COURT OF APPEALS
STATE OF GEORGIA

GIACOMO BELLOMO,

Appellant,

v.

TECH MAHINDRA (AMERICAS), INC.,

Appellee.

Appeal No. A24A1174

BRIEF OF APPELLEE TECH MAHINDRA (AMERICAS), INC.

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INTRODUCTION

Nearly seven years ago, Appellant brought a baseless conspiracy claim against Tech Mahindra (Americas), Inc. ("TechM") for engaging in a legitimate, arms'-length business transaction. TechM knew that it had not engaged in conspiracy, so it offered Appellant $10,000 to settle out of a case it never belonged in in the first place. Appellant refused TechM's offer. TechM was later dismissed by the Trial Court, this Court affirmed the dismissal, and certiorari review of that decision was denied. After being forced to spend millions of dollars on attorneys' fees to defend against Appellant's efforts to litigate a meritless claim, TechM sought to recover its attorneys' fees under O.C.G.A. § 9-11-68 ("Rule 68").

Rule 68 mandates that attorneys' fees be awarded to a defendant who makes a good faith offer to settle that is rejected, and thereafter the defendant obtains a final judgment of no liability. That is what occurred here: TechM obtained a final judgment of no liability. After reviewing a litany of evidence demonstrating TechM's good faith in making its settlement offer as well as the reasonableness of the attorneys' fees that TechM sought after obtaining a final judgment, the

Trial Court complied with its statutory mandate and awarded TechM its attorneys' fees and costs. In making its award, the Trial Court deducted $432,683.02 from the total fees and costs that TechM had sought based on Appellant's argument that he should not have to pay for discovery-related fees that TechM purportedly would have had to incur responding to discovery as a third-party (that presumably would have been served with subpoenas in connection with this case). The Court should affirm the Trial Court's decision because it is reasonable and well-reasoned and, therefore, afforded appropriate deference.

PART ONE: STATEMENT OF ADDITIONAL MATERIAL FACTS AND APPELLANT'S MATERIAL INACCURACIES[1]

Appellant's brief omits important facts and misstates others. The following additional material facts are necessary to understand the issues presented on appeal.

A. This Action's Factual Backdrop

Appellant's claims in this action arose out of alleged misconduct by his former employer, Avion Systems, Inc. ("Systems"), Kanchana Raman, Systems' owner, and other Raman-owned companies. In

[1] Where appropriate, TechM will cite to the record on Record on Appeal in *Tech Mahindra (Americas), Inc. v. Giacomo Bellomo*, A22A1068 (Mar. 1, 2022), which is TechM's cross-appeal in this action previously reviewed by this Court, using the format "(TechM V__-p.__)". Citations to Appellant's Record on Appeal use the format "(V__-p.__)".

January 2015, Appellant obtained a $304,667.85 judgment against Systems in a litigation to which TechM was not a party. (TechM V.8-p.1735–1736.) Appellant evidently had difficulty collecting on that judgment, which is not surprising because the record shows that beginning in 2013 (two years before Appellant obtained his judgment), Systems was in default on nearly $8 million it owed to its secured lender, Fifth Third Bank ("Fifth Third"). (V.3-p.401–402.) In exchange for its line of credit with Fifth Third, the bank had a first-priority, recorded lien on all of Systems' assets. (*Id.*) Appellant had nothing to collect on and the record shows that he was aware of Systems' default to Fifth Third as early as December 30, 2013. (V.7-p.1441–1442; p.1458–1459.)

In fact, as of December 30, 2013, Systems was in default to Fifth Third on debt of no less than $7.894 million. (V.3-p.402.) The only reason Fifth Third had not liquidated Systems' assets is that Systems and the bank were parties to a Forbearance and Modification Agreement ("Forbearance Agreement"), dated December 30, 2013, and a series of modifications to it between April 2014 and October 2014. (V.3-p.401–405.) Ms. Raman was a party to the Forbearance Agreement and

personally responsible as a guarantor of Systems' defaulted debt. (V.3-p.402.)

