**[Cite as *Firestone Financial Corp. v. Syal*, 2006-Ohio-443.]**

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 86249

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| FIRESTONE FINANCIAL CORP. | : | |
| | : | |
| Plaintiff-Appellee | : | JOURNAL ENTRY |
| | : | |
| -vs- | : | AND |
| | : | |
| SHIV SYAL, d.b.a. BICK VENDING MACHINES | : | OPINION |
| | : | |
| | : | |
| Defendant-Appellant | : | |

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| Date of Announcement of Decision: | FEBRUARY 2, 2006 |
| Character of Proceeding: | Civil appeal from Parma Municipal Court Case No. 03CVF1014 |
| Judgment: | Reversed and Remanded. |
| Date of Journalization: | |
| Appearances: | |
| For Plaintiff-Appellee: | LINDA R. VAN TINE, ESQ.<br>1410 Central Avenue<br>Sandusky, Ohio 44870 |
| For Defendant-Appellant: | MICHAEL D. GOLDSTEIN, ESQ.<br>WILLIAM M. GOLDSTEIN, ESQ.<br>55 Public Square, #650<br>Cleveland, Ohio 44113 |

JAMES J. SWEENEY, J.:

**{¶ 1}** Defendant-appellant, Shiv Syal, d.b.a. Bick Vending Machines ("Syal"), appeals the order of the Parma Municipal Court awarding plaintiff-appellee Firestone Financial Corp. ("Firestone") attorney fees in the amount of $7,782.26. For the following reasons, we reverse and remand the decision of the trial court.

**{¶ 2}** A review of the record reveals the following facts: On February 15, 2002, Syal entered into a contractual commercial financing agreement with Firestone for the purchase of vending machines. Pursuant to the terms of the Promissory Note ("the Note") and Security Agreement (the "Agreement"), Syal agreed to pay Firestone $399.40 per month for 35 months. Syal made only two payments to Firestone and then ceased making payments. Pursuant to the terms of the Note and Agreement, the vending machines were liquidated, resulting in net proceeds of $7,680.20.

**{¶ 3}** On March 27, 2003, Firestone filed suit in the Parma Municipal Court seeking to recover the balance due because of Syal's breach of contract. Firestone also sought attorney fees as allowed by the contract. Syal counterclaimed that Firestone had fraudulently induced him into entering into the Note and Agreement.

**{¶ 4}** On January 13, 2005, the trial court granted Firestone's motion for summary judgment and granted judgment in the amount of $7,680.20, plus interest and costs.

**{¶ 5}** On March 16, 2005, the trial court held a hearing to determine the amount of attorney fees Firestone should recover.[1] That amount was determined to be $7,782.26. It is from that decision that Syal now appeals and raises two assignments of error for our review. Since they are interrelated, they will be addressed together.

**{¶ 6}** "I. The trial court erroneously awarded plaintiff-appellee attorney fees in violation of public policy.

**{¶ 7}** "II. The trial court erroneously entered judgment for an amount of attorney's fees that was unreasonable and unsupported by the evidence."

**{¶ 8}** In these assignments of error, Syal argues that the attorney fee provision in the contract "is unconscionable and unenforceable as against public policy." Syal also argues that the trial court erred in making an award of attorney fees in the absence of any evidence that such fees were necessary and reasonable.

**{¶ 9}** An appellate court will not reverse a trial court's award of attorney fees unless there was an abuse of discretion by the trial court. *Curtis v. Curtis* (2000), 140 Ohio App.3d 812, 815. Abuse of discretion is more than an error of law or judgment "it implies that the court's attitude is unreasonable, arbitrary or

[1]There is no indication in the record that a transcript of the testimony was taken.

unconscionable." *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

**{¶ 10}** Under Ohio law, contractual provisions awarding attorney fees are enforceable and not void as against public policy so long as the fees awarded are fair, just, and reasonable as determined by the trial court upon full consideration of all the circumstances of the case. See *Nottingdale Homeowners' Assn., Inc. v. Darby* (1987), 33 Ohio St.3d 32; *Northwoods Condo. Owners' Assn. v. Arnold* (2002), 147 Ohio App.3d 343.

**{¶ 11}** It is not against public policy or statutory law for a provision regarding attorney fees to be included in a commercial contract if the parties had equal bargaining power and the contract was not entered into under compulsion or duress. See *First Capital Corp. v. G & J Indus.* (1999), 131 Ohio App.3d 106, 113; *Gaul v. Olympia Fitness Ctr.* (1993), 88 Ohio App.3d 310; *Gordon Food Serv., Inc. v. Ahmed*, (Jan. 21, 1999), Cuyahoga App. No. 74890.

