

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Nancy A. Wright, Respondent/Appellant,
v.
Autos of Charleston, Inc., . . . Appellant/Respondent.

Appeal from Charleston County
A. Victor Rawl, Circuit Court Judge

Unpublished Opinion No. 93-UP-257
Heard September 8, 1993 - Filed September 28, 1993

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED

Desa A. Ballard and L. Joel Chastain, both of Ness,
Motley, Loadholt, Richardson, & Poole, of Barnwell;
and Richard C. Bell of Mt. Pleasant, for
appellant/respondent.

C. Steven Moskos, of North Charleston; and Conrad
L. Falkiewicz, of Charleston, for
respondent/appellant.

PER CURIAM: Nancy A. Wright (Wright) brought suit against Autos of Charleston, Inc., (Autos) alleging causes of action for breach of contract and for unfair and deceptive acts committed in violation of S.C. Code Ann. § 56-15-30 (1991). The jury found no contract existed between Wright and Autos and found Autos violated § 56-15-30. The jury awarded Wright \$5,000.00 actual damages and \$7,000 punitive damages. Pursuant to S.C. Code Ann. § 56-15-110(1), the trial judge doubled the actual damages and awarded costs and attorney fees in an amount less than the amount requested by Wright. Autos and Wright appeal. We affirm in part, reverse in part, and remand.

Wright signed an agreement to lease a new car from Autos. No one from Autos signed the agreement. In fact, an agent of Autos wrote "pending approval" across the top of the leasing form. The day after Wright signed the lease agreement and took possession of the automobile, Wright attempted to return

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it. Autos refused to accept the car's return, claiming a contract existed between it and Wright.

In deciding a motion for a directed verdict, a court must consider the evidence and all reasonable inferences that can be drawn from it in a light most favorable to the non-moving party. Sub Station II v. Oliver, ___ S.C. ___, 414 S.E.2d 141 (1992); Garrett v. Locke, ___ S.C. ___, 419 S.E.2d 842 (Ct. App. 1992) (per curiam) (citation omitted). If the evidence is susceptible of more than one reasonable inference, the issue should be submitted to the jury for its determination. Unlimited Serv., Inc. v. Macklen Enter., Inc., 303 S.C. 384, 401 S.E.2d 153 (1991).

We hold the trial judge properly submitted to the jury the issue of whether a contract existed between the parties because the evidence and its reasonable inferences support the conclusion that no contract existed between them. There is evidence Autos failed to comply with the requirements of its own lease agreement because no agent of Autos signed Wright's copy of the contract at the time Wright took possession of the vehicle and there is evidence an agent of Autos wrote "pending approval" across the top of the lease agreement.

2. Autos argues the trial judge erred in submitting to the jury the cause of action based on alleged unfair and deceptive acts because Wright presented no evidence regarding conduct proscribed by S.C. Code Ann. § 56-15-40(a)-(c) (1991).¹ We need not address this argument because Autos did not include it at trial as a ground for its directed verdict motion. Connolly v. People's Life Ins. Co., 299 S.C. 348, 384 S.E.2d 738 (1989) (per curiam); Merritt v. Grant, 285 S.C.

¹ Section 56-15-30(a) states "[u]nfair methods of competition and unfair or deceptive acts or practices as defined in § 56-15-40 are hereby declared to be unlawful." Under § 56-15-40(1), § 56-15-30 is violated when any motor vehicle dealer engages "in any action which is arbitrary, in bad faith, or unconscionable and which causes damage to any of the parties or to the public." Under § 56-15-40(4) (a)-(c), § 56-15-30 is violated when a dealer requires a purchaser to purchase special features as a condition of the vehicle's sale or delivery, a dealer represents a used or demonstrator model as new, or a dealer engages in false or misleading advertising.

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150, 328 S.E.2d 346 (Ct. App. 1985) (per curiam) (citation omitted). Autos only argued Wright did not establish a violation of "[§] 56-15-10 [sic]" because Wright failed to prove Autos "acted with malice, bad faith, unfairly, or attempted to deceive her."