Absolutely unconnected to Appellant or his 2015 judgment against Systems, TechM was introduced to Ms. Raman (Systems' owner) in 2014. (V.3-p.405–406.) TechM is a leading provider of information technology (IT) services and consulting, and it met with Ms. Raman because it understood she was interested in pursuing a business venture with the company. (V.3-p.406.) In April 2014, Ms. Raman and representatives of TechM began arms'-length negotiations concerning a potential business venture which would require an investment by TechM. (*Id.*) The parties engaged in extensive negotiations concerning the terms on which an investment might be made, its size, and structure. (*Id.*) From the start of the discussions, Ms. Raman indicated a desire to sell off the part of Systems' business that performed telecommunications projects (Systems also had other lines of business). (*See* TechM V.8-p.1730.) TechM was not aware of the Forbearance Agreement during the negotiations, but Fifth Third's continued pressure on Ms. Raman to either find a purchaser for Systems or the bank would foreclose its lien on Systems' assets unquestionably was the

driving force behind Ms. Raman's negotiating position. (TechM V.8, p.1726–1727.)

Fifth Third was closely monitoring the negotiations between TechM and Ms. Raman. The bank was pushing Systems and Ms. Raman to finalize an agreement with TechM. (TechM V.11-p.2386, 50:7-12.) The negotiations between the parties continued through November 2014. On November 17, 2014, which was a deadline imposed by Fifth Third under the Forbearance Agreement, the parties signed three definitive agreements memorializing a transaction under which TechM agreed to invest up to $6 million in Avion Networks, Inc. ("Networks"), which was newly formed for purposes of the transaction. (V.3-p.407–408.)

The Networks transaction was memorialized nearly two months before Appellant obtained his January 2015 judgment against Systems. In July 2017, Appellant commenced this action against Systems, Ms. Raman, Networks, and TechM alleging that the parties' legitimate business venture was a fanciful conspiracy concocted to avoid having to satisfy Appellant's judgment against Systems. The allegations made no sense when viewed objectively. Discovery in this action showed that

Appellant and his counsel were aware of the existence of the Forbearance Agreement and Fifth Third's involvement as Systems' secured lender before Appellant filed this case. (V.7-p.1441–1442; p.1458–1459.) Appellant and his counsel were also aware in July 2017 that there was zero evidence supporting a claim that TechM conspired with Systems and Ms. Raman to hinder Appellant's efforts to satisfy his 2015 judgment against Systems. Nonetheless, this case followed.

B. TechM's Offer of Judgment

TechM knew this case had no merit from the beginning because TechM had no knowledge of Appellant, his prior employment-related litigation against Systems, or his 2015 judgment against Systems until after this case was filed in July 2017. That much was clear. As a result, TechM believed that its exposure was minimal and Appellant's prospects for recovery against TechM low. Therefore, on October 23, 2017, TechM served Plaintiff with an Offer of Settlement of $10,000. Appellant rejected TechM's Offer of Settlement on November 21, 2017. (V.5-p.1261–1266.)

C. TechM Obtains a Dismissal of this Action

Immediately before jury selection was to start, Appellant and the non-TechM defendants announced a settlement in open court. TechM

then moved to dismiss because Appellant's settlement meant that the dismissal of the fraudulent conveyance claim on which Appellant's only remaining claim—civil conspiracy—could not survive as a standalone claim. The Trial Court agreed and granted TechM's motion to dismiss. (V.5-p.1202–1205.)

The Court of Appeals affirmed the Trial Court's dismissal. Appellant petitioned the Georgia Supreme Court for a writ of certiorari on November 11, 2022, which the Supreme Court denied on June 21, 2023. *Giacomo Bellomo v. Tech Mahindra (Americas), Inc.*, A22A0859, November 1, 2022; *cert denied*, S23C0370, June 21, 2023. Once the action was remitted to the Trial Court, the Trial Court entered a final judgment of no liability on July 11, 2023, triggering TechM's right to recover attorneys' fees under Rule 68. (V.6-p.1698.)

D. TechM Moves for Attorneys' Fees and Costs

After defeating all of Appellant's attempts to appeal dismissal, TechM moved to recover the attorneys' fees and costs that Appellant had forced it to incur by rejecting TechM's good faith offer to settle the case.

On April 28, 2023, TechM moved for attorneys' fees and costs under Rule 68. In that motion, TechM sought the fees and costs incurred between Appellant's rejection of its Offer of Settlement November 21, 2017 and the Trial Court's dismissal on September 27, 2021, totaling $1,250,824.12 in attorneys' fees for 2,464.70 hours of work and $417,863.77 in expenses to defend against Appellant's suit. (V.5-p.1228–1233.)

