has often been raised whether victorious litigants should be entitled to have their legal fees paid by the losers. Although the idea of making those whose positions are found to be less persuasive pay for the costs of proving that may be appealing, our system rarely permits it. Indeed, the traditional "American rule" provides that attorney's fees are generally not awardable to the winning party unless they are specifically authorized by statute or contract. However, courts have made exceptions to that rule in certain limited situations. One recent case examining this issue in the context of a dispute over a collector car was *Russell v. Smith*, decided by the Court of Appeals of Ohio, Franklin County, on July 16, 1992.

According to the Court, Roy Smith owned a 1967 Mercury Comet. Smith voluntarily turned the Comet over to Lee Rider based on an agreement between Smith and Rider involving an exchange of vehicles. However, Rider did not perform the terms of the agreement to Smith's satisfaction. Although Smith had relinquished title to Rider, Smith did not sign the transfer portion of the certificate of title. Rider ultimately sold the Comet to Ralph Roof, who sold it to Roger Stimpfle, who in turn sold the automobile to Edward L. Russell, Jr.

Smith reportedly confronted Russell at his place of employment and told him that the Comet had been stolen from Smith. Smith made a report to the Proctorville, Ohio Police Department, asserting that the automobile had been stolen from Smith's house in Proctorville. Smith used that report to obtain the assistance of the Columbus Police to get the Comet from Russell. Smith summoned police to

Russell's place of employment where, on the strength of Smith's stolen vehicle report, the police impounded the car and then returned it to Smith.

Russell sued Smith, seeking return of the Comet. The trial court eventually ruled in Russell's favor. It found that Smith had voluntarily relinquished possession of the Comet and the certificate of title to Rider, and that Smith was barred from asserting title to the automobile. Based on Smith's "intentional, wrongful taking of the automobile from Plaintiff," the trial court awarded actual damages plus attorney's fees, as well as punitive and exemplary damages.

Smith appealed, arguing that the trial court erred in awarding attorney's fees, as the relevant statute did not authorize an award of attorney's fees, and that, absent a statutory provision, a prevailing party is not entitled to attorney's fees unless the opposing party acted in bad faith.

The Court of Appeals ruled for Russell. It began its analysis by noting the rule that "Generally, a prevailing party may not recover attorney fees as costs of litigation in the absence of statutory authority unless the breaching party has acted in bad faith, vexatiously, wantonly, obdurately or for oppressive reasons." However, the Court also noted the related rule that if *punitive* damages are proper in a case, the aggrieved party may also recover reasonable attorney's fees. In this action, the trial court *had* awarded punitive damages, the propriety of which Smith had not challenged.

The Court of Appeals noted that the award of punitive damages had been proper. It observed that the trial court had found that although Smith had previously filed a police report indicating he had voluntarily relinquished the Comet to Rider, he subsequently filed a false stolen vehicle report which he used to

recover the automobile. Characterizing Smith's actions as intentional and wrongful, the trial court had awarded punitive damages. The Court of Appeals agreed that such findings supported the award of punitive damages.

The Court of Appeals disagreed with Smith's assertion that, even if the award of attorney's fees was proper, the *amount* of attorney's fees awarded was unreasonable. While agreeing that the amount of attorney's fees awarded in this case had exceeded the compensatory damages awarded, the Court of Appeals could not conclude that the trial court had abused its discretion. The Court observed that, because of Smith's wrongful and intentional taking of Russell's automobile, Russell had had to initiate and prosecute a lawsuit to obtain that which was ultimately determined to be his. Moreover, Russell had presented an exhibit delineating his attorney's time spent as well as an hourly rate, and Smith had had the opportunity to contest that information at trial.

Thus, the trial court had not abused its discretion either in awarding attorney's fees, or in the amount awarded. Accordingly, the Court affirmed the judgment for Russell.

Smith did win one battle, however. Russell had also requested repayment of the expenses and attorney's fees he incurred in the *appeal* of the case. The Court of Appeals noted that, since Smith's appeal presented a reasonable question for review, his appeal was not frivolous. Therefore, Russell's motion for appellate expenses and attorney's fees was denied.

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