3. Autos argues the trial judge's jury charges were flawed for several reasons. First, Autos asserts the claim based on § 56-15-30 is inapplicable to any events that occurred between Wright and Autos after Wright took possession of the car. Second, Autos argues the trial judge did not define acts that may be considered "arbitrary, in bad faith or unconscionable" as set forth in § 56-15-40. Third, Autos argues the trial judge erred because the verdict form submitted to the jury differed from his oral instructions regarding § 56-15-40. Fourth, Autos argues the punitive damages charge was flawed because the judge did not charge all the factors set forth in Gamble v. Stevenson, 305 S.C. 104, 406 S.E.2d 350 (1991). The trial judge properly submitted the issue of punitive damages to the jury.

Although a defendant's ability to pay is a proper and relevant factor for a jury to consider in awarding punitive damages, evidence of a defendant's worth is not necessary to sustain an award of punitive damages. Rogers v. Florence Printing Co., 233 S.C. 567, 576, 106 S.E.2d 258, 263 (1958).

5. Autos argues the award of attorney fees under S.C. Code Ann. § 56-15-110(1) (1991)² was improper.

Wright's attorneys submitted affidavits supporting attorney fees in the amount of \$17,597.50. Without making any findings of fact, the trial judge awarded \$6,800.00 in attorney fees.

In Blumberg v. Nealco, Inc., ___ S.C. ___, 427 S.E.2d 659 (1993), our Supreme Court set forth six factors to consider in determining an award of attorney fees: "1) nature, extent, and difficulty of the legal services rendered; 2) time and labor

² Section 56-15-110 (1) provides "any person who shall be injured in his business or property by reason of anything forbidden in this chapter may sue therefor in the court of common pleas and shall recover ... the cost of suit, including a reasonable attorney's fee."

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devoted to the case; 3) professional standing of counsel; 4) contingency of compensation; 5) fee customarily charged in the locality for similar services; and 6) beneficial results obtained." Id. at ____, 427 S.E.2d at 660 (citing Collins v. Collins, 239 S.C. 170, 122 S.E.2d 1 (1961)). Additionally the Court held:

When an award of attorney's fees is requested and authorized by contract or by statute, the court should make specific findings of fact on the record for each factor set forth in Collins, supra. On appeal, absent sufficient evidentiary support on the record for each factor, the award should be reversed and the issue remanded for the trial court to make specific findings of fact.

Blumberg, __ S.C. at __, 427 S.E.2d at 661.

The trial judge here did not make specific findings of fact on the record. Because Blumberg mandates such findings, the award of attorney fees is reversed and remanded for the trial judge to make specific findings of fact, using solely the existing record without the introduction of additional evidence. Cf. Sunrise Savings & Loan Assoc. v. Mariner's Cay Development Corp., 295 S.C. 208, 367 S.E.2d 696 (1988) (wherein the supreme court found the record was inadequate, remanded the award of attorney fees, and directed the trial court to take evidence on the reasonableness of the fees).

6. Autos argues the trial judge erred in awarding \$1,041.84 in costs.

Wright's attorneys submitted affidavits supporting costs of \$1,086.84 which included \$688.40 for depositions, \$62.54 for document reproduction, and \$240.90 for mileage. Autos argues none of these costs are permissible under South Carolina law. Because Autos raises this argument for the first time on appeal, we may not consider the trial judge's award of costs. Talley v. South Carolina Higher Educ. Tuition Grants Comm., 289 S.C. 483, 487, 347 S.E.2d 99, 101 (1986).

In her cross-appeal, Wright argues the trial judge should have awarded her the full amount of attorney fees because Autos did not file a counter-affidavit or memorandum of law opposing Wright's request for attorney fees. Because of this

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Court's remand of the issue of attorney fees, we need not address this issue.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

Curtis G. Shaw, J.

Joseph W. Carter, J.

Robert Ashley J., J.