On June 30, 2023, TechM filed a supplemental motion for attorneys' fees under Rule 68 to include fees and costs incurred after the Trial Court's dismissal through work on the appeals and motion for attorneys' fees, for the time period of September 28, 2021 through June 27, 2023. Between September 28, 2021 and June 27, 2023, TechM incurred $413,441.00 in attorneys' fees for 751.41 hours of work and $81,285.46 in expenses to defend against Appellant's suit. (V.6-p.1457–1464.)

On August 23, 2023, Appellant filed a Request for Evidentiary Hearing on TechM's attorneys' fees motion. In the same request, Appellant, for the first time, requested that TechM produce the invoices at issue. (V.7-p.1730–1735.) The Trial Court then noticed an evidentiary

hearing for September 8, 2023, and directed the parties to file all hearing exhibits into the record at least one day prior to the hearing. (V.7-p.1736–1738.) The Trial Court requested that TechM provide its invoices for *in camera* review, which TechM did. (V.9-p.2336, ll. 12–14.) TechM produced its invoices to Appellant's counsel's on September 5, 2023. The following day, TechM moved to file the hearing exhibits under seal, which Appellant did not oppose. (V.7-p.1739–1743.) TechM redacted the invoices only to the extent they included fees outside the time periods for which recovery was sought. (V.8-p.1816–1946.) Nor did Appellant object to the invoices being authenticated during the evidentiary hearing and entered into evidence. (V.9-p.2392, ll. 5–23.)

The Trial Court held a three-hour evidentiary hearing on TechM's motion for attorneys' fees on September 8, 2023. (V.7-p.1736–1738.) In addition to detailed and thorough questioning by the Trial Court, Appellant's counsel cross-examined TechM's primary counsel, Mr. Philip, D. Robben, Esq., about his views on the merits of the case, the Offer of Settlement, his experience, and the reasonableness of services provided to TechM and corresponding rates. (V.9-p.2327–2428.) Appellant's counsel had the opportunity to examine other TechM

attorneys or call other witnesses, but declined to do so. (V.9-p.2338, ll. 24–25; p. 2339, ll. 1–2; p.2409, ll. 2–4.)

At the end of the evidentiary hearing, the Trial Court explicitly found that TechM's Offer of Settlement was made in good faith (V.9-p.2422, ll. 9–11; p.2431, ll. 12–18), but provided the parties an opportunity to provide supplemental authority on: (i) whether the Court is required to make specific written findings of facts when entering an award under Rule 68; (ii) the methodology for adjusting the amount of an attorneys' fees award under Rule 68; (iii) whether the Court may consider the prevailing market rate for attorneys' fees in New York—i.e., the location of the law firm that TechM retained in this action—to determine the reasonableness of hourly rates or must it apply the market rate for Atlanta, which is the venue of the litigation; (iv) whether, under Rule 68, TechM may recover attorneys' fees incurred while this case was on appeal and before the entry of final judgment; and (v) whether TechM may recover attorneys' fees incurred in connection with its applications for attorneys' fees. (V.9-p.2429–2438.) Both parties submitted supplemental briefing regarding these questions. (V.9-p.2318–2324.)

After conducting the evidentiary hearing and reviewing the parties' supplemental briefing, the Trial Court awarded TechM $1,730,731.33 in attorneys' fees and costs, $432,683.02 less than what TechM sought, reasoning that TechM would have had to engage in discovery even if it were a non-party. (V.9-p.2325–2326.) The Trial Court explicitly found that TechM provided documentation of its incurred costs and expenses, that "TechM has demonstrated that its offer was valid and made in good faith," and therefore it was "entitled to recover attorneys' fees and costs from Plaintiff incurred defending this case from the time Plaintiff rejected the offer until judgment was entered finding no liability as to TechM, pursuant to O.C.G.A. § 9-11-68." (V.9-p.2326.) This appeal followed.

PART TWO: APPELLEE'S ARGUMENTS AND CITATION OF AUTHORITIES

A. Standard of Review

This Court reviews awards of attorneys' fees for abuse of discretion. *Shaha v. Gentry*, 359 Ga. App. 613, 614 (2021). For there to be a finding of abuse of discretion, Appellant must show "either that the trial court's ruling was unsupported by any evidence of record or that its ruling misstated or misapplied the relevant law." *Coastal Bank v.*

