No. A25A2013

In the
Court of Appeals of the State of Georgia

LEGACY FORD OF MCDONOUGH, INC.,

Appellant,

v.

MICHAEL REYNOLDS,

Appellee.

On Appeal from the State Court of Fulton County
Civil Action File No. 23EV004076

APPELLANT'S BRIEF

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Respectfully submitted this 1st day of July, 2025.

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INTRODUCTION

This is a case of an unconsummated trade-in deal of a vehicle for lack of financing. Plaintiff/Appellee Michael Reynolds sought to trade in his Freightliner for an F-250 at Defendant/Appellant Legacy Ford of McDonough, Inc. However, the deal was subject to credit approval, and there was no evidence of credit approval at trial. Indeed, between credit preapproval and the time to submit the final credit application, Mr. Reynolds compromised the value of the Freightliner, thereby rendering credit unavailable. Mr. Reynolds nonetheless sued to get his trade-in deal.

Legacy Ford moved for directed verdict on the basis that no enforceable contract existed because, *inter alia*, there was no mutual assent and the alleged agreement violated the Statute of Frauds. Further, Mr. Reynolds's attorneys failed to establish the reasonableness of their fees.

The trial court denied the motions for directed verdict. Instead, it allowed the jury to return a Verdict of $74,000 in damages and $20,000 in attorney's fees. This appeal follows. Legacy Ford requests that the Court vacate the judgment and remand with instruction that the trial court to enter a directed verdict in favor of Legacy Ford.

STATEMENT OF JURISDICITON

This is a direct appeal from the final judgment entered on a jury verdict in a civil action. The final judgment was entered on April 8, 2025, and Appellant filed its Notice of Appeal on May 8, 2025. Accordingly, the appeal is timely.

The issues raised in this appeal do not fall within the exclusive jurisdiction of the Supreme Court of Georgia as defined by Article VI, Section VI, Paragraph III of the Constitution of the State of Georgia. Accordingly, this Court has jurisdiction pursuant to Article VI, Section V, Paragraph III of the Georgia Constitution and O.C.G.A. § 15-3-3.1(a)(6).

ENUMERATION OF ERRORS

1) The trial court erred by denying the motion for directed verdict because there was no evidence presented at trial to support a finding that a contract existed between Mr. Reynolds and Legacy Ford.
2) The trial court erred by denying the motion for directed verdict because, if a contract existed, then it was