

*Attorney Fees - Unfair Trade Practices and Consumer  
Protection Law and Tampering with Odometer Law*

1. Where a Court awards damages less than \$1,500.00 for tampering with an odometer, recovery is not under the Pennsylvania Odometer Act.
2. While not determinative, the plaintiff's recovery is a crucial factor in determining the proper amount of attorney's fees.

*Larry Selkowitz, Esquire, Attorney for Plaintiff*  
*Thomas M. Painter, Esquire, Attorney for Defendant*

OPINION AND ORDER

WALKER, J., October 8, 1990:

Plaintiff has filed this motion for post-trial relief in the nature of a petition for attorney's fees following a non-jury trial in which plaintiff was awarded a one thousand, one hundred nineteen dollar and eight cent (\$1,119.09) verdict. No provision was included for the award of attorney's fees.

Plaintiff claims that this court should award the attorney's fees based on the amount of time actually expended pursuing plaintiff's claims for damages under both the Unfair Trade Practices and Consumer Protection Law, 73 P.S. section 201-1 *et seq.* and Tampering with Odometer Law, 75 Pa.C.S.A. section 7131 *et seq.*

Plaintiff claimed that defendant had violated the laws when it sold him a van that had two hundred eight-nine (289) registered miles on it according to its odometer when, in fact, the automobile had one thousand, two hundred ninety-one (1,291) miles on it. This court awarded plaintiff one thousand, one hundred nineteen dollars and eight cents (\$1,119.08) in damages and plaintiff's counsel filed the instant motion, requesting compensation in the amount of nine thousand, ninety-nine (\$9,099) dollars and costs in the amount of seven hundred forty-eight dollars and fifty-nine cents (748.59).

We will first dispose of plaintiff's argument that he is entitled to attorney's fees under the Tampering with Odometer Law, *infra*. It is true, as plaintiff states in his motion, that the act mandates the

award of attorney's fees to any party who successfully brings an action under the Odometer Law. However, the act also provides that:

A person who, with intent to defraud, violates any requirement imposed under this subchapter shall be liable in an amount equal to the sum of three times the amount of actual damages sustained or \$1,500, whichever is the greater, and in the case of any successful action to enforce this liability, the costs of the action together with reasonable attorney fees as determined by the court.

75 Pa. C.S.A. section 7138(a).

This court only awarded plaintiff one thousand, one hundred nineteen dollars and eight cents (\$1,119.08). The court could not, under the Odometer Law, award less than one thousand, five hundred (\$1,500) dollars. Therefore, the plaintiff did not recover under the Odometer Law.

Plaintiff's counsel also claims that he should recover attorney's fees from the defendant under the Unfair Trade Practices and Consumer Protection Law. That law provides:

Any person who purchases or leases goods or services primarily for personal, family or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by any person of a method, act or practice declared unlawful by section 3 of this act, may bring a private action, to recover actual damages or one hundred dollars (\$100), whichever is greater. *The court may, in its discretion, award up to three times the actual damages sustained, but not less than one hundred dollars (\$100), and may provide such additional relief as it deems necessary or proper.*

73 P.S. section 201-9.2. (emphasis added).

The award of counsel fees in a successful action under the Unfair Trade Practices Law is within the discretion of the court. However, for this court to award any additional relief, it must find that the award is necessary or proper.

A recent Superior Court case dealing with the award of attorney's fees laid out several factors which a court may consider when determining the reasonableness of fees. *Croft v. P&W Foreign Car Service, Inc.* 383 Pa.

Super. 435, 557 A.2d 18 (1989). As plaintiff's counsel argues, the amount of counsel fees awarded should not serve as a ceiling on the amount of counsel fees awarded. However, it is one factor to consider.

Although the *Croft* suit was brought under the Magnuson-Moss Act, 15 U.S.A.C. section 2310(d)(2), the underlying purpose behind any award of attorney's fees is the same under both the federal act and the Unfair Trade Practices Law. Attorney's fees are awarded to the successful party "to make the pursuit of certain public rights economically feasible." *Croft*, 383 Pa. Super. at 438, 557 A.2d at 20. We will, therefore, use those same four factors.

The factors listed are: (1) the time and labor required, the novelty and difficulty of the questions involved and the skill requisite to properly conduct the case; (2) the customary charges of the members of the bar for similar services; (3) the amount involved in the controversy and the benefits resulting to the client or clients from the services, and (4) the contingency or certainty of the compensation.

We will first evaluate the skill and time normally required by an attorney to conduct a similar case. The plaintiff brought his action under both the Unfair Trade Practices and Odometer Laws. Few actions brought under the Odometer Law are very complex:

An Odometer Act case is a very routine and unsophisticated lawsuit. It lends itself well to forms and it is seldom that any difficult legal questions are presented or that the attorney has had to develop any particular expertise in any arts or sciences which may have an impact on the facts.

*Lindsey v. Anderson and Sons Auto Sales, Inc.*, 690 F. Supp. 1028, 1030 (N.D. Ga. 1988).

This court is mindful, however, that the plaintiff also brought suit under the Unfair Trade Practices Law. Many cases brought under this act can be complex, with convoluted issues involving state of mind and fraudulent misrepresentation. We will take this into consideration in determining a proper award of fees.

Second, plaintiff's counsel states that it normally charges ninety

(\$90) dollars per hour for the work involved in presenting this type of case and that it has invested one hundred one and one-tenth (101.1) hours pursuing the matter on plaintiff's behalf. Considering counsel's reputation and experience, the hourly fee is reasonable. However, the fact that counsel's hourly fee is reasonable is not conclusive. Plaintiff's counsel has admitted no evidence of the actual number of hours invested and accordingly, this court must look at how much time would normally be spent on a case of this type.

