

[Cite as *Jarmon v. Friendship Auto Sales Co., Inc.*, 2006-Ohio-1587.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 86589

LAQUITA JARMON	:	
	:	JOURNAL ENTRY
Plaintiff-Appellant	:	
	:	and
-vs-	:	
	:	OPINION
FRIENDSHIP AUTO SALES CO., INC.	:	
	:	
Defendant-Appellee	:	
	:	

DATE OF ANNOUNCEMENT MARCH 30, 2006  
OF DECISION:

CHARACTER OF PROCEEDING: Civil appeal from  
Common Pleas Court  
Case No. CV-531177

JUDGMENT: Reversed and Remanded.

DATE OF JOURNALIZATION:

APPEARANCE:

For Plaintiff-Appellant: JOSEPH M. ROMANO  
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400 Terminal Tower  
Cleveland, Ohio 4113

For Defendant-Appellee: PINKIE LUE CLARK  
75 Public Square  
Suite 800  
Cleveland, Ohio 44113

PATRICIA ANN BLACKMON, J.:

{¶1} Appellant Laquita Jarmon appeals the trial court's failure to include work performed by her attorney's law clerks in her award of attorney fees. She assigns the following error for our review:

**"I. The trial court committed reversible error when it limited its award of attorney's fees [sic] under R.C. 1345.09(F) so that it compensated only work billed by the attorney himself and not work billed by his law clerk."**

{¶2} Having reviewed the record and pertinent law, we reverse and remand to the trial court for proceedings consistent with this opinion. The apposite facts follow.

{¶3} Jarmon sued appellee Friendship Auto Sales, Inc. ("Friendship"), claiming numerous violations of the Ohio Consumer Sales Practices Act (CSPA), the Ohio Retail Installment Sales Act (RISA), and conversion of Jarmon's vehicle. At trial, the jury found that Friendship violated RISA by failing to provide notice of repossession and disposition of Jarmon's car, violated the CSPA in so doing, and, in addition, converted Jarmon's car. The jury awarded Jarmon \$2,500 in compensatory damages.

{¶4} The trial court held a separate hearing to determine the amount of treble damages and attorney fees. The trial court awarded treble damages in the amount of \$7,500. Although Jarmon requested \$12,831 in legal fees, the court awarded her fees in the amount of \$3,549.50.

Attorney Fees

{¶5} In her sole assigned error, Jarmon contends the trial court erred by failing to include work performed by her attorney's law clerks in the attorney fee award.

{¶6} R.C. 1345.09(F)(2) provides that a "court may award to the prevailing party a reasonable attorney's fee limited to the work reasonably performed if \*\*\* the supplier has knowingly committed an act or practice that violates this chapter." In this case, the jury found that Friendship knowingly violated the relevant CSPA provisions, which entitled her to attorney fees.

{¶7} In *Bittner v. Tri-County Toyota, Inc.*<sup>1</sup> the Ohio Supreme Court stated the following considerations apply in considering the reasonable amount of attorney fees to award in a consumer case:

"When awarding reasonable attorney fees pursuant to R.C. 1345.09(F)(2), the trial court should first calculate the number of hours reasonably expended on the case times an hourly fee, and then may modify that calculation by application of the factors listed in DR 2-106(B). These factors are: the time and labor involved in maintaining the litigation; the novelty and difficulty of the questions involved; the professional skill required to perform the necessary legal services; the attorney's inability to accept other cases; the fee customarily charged; the amount involved and the results obtained; any necessary time limitations; the nature and length of the attorney/client relationship; the experience, reputation, and ability of the attorney; and whether the fee is fixed or contingent. All factors may not be applicable in all cases and the trial court has the discretion to determine which factors to

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<sup>1</sup>*Bittner*, supra at 146.

apply, and in what manner that application will affect the initial calculation.”<sup>2</sup>