Rawlins, 363 Ga. App. 627, 631–32 (2022). Under the abuse of discretion standard, "when questions are committed to a trial court's discretion, the court is afforded substantial deference that allows for a range of permissible outcomes[.]" *Premier Pediatric Providers, LLC v. Kennesaw Pediatrics, P.C.*, 318 Ga. 350, 358 (2024). Appellant's argument that the Trial Court should be given less deference because the Trial Court was not the presiding judge over the entire lifetime of the case is unavailing. (App. Br. at 13.) The Trial Court had intimate knowledge of the entire case record, heard and decided the parties' respective motions to dismiss and summary judgment, and heard from the parties and reviewed the evidence on the motion for attorneys' fees. This Court lacks the same intimate familiarity with the record and should afford due deference to the Trial Court's determinations. *See Gen. Motors Corp. v. Blake*, 237 Ga. App. 426, 427 (1999) ("The appellate court, which is far removed from the unfolding development in the life of a case in court and does not participate in its ongoing journey, is therefore bound to respect the exercise of the trial court's discretion and reverse it only if it is manifestly abused.").

In considering TechM's motion for attorneys' fees, the Trial Court acted as the factfinder. Importantly, "[w]here the trial court is the factfinder, [the Court of Appeals] construe[s] the evidence in the light most favorable to support the court's judgment and will uphold the court's factual findings on appeal if there is *any* evidence to support them." *Tolson v. Sistrunk*, 332 Ga. App. 324, 325 (2015) (emphasis added). On appeal, this Court must not substitute its judgment for that exercised by the trial court in awarding fees and costs "when there is some support for the trial court's conclusion." *Great W. Cas. Co. v. Bloomfield,* 313 Ga. App. 180, 183 (2011); *see also Penland v. Corlew*, 248 Ga. App. 564, 566–67 (2001) ("[I]t is clearly settled in Georgia that the appellate courts will not disturb the trial court's exercise of its discretion unless a manifest abuse of discretion is shown or there was no evidence on which to base the ruling."). Here, there was—at least—"some support" for the Trial Court's attorneys' fee award, and the Trial Court did not abuse its discretion in making the award.

B. The Trial Court Correctly Found That TechM's Offer of Settlement Was Made In Good Faith

Whether an offer to settle a claim was made in good faith is a factual determination to be made by the trial court. The determination

is "based on the trial court's assessment of the case, the parties, the lawyers, and all of the other factors that go into such a determination, which the trial court has gathered during the process of the case." *Great West Cas. Co. v. Bloomfield*, 313 Ga. App. 180, 183 (2011). "A trial court may not [] base a ruling exclusively on [] objective factors but is instead required to consider the offeror's explanation and then determine whether, despite consideration of the objective factors, the offeror had a *subjectively* reasonable belief on which to base its offer." *Coastal Bank v. Rawlins*, 363 Ga. App. 627, 631 (2022) (emphasis added) (internal citations and quotation marks omitted). In other words, the court must consider whether the offeror had a reasonable foundation on which to base its settlement offer: "whether the offeror has good faith rests on whether the offeror has a reasonable foundation on which to base the offer. So long as the offeror has a basis in known or reasonably believed fact to conclude that the offer is justifiable, [then] the good faith requirement has been satisfied." *Richardson v. Locklyn*, 339 Ga. App. 457, 460 (2016).

After a three-hour evidentiary hearing on TechM's motion, the Trial Court explicitly found that TechM's Offer of Settlement was made

in good faith. (V.9-p.2422, ll. 9–11; p.2431, ll. 12–18.) During the hearing, TechM's counsel, Mr. Robben testified that in his discussions with Appellant's counsel before the Offer of Settlement was made, he made it clear that he did not believe the case against TechM had any merit because it involved an arms'-length transaction. In an effort to facilitate further discussion and help Appellant understand why TechM believed the claims against it had no merit, Mr. Robben sent Appellant's counsel public documents that undercut some of Appellant's key allegations, including documents that demonstrated that Systems' property was covered by a lien in Fifth Third Bank's favor. (V.9-p.2355, ll. 11–25; p. 2356, ll. 1–4; p.2388, ll. 2–25.)

Among other things, Mr. Robben testified that TechM came to a $10,000 Offer of Settlement because it knew its own conduct and that it did nothing wrong. (V.9-p.2364, ll. 8–11.) Mr. Robben made it clear to Appellant's counsel from the start that he did not believe that TechM belonged in this lawsuit, that TechM had no knowledge of Appellant or his judgment when it engaged in the transaction with Systems, and that the public record showed that Fifth Third Bank had a lien over all of Systems' property. (V.9-p.2398, ll. 11–25.) Based on this knowledge,

TechM believed Appellant may have sued TechM by mistake, and offered settlement of $10,000 to cover Appellant's costs in mistakenly suing TechM. (V.9-p.2399, ll. 1–9.) Based on this and other testimony showing TechM's subjective intent, the Trial Court correctly found that the Offer of Settlement was made in good faith. *See Coastal Bank*, 363 Ga. App. at 631.