The factor with which we are most concerned is the amount involved in the controversy and the benefits resulting to the client or clients from the services. While not determinative, the plaintiff's recovery is a crucial factor in determining the proper amount of attorney's fees.

We take issue with plaintiff's counsel's statement at argument to the effect that attorneys must actively pursue whatever claims a client wants him to pursue, regardless of whether that attorney believes the damages are real and recoverable. Here, plaintiff and his counsel miscalculated their case. Defendant should not bear the risk of such miscalculation.

As *Croft* suggests, there must be some relationship between the amount involved and the attorney's fees. This court has considered the arguments made by plaintiff's counsel and, undoubtedly, fees may exceed damages. But nine thousand (\$9,000) dollars in fees is too far out of proportion of the one thousand one hundred (\$1,100) dollar award to be either necessary or proper. A proportion between fees sought and damages awarded of 8 to 1 cannot be allowed in a case of this complexity.

The final factor to consider is the contingency or certainty of the compensation. Plaintiff was seeking recovery under the Odometer Law, which would guarantee an award of at least one thousand, five hundred (\$1,500) dollars and an award of reasonable attorney's fees, but recovered under the Unfair Trade Practices Law, which guarantees an award of at least one hundred (\$100) dollars. Regardless of the certainty of either the plaintiff or his counsel's recovery, however, this court will carefully scrutinize any request for nine thousand (\$9,000) dollars in counsel fees.

This court is put in a very unfavorable position. It is no comfort

that it is within our discretion to award necessary and proper attorney's fees. "This is the sort of opinion . . . which makes the trial judge a candidate for crucifixion on the cross of discretion." *Gimarc v. Neal*, 417 F.Supp. 129, 132 (D.C.S.C. 1976). However, after applying all four of the *Croft* factors, including the novelty and difficulty of the questions presented and the damages awarded, this court finds that one thousand, five hundred (\$1,500) dollars in attorney's fees is reasonable and proper. Accordingly, defendant will pay plaintiff's counsel fees in that amount. Plaintiff will pay the seven hundred forty-eight dollars and fifty-nine cents (\$748.59) in costs of the prosecution.

#### ORDER OF COURT

October 8, 1990, the court finds for James A. Lucas, Sr., plaintiff, and against Chambersburg Toyota, Inc., defendant, in the amount of one thousand, one hundred nineteen dollars and eight cents (\$1,1190.08); and

The court orders the defendant to pay plaintiff's counsel the sum of one thousand, five hundred (\$1,500) dollars as proper and reasonable attorney's fees.

COMMONWEALTH OF PENNSYLVANIA V. ONE 1982 FORD TRUCK, ETC., ET AL., PENNSYLVANIA STATE POLICE BUREAU OF LIQUOR CONTROL ENFORCEMENT, C.P. Franklin County Branch, Misc. Doc. Vol. AA, Page 77

#### *Seizure of Vehicles - Forfeiture - Violation of Liquor Code*

1. Once the Commonwealth introduces evidence that a vehicle was used in violation of the Liquor Code, the burden shifts to the defendant to show it was not so used.
2. The Court has discretion as to whether a confiscated vehicle shall be forfeited.
3. A trial court must consider a claimant's lack of knowledge when deciding whether or not to return seized property.
4. A distinction must be made between a distributor who has no reason to know alcohol is being purchased for resale and where employees of the distributor were active witnesses and participants.

*Michael S. Sherman; Esquire, Counsel for Plaintiff*  
*Robert M. Strickler; Esquire, Counsel for Defendant*

#### OPINION AND ORDER

WALKER, J., October 18, 1990:

Both actions having been consolidated, a hearing was held on the instant motion for return of property and petition for forfeiture on September 20, 1990. The facts, which are not in dispute, follow.

In early 1990, Steven and Kelly Ambrose (hereinafter, "Ambrose") contacted Chambersburg Beverage, Inc. ("Chambersburg Beverage") and ordered 60 half barrels of beer, ice and cups. Ambrose also arranged for the rental of Chambersburg Beverage's truck, which was equipped with tapping devices to dispense the beer. The beer, supplies and truck were delivered to the "Ambrose's 4th Annual Hog Roast" in Greencastle, Franklin County, on September 1, 1990. The event was widely advertised and tickets were sold in advance in and around the Greencastle area.

Two Chambersburg Beverage employees took the beer and truck to the hog roast. While at the picnic, the employees were responsible for remaining with the truck, transferring the barrels of beer from the storage area of the vehicle to the tap area, tapping the barrels, replacing empty barrels of beer and keeping the beer cold.

Officers from the Pennsylvania State Police, Bureau of Liquor Control Enforcement ("Bureau") purchased tickets to the hog roast for \$20 at the front gate. Before they were permitted to purchase a ticket, however, they were required to show proof of age and to sign a "waiver" stating that they were of legal drinking age. Ambrose did not have either a liquor license or a special occasion permit which permitted him to sell alcohol.

At approximately 2:00 p.m., a raid was conducted and the Bureau officers confiscated the beer and truck. Chambersburg Beverage filed a motion for return of the truck on September 7, 1990, and the Bureau filed its petition for forfeiture of the vehicle on September 19, 1990.

Chambersburg Beverage first argues that the truck was improperly and unlawfully seized. This court disagrees. Sections 2-211 (a)