**{¶ 12}** Here, the parties entered into a contract providing for the award of attorney fees.[2] The contract, in and of itself, does not violate public policy or statutory law and therefore is enforceable. However, the trial court made no determination as to whether the Agreement was made by parties with equal bargaining power, with no coercion or duress. Indeed, Syal specifically claims that he was unsophisticated in business, "naive" and an

[2]See Paragraph 1 of the Security Agreement.

"immigrant" with insufficient knowledge of what he was getting into.

**{¶ 13}** Assignments of Error I and II are sustained.

**{¶ 14}** The decision of the trial court is reversed and the case is remanded for further proceedings consistent with this opinion.

It is ordered that appellant recover of appellee his costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Parma Municipal 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.

FRANK D. CELEBREZZE, JR., P.J., CONCURS.
CHRISTINE T. McMONAGLE, J., DISSENTS (See dissenting opinion attached).

JAMES J. SWEENEY
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

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| Plaintiff-Appellee | : | D I S S E N T I N G |
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| v. | : | O P I N I O N |
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| SHIV SYAL, d/b/a BICK VENDING MACHINES, | : | |
| | : | |
| Defendant-Appellant | : | |

DATE: FEBRUARY 2, 2006

CHRISTINE T. McMONAGLE, J., DISSENTING:

Respectfully, I dissent. In February of 2002, appellant Shiv Syal, d/b/a Bick Vending Machines, and non-party Seaga Manufacturing entered into an agreement whereby appellant purchased vending machines. Pursuant to the agreement, Syal executed a promissory note and a security agreement. Included in the agreement was a provision whereby Syal would pay attorney fees, if any, occasioned by a default. Non-party Seaga assigned all its rights under these documents to Firestone Financial, appellee herein.

Ultimately, appellant Syal defaulted on the note, Firestone accelerated the balance, Syal returned the vending machines to Firestone, and the machines were sold resulting in a deficiency of $7,680.20. Appellant refused to pay the deficiency, and appellee instituted proceedings in the Parma Municipal Court in March 2003. In the Complaint, Firestone demanded judgment for the deficiency and $1,920 in attorney fees.

On April 23, 2003, appellant removed the action from the Parma Municipal Court to the United States District Court for the Northern District of Ohio. After many filings and attempts to join parties in the federal court, the case was returned to the Parma Municipal Court in May 2004, with a finding that the federal court lacked subject matter jurisdiction insofar as the amount in controversy did not exceed $75,000.

Once back in the Parma court, appellee Firestone filed a motion for summary judgment to which appellant responded. Summary judgment for the amount of the deficiency was granted on January 13, 2005, and a date was set to determine the amount of reasonable attorney fees. On March 16, 2005, the court found reasonable attorney fees to be $7,782.26. It is **only** from the attorney fee portion of the court's order that appellant appeals.

Appellant's first argument is that contracts to pay attorney fees are unenforceable in commercial transactions, and that such agreements are contrary to public policy. I fully concur with the majority: that is not the law in the State of Ohio, nor has it been

for over a decade. *First Capital Corp. v. G and J Industries, Inc.* (1999), 131 Ohio App.3d 106, 721 N.E.2d 1084; *Gaul v. Olympia Fitness Center* (1993), 88 Ohio App.3d 310, 623 N.E.2d 1281; *Gordon Food Service Inc. v. Ahmed, M.D.* (Jan 21, 1999), Cuyahoga App. No. 74890. However, as explained below, I do depart from the majority's holding that this matter should be returned to the trial court to determine whether the agreement was made by parties with equal bargaining power, with no coercion or duress.

Appellant's second issue (apparently not addressed by the majority because of its holding to reverse and remand) is that the fees charged were not reasonable. He argues that plaintiff's counsel should have hired an attorney who officed nearer to the Parma Municipal Court, as two hours round trip drive time to attend two pretrials impermissibly ran up the bill and "to attempt to pass the bill to Mr. Syal for that decision is incredulous." (sic)

I find ample evidence that the fees charged were more than reasonable. The record is clear that the fees immediately after filing were less than $2,000. Appellant's one-year "trip" to federal court, and summary judgment practice in the Municipal Court defending a less-than $8,000 claim, resulted in the remaining fee. If there is disproportionality between the underlying judgment and the fee, it appears to be exclusively due to the activities of appellant. Accordingly, I find no merit to appellant's attack on the reasonableness or necessity of the fee.

All of the issues involving the validity of the agreement itself (duress, coercion, bargaining power, etc.) were, or should have been, resolved in the motion for summary judgment. No appeal has been taken from that ruling, and hence the validity of the contract is now the law of the case. There is no need to reverse this matter and remand it to the trial court; the ruling of the trial court is complete and without error. I would affirm.