Appellant asserts that, in determining whether TechM's offer was made in good faith, the Trial Court was required to consider: whether the offer bore no reasonable relationship to the amount of damages, an unrealistic assessment of liability, or that the offeror lacked intent to settle the claim. (App. Br. at 14.) These factors are not mandatory in determining good faith. *See Coastal Bank v. Rawlins*, 347 Ga. App. 847, 851 (2018) (trial court "may" consider objective factors in determining good faith, including these).

Appellant bore the burden of showing that TechM's Offer of Settlement was not made in good faith. *Hillman v. Bord*, 347 Ga. App. 651, 655 (2018). Instead of meeting his burden, Appellant offered the Trial Court mere conjecture, while TechM explained to the Trial Court why it made the good faith offer of $10,000 to resolve the matter.

Appellant argues that TechM's offer was not made in good faith because it did not bear a reasonable amount to the damages sought by Appellant, it could not have been premised on a realistic assessment of liability, and TechM lacked intent to settle. (App. Br. 14–23.) But what matters is TechM's subjective belief concerning its offer to settle. TechM came to the figure of $10,000 for its Offer of Settlement because it always (correctly) believed that its exposure in this case was minimal.

TechM knew that it did not engage in a conspiracy—the only claim asserted against it. In his complaint, Appellant alleged that TechM conspired with the Non-TechM defendants to avoid paying Appellant's judgment. But, TechM concluded that Appellant's claim was meritless, and his potential for recovery low, because (among other things): (i) TechM had participated in a legitimate, arms' length business transaction with the Non-TechM defendants; and (ii), most importantly, TechM had no knowledge of the existence of Appellant's judgment until the day that this litigation was filed in July 2017. TechM, therefore, subjectively knew it could not have conspired with anyone to avoid paying a judgment that it was not even aware of. TechM analyzed that it, therefore, should face no liability for the

alleged conspiracy and made a settlement offer commensurate with that analysis.

TechM's basis for its position that its exposure was minimal was strengthened as the case progressed. TechM produced hundreds of documents reflecting the fact that its transaction with the Non-TechM defendants was a legitimate, arms' length business transaction during which both TechM and the Non-TechM defendants were advised and guided by lawyers and financial professionals. Discovery from non-party Fifth Third also revealed that Plaintiff's difficulties in collecting his judgment from Systems—Appellant's judgment-debtor—stemmed from the fact that Systems was in default to secured lenders with valid first-priority liens. (V.3-p.401–402.) It appears that Systems was judgment proof at the time Appellant sued it in 2013. In March 2013, Fifth Third refinanced more than $8 million that Systems owed to its prior secured lender, BB&T Bank ("BB&T"). (V.3-p.339.) Systems' debt to BB&T, on which it had defaulted, was secured by a perfected, first-priority lien on all of Systems' assets from May 2011 to March 28, 2013. (V.3-p.339.) On March 28, 2013, Fifth Third perfected its own first-priority security interest—covering all of Systems' assets—to secure the loan that

refinanced the BB&T debt. (V.3-p.340.) By December 30, 2013, if not before then, Systems was in default with Fifth Third, which it owed at least $7.894 million. (V.3-p.337.) Therefore, Appellant's difficulties in collecting his judgment had nothing to do with a fraudulent conveyance or conspiracy and nothing to do with TechM.

Appellant claimed that TechM conspired to facilitate a fraudulent conveyance that caused his collection difficulties by paying $3 million that was used to buy property Systems owned—and to pay down the debt that Systems owed to its secured lender, Fifth Third. There is no dispute that TechM's $3 million investment reduced Systems' indebtedness to Fifth Third by $3 million. Appellant argues that he did not have sufficient discovery to evaluate the Offer of Settlement (App. Br. at 18), but an offeree's reasons for rejecting an offer is irrelevant to the analysis of good faith. Regardless, Appellant made his allegations against the defendants, TechM included, even though he was aware of the default. He also knew that, at the time Systems transacted with TechM, Systems was operating under a Forbearance Agreement with Fifth Third, under which Systems promised to engage in the TechM transaction to pay down the defaulted balance. (V.7-p.1441–1442;

p.1458–1459.) Further, the depositions of TechM's corporate representative and Ms. Raman both confirmed that TechM had no knowledge of Appellant's judgment prior to the filing of this case and that Ms. Raman never told TechM about the judgment during the due diligence phase of the parties' transaction. (V.3-p.362.) This evidence reinforced TechM's early analysis of Appellant's case and TechM's assessment that Appellant's claims were meritless and should not lead to any recovery in his favor against TechM.