{¶8} When making the fee award under R.C. 1345.09(F)(2), the trial court must state the basis for the fee determination in order to aid appellate review of the reward.<sup>3</sup> In the instant case, the court stated as follows in awarding the fees: “The court awards attorney’s fees for the work completed by attorney Joseph Romano at \$125.00 an hour in the amount of \$3,549.50.”<sup>4</sup>

{¶9} Although Friendship contends there is no evidence the trial court disregarded the fees attributed to the law clerks, we conclude the record is devoid of any evidence that the trial court followed *Brittner* and did consider the law clerks’ fees. The court stated it was awarding fees “for the work completed by attorney Joseph Romano at \$125.00 an hour.” The trial court did not mention the fees for the law clerks. Also, at the fee hearing, Friendship’s lawyer specifically asked the court not to allow any fees incurred by the law clerks. Interestingly, all of the law clerks’ hours were redacted from Jarmon’s affidavit, where the fees

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<sup>2</sup>Id. at 145-146.

<sup>3</sup>Id.

<sup>4</sup>Journal Entry, June 1, 2005.

were itemized. The record strongly suggests that the trial court disregarded the law clerks' fees.

{¶10} This court and other courts have held, that, legal fees incurred as a result of work performed by law clerks or legal interns should be taken into account when awarding attorney fees.<sup>5</sup>

As we stated in *Jackson v. Brown*,<sup>6</sup> the use of law clerks may decrease litigation expenses since they are charged at a lower rate; therefore, their use should not be discouraged.

{¶11} The affidavit indicates the clerks drafted the complaint, various motions, including a motion for summary judgment, and the trial brief. The trial court's award, which was \$74 over the fees incurred solely by attorney Romano, fails to take into account the work performed by the law clerks. We appreciate that Jarmon recovered a relatively minor award; this does not dictate the attorney fees should be correspondingly limited. As the court in *Bittner* held:

**"[W]e reject the contention that the amount of attorney fees awarded pursuant to R.C. 1345.09(F) must bear a direct relationship to the dollar amount of the settlement, between the consumer and the supplier. The Act was amended in 1978 to include the payment of attorney fees '\*\*\* to prevent unfair, deceptive, and unconscionable acts and practices, to**

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<sup>5</sup>*Jackson v. Brown* (1992), 83 Ohio App.3d 230, 232; *Non-Employees of Chateau Estates Resident Ass'n v. Chateau Estates, Ltd.*, 2<sup>nd</sup> Dist. No. 2004 CA 19, 2003, CA 20, 2004-Ohio-3781; *Ron Scheiderer & Associates v. City of London* (Aug. 5, 1996), 12<sup>th</sup> Dist. No. CA95-08-022, CA95-08-024.

<sup>6</sup>*Id.*

provide strong and effective remedies both public and private, to assure that consumers will recover any damages caused by such acts and practices, and to eliminate any monetary incentives for suppliers to engage in such acts and practices.' (137 Ohio Laws, Part II, 3219).

"In order for private citizens to obtain redress under the Act, they first must be able to obtain adequate representation. Private attorneys may be unwilling to accept consumer protection cases if the dollar amount they are permitted to bill their adversary is limited by the dollar amount of the recovery, especially since monetary damages in many instances under the Act are limited to \$200.

An attorney may expend inordinately large amounts of time and energy pursuing a claim that reaps relatively small monetary benefits for a prevailing plaintiff. \*\*\* Prohibiting private attorneys from recovering for the time they expend on a consumer protection case undermines both the purpose and the deterrent effect of the Act."<sup>7</sup>

{¶12} Finally, we note the trial court does have discretion to limit the amount of fees it awards in relation to the work performed by the law clerk when it finds the factors listed in *Bittner* dictate a lesser amount. Accordingly, Jarmon's sole assigned error is sustained.

Judgment reversed and remanded for proceedings consistent with this opinion.

This cause is reversed and remanded.

It is, therefore, ordered that said appellant recover of said appellee her costs herein.

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<sup>7</sup>Id. at 144.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

ANN DYKE, A.J., And

SEAN C. GALLAGHER, J., CONCUR.

PATRICIA ANN BLACKMON  
JUDGE

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).