

THE HIGH COST OF JUSTICE

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Anyone who has ever been a party to a lawsuit knows that justice often carries a high cost. Whether you are a plaintiff asserting your claims or a defendant opposing the claims asserted against you, the odds are that you will have expended significant amounts of money, time, and effort to prove that your side is entitled to prevail.

Although it may seem unfair, and although some other legal systems provide otherwise, the American legal system has generally not provided for reimbursement of such expenses as attorneys' fees to prevailing parties. Normally, the best that a plaintiff can expect is recovery of the sum under dispute, perhaps with some interest added. Similarly, usually the best a prevailing defendant can hope for is vindication in the form of dismissing or denying the plaintiff's claims, and not any reimbursement of the often significant costs of defense.

There are, however, some exceptions to these general rules. In certain cases, legislation has provided and/or courts have the discretion to award the prevailing party its actual or "reasonable" attorneys' fees. In addition, sometimes the law provides that a prevailing plaintiff can recover a multiple of the amount of damages awarded.

Such exceptions sometimes apply in the context of "consumer protection." A recent case involving such a situation and a dispute over work done on a collector car was *Waters v. Collins Body Shop*, decided on April 17, 1995 by the Court of Appeals of Ohio.

According to the Court, on March 23, 1993, William J. Waters and Collins Body Shop ("Collins") agreed that Collins would "restore" Waters' 1962 Thunderbird for \$1,600. Waters wanted the car repainted its original color. Waters gave Collins a \$600 deposit on March 25; Collins did not provide Wa-

ters with a receipt for the deposit. Although Collins reportedly indicated that the car would be ready in approximately six weeks, it actually took five months to complete the work. When Waters picked up the Thunderbird, he paid the \$1,000 balance by check. However, upon later examination, Waters became unsatisfied with Collins' workmanship, and discovered that Collins had not used the correct color paint. Waters stopped payment on his \$1,000 check.

Waters sued Collins. Collins filed an answer and asserted a counterclaim for the \$1,000 balance due under the parties' agreement. The trial court ruled that Collins had violated the Ohio Consumer Sales Practices Act ("CSPA") by failing to (1) provide a proper receipt for Waters' deposit, and (2) deliver the promised services within eight consecutive weeks of the promised delivery date. The trial court also determined that Collins improperly painted Waters' car, which would have to be totally repainted if Waters was to have the benefit of his bargain. It ruled that, since Waters received no benefit from Collins' work, the proper measure of damages equaled the \$600 deposit held by Collins. Pursuant to the CSPA, the trial court awarded Waters treble damages (three times \$600), plus \$1,100.28 in attorneys' fees. Collins appealed.

The Court of Appeals affirmed the trial court's ruling for Waters. On the treble damages issue, the Court of Appeals noted that the CSPA provides that where a supplier commits an act declared to be deceptive or unconscionable, the consumer may recover three times the amount of his or her actual damages. The law (1) required giving a receipt for all deposits, setting forth terms for refunds, and (2) prohibited accepting a deposit and failing to deliver the promised goods or ser-

vices, or offering to give a full refund, within eight weeks, both of which Collins had not done. The Court concluded that Collins had thus committed two acts declared to be deceptive or unconscionable. It ruled that the trial court, having determined that Waters' actual damages could be measured by the \$600 Waters deposited, had authority to award Waters treble his damages under the CSPA.

In upholding the trial court's award of attorneys' fees, the appellate court observed that the CSPA permits a court, in its discretion, to award reasonable attorneys' fees if a "supplier has knowingly committed an act or practice that violates" the statute. The Court noted that, under the CSPA, "knowingly" means that the supplier intentionally committed the act that violated the statute; the supplier did not have to know that its conduct violated the law in order for the court to grant attorneys' fees. As Collins noted, the CSPA provides that, if a supplier proves that the violation resulted from a "bona fide error" after having put into place procedures reasonably adopted to avoid the error, no attorneys' fees shall be awarded and monetary recovery shall be limited to the actual damages resulting from the violation. However, the Court ruled that Collins failed to carry its burden of demonstrating that it had made a bona fide error, and had not maintained any procedures to avoid the errors in this case.

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