With respect to the value of TechM's offer in comparison to the amount of damages sought by Appellant, "Georgia courts have found offers far below the claimed damages to be in good faith." *Carter v. Hillstone Restaurant Group, Inc.*, 2021 WL 9699808, at *2 (N.D. Ga. June 7, 2021). In *Cohen v. The Alfred and Adele Davis Academy*, for example, the plaintiff sought to recover $600,000 and the defendant's settlement offer was $750—an offer that was only 0.1% of what the plaintiff sought to recover. *See Cohen*, 310 Ga. App. at 761; Plaintiff's Recasted, Restated and Amended Complaint for Damages, No. 2006CV115368 (June 18, 2007). The Georgia Court of Appeals affirmed the trial court's award of attorneys' fees under O.C.G.A. § 9-11-68,

reasoning that "because [defendant] reasonably and correctly anticipated that its exposure was minimal, the fact that it was willing to settle [plaintiff's] claims for a nominal value does not demand a finding that its offer was made in bad faith." *Cohen*, 310 Ga. App. at 763; *see also Richardson v. Locklyn*, 339 Ga. App. 457, 460, 793 S.E.2d 640, 643 (2016) ("In the context of a nominal offer of judgment, this court has held that where the offeror has a reasonable basis to believe that exposure to liability is minimal, a nominal offer is appropriate. Whether the offeror has a reasonable basis to support the offer is determined solely by the subjective motivations and beliefs of the offeror."). Here, TechM's $10,000 offer was approximately 3% of the value of Appellant's judgment—and nearly fifteen times greater than the offer in *Cohen*—an amount that clearly was not a bad faith offer.

Appellant relies on *Great W. Cas. Co. v. Bloomfield*, 313 Ga. App. 180 (2011) for the inaccurate proposition that a disparity between the offer of settlement and damages sought establishes lack of good faith. (App. Br. at 16.) *Great West* says nothing of the sort. Instead, in acknowledging the deference owed to trial courts, this Court refused to find that the trial court abused its discretion for not awarding

attorneys' fees; it made no independent findings regarding good faith. *Id.* at 183. There, the trial court had found an absence of good faith of an initial offer of $25,000 where the movant later offered $1 million, and the jury awarded damages in excess of $50 million. *Id.* at 182. The same escalation and liability are not present here; TechM at all times believed it would not be held liable and it was not.

Nor can Appellant establish an absence of good faith merely by speculating that, if he proved his claim, the jury might have found TechM liable for the entire amount he sought because fault for civil conspiracy is legally indivisible. (App. Br. at 14.) This is so because "[t]hat a jury could have awarded more than what [defendant] offered, besides being speculative, does not establish that [defendant's] offer did not bear a reasonable relationship to the damages." *See Andrews v. Autoliv Japan*, Ltd, 2017 WL 3207442, at *4 (N.D. Ga. July 28, 2017) (finding defendant's settlement offer reasonable and made in good faith in light of weak evidence of defendant's involvement in the events at issue).

Additionally, that TechM ardently defended itself in the lawsuit is not evidence that it believed its exposure was high. (App. Br. at 16–17,

19.) Corporate defendants have a significant interest in ardently defending against frivolous lawsuits (like this one), with the intent of deterring other potential plaintiffs from bringing spurious claims against a perceived deep pocket with the hope of squeezing out large settlements. TechM's engagement of qualified counsel and zealous defense against the claims made against it in this matter cannot, therefore, be questioned.

Appellant mischaracterizes the testimony of TechM's counsel to suggest that TechM lacked the intent to settle when it presented its Offer of Settlement. Mr. Robben testified that TechM believed it did not belong in the case at all when it made its Offer of Settlement, so much so that TechM thought Appellant may have made a mistake by suing it, and that the $10,000 would be enough to cover Appellant's costs associated with mistakenly suing TechM. (V.9-p.2399, ll. 1–9; p.2400, ll. 1–11.) Mr. Robben did not characterize the likelihood of Appellant accepting the Offer of Settlement as "farcical." (App. Br. at 21.) Rather, Mr. Robben testified that he did not want to enter a special appearance—to secure a confidentiality order under which TechM could provide Appellant with documents to assess whether to voluntarily

dismiss TechM from the case—due to the risk of waiving personal jurisdiction defenses. In response to questions suggesting such risk was justified by the possibility that Appellant might have agreed to discontinue the case, Mr. Robben commented that it was "farcical," in retrospect, to think that such efforts would have been successful since, in discovery, TechM learned that Appellant already had documents that demonstrated the frivolous nature of his claims against TechM in spite of which he pressed on with his frivolous case. (V.9-p.2357, ll. 12–25; V.9-p.2358, ll. 1–15; p.2389, ll. 16–19.) Mr. Robben's testimony makes clear that TechM's reasoning for the $10,000 amount was that it believed it had no liability, hoped Appellant was genuinely mistaken in suing it, and then realized Appellant purposefully brought it into this case not because of perceived merit but because TechM was thought to be a deep pocket. (V.9-p.2399, ll. 15–21.)

C. The Trial Court Did Not Abuse Its Discretion In Calculating Reasonable Attorneys' Fees and Costs

In deciding the amount of attorneys' fees to award, the Trial Court considered affidavits of counsel, detailed invoices showing all time billed by TechM's counsel, hourly rates, and descriptions of tasks, and testimony at the evidentiary hearing. The award included a portion of

the amount billed by TechM's counsel during the relevant time period, which the Trial Court determined was reasonable based on abundant evidence. The Trial Court reduced the full amount sought by TechM by $432,683.02—a 20% reduction—reasoning that TechM would have had engage in discovery even if it were a non-party.

i. The Trial Court Followed All Proper Methods for Calculating an Award

The Trial Court did not pull a number "out of thin air." (App. Br. at 24.) Indeed, the Trial Court's Order explains that it was awarding the total, reasonable amount sought by TechM, reduced by costs associated with discovery, because TechM would have had to produce documents under subpoena even if it were not a party to the action.

Even if the Trial Court reduced the total without employing a precise calculus, it had the discretion to do so. Trial courts possess the discretion to adjust the amount of an attorneys' fees award under Rule 68 by either an "hour-by-hour assessment" or an "across-the-board percentage" adjustment in the "number of hours claimed or in the final lodestar figure." *Otogenetics, Corp. v. Omega Biosciences, Inc.*, 2018 WL 11243794, at *6 (N.D. Ga. Aug. 29, 2018) (internal citation omitted). In determining a fee award under Rule 68 in *Andrews v. Autoliv Japan,*

Ltd., 2017 WL 3207442 (N.D. Ga. July 28, 2017), the district court adjusted the fee award by a blanket amount after calculating the lodestar amount, finding that "the court may, within its discretion, adjust the amount upwards or downwards based on a number of factors, such as the quality of the results obtained and the legal representation provided." *Id.* at *5.

ii. The Trial Court Granted Fees and Costs Through the Appropriate Time Periods

Appellant contends that the Trial Court erred in awarding TechM attorneys' fees and costs incurred after the Trial Court dismissed TechM on September 27, 2021. (App. Br. at 26.) But the Trial Court correctly found that Rule 68 encompasses fees incurred through work on appeals and the motions for attorneys' fees until a final judgment of no liability is rendered. The plain language of Rule 68 allows for the recovery of attorneys' fees and expenses of litigation when an offer of settlement is rejected by the plaintiff and the final judgment is one of no liability. O.C.G.A. § 9–11–68(b)(1). Here, the requirement that the final judgment is "one of no liability" was met only after the Georgia Supreme Court denied Appellant's request for certiorari review of this

Court's decision affirming the Trial Court's order dismissing Appellant's only claim against TechM.

This result is supported by Georgia precedent that a trial court's judgment "is not final [when] it is still on appeal." *Sec. Life Ins. Co. of Am. v. St. Paul Fire & Marine Ins. Co.*, 278 Ga. 800, 803 (2004) (finding the judgment was not final in a case "in which the principal [was] still engaged in contesting the extent of its liability" on appeal); *Lexington Devs., Inc. v. O'Neal Const. Co.*, 143 Ga. App. 440, 441 (1977) ("In Georgia a judgment is suspended when an appeal is entered within the time allowed. And the judgment is not final as long as there is a right to appellate review."); *Chlupacek v. Chlupacek*, 226 Ga. 520, 521 (1970) (concluding that "[t]he judgment cannot be treated as final so long as either party has the right to have it reviewed by the Supreme Court.").

Here, the Trial Court only entered a "final judgment" of "no liability" on July 11, 2023, once the action was remitted to the Trial Court. Although Appellant filed an appeal of the Trial Court's "final order" granting TechM's motion to dismiss the sole claim alleged against TechM ("Dismissal Order"), issued on September 27, 2021, the Dismissal Order was not a final judgment of no liability. The Trial

Court only entered a final judgment of no liability in favor of TechM (based on the Dismissal Order) upon remittitur. Therefore, under the plain language of the statute, the requirement of a "final judgment" of no liability was met on July 11, 2023. *See Cohen v. Alfred & Adele Davis Acad., Inc.*, 310 Ga. App. 761, 764 (2011) (allowing an award for fees incurred for the time period after plaintiff filed a notice of appeal and up until the trial court entered a judgment based on a previous order granting a motion for summary judgment); *Med. Ctr. of Cent. Georgia, Inc. v. Cancel*, 356 Ga. App. 529, 532 (2020) (contemplating that a motion for Rule 68 attorney fees may be filed after the trial court entered final judgment upon remittitur).

TechM was also entitled to recover costs incurred for work on the attorneys' fees motion because they were incurred before July 11, 2023, when the Trial Court entered a "final judgment" of "no liability" once the action was remitted to the Trial Court.

iii. The Amount Awarded Was Reasonable

Contrary to Appellant's assertions, all that is required to show the value and reasonableness of attorneys' fees is "evidence of [] hours worked and rates charged." *Georgia Dep't of Corr. v. Couch*, 322 Ga.

App. 234, 239 (2013). TechM provided all relevant invoices which reflect the timekeeper, their rate, time billed, a description of the services provided, and that a 20% discount was applied to all hours billed. Additionally, during the evidentiary hearing, TechM provided extensive testimony describing the experience of TechM's counsel (V.9-p.2396, ll. 20–25; p. 2397 ll. 1–9) and the reasonableness of their rates (V.9-p.2397, ll. 22–25; pp.2400–2405). Such evidence provided the Trial Court with a firm basis on which to base its finding of reasonableness. *See Shaha v. Gentry*, 359 Ga. App. 613, 614 (2021) (fees found reasonable where the evidence showed time billed, services provided, hourly rates, and experience level of attorneys).

TechM's counsel's discounted hourly rates are reasonable for both the Atlanta and New York markets. In *Taylor v. Devereux Foundation, Inc.*, the Georgia Supreme Court held that rates higher than those charged by Kelley Drye & Warren LLP ("Kelley Drye")—TechM's primary counsel—were reasonable in Atlanta. 316 Ga. 44 (2023). The *Taylor* court determined that hourly rates in the range of $625, $875, and $900, depending on experience level, were reasonable when examining a contingency fee. *Id.* at 93. These rates are higher than the

discounted rates Kelley Drye charged TechM. Additionally, in a case decided nearly six years ago, *Andrews v. Autoliv Japan, Ltd.*, 2017 WL 3207442 (N.D. Ga. July 28, 2017), the court found hourly rates of $715 and $575, discounted by 15% for billing in the case, reasonable in the Atlanta market, which are higher rates than those charged for the majority of the Kelley Drye time-keepers who worked on this case. *Id.* at *6.

Finally, Appellant incorrectly argues that the Trial Court erred by not including the factual bases for its decision awarding attorneys' fees. (App. Br. at 34.) There is no such requirement. This Court has held that the Rule 68 imposes no requirement to make "written findings of facts or conclusions of law" when an offer of settlement was made in good faith. *Cohen v. Alfred & Adele Davis Acad., Inc.*, 310 Ga. App. 761, 764 (2011). Based on the plain language of the statute itself, written findings are only required when the trial court finds an absence of good faith, which is not the case here. O.C.G.A. § 9-11-68(d)(2).

CONCLUSION

Based on the foregoing, Appellee respectfully requests that this Court affirm the Trial Court's Order awarding attorneys' fees and costs to TechM.

This submission does not exceed the word count limit imposed by Rule 24.

Respectfully submitted this 20th day of May, 2024.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day caused this "Brief of Appellee Tech Mahindra (Americas), Inc." to be served on the following counsel of record in the foregoing matter via e-mail and U.S. Mail, with adequate postage affixed thereto, as follows:

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This 20th day of May, 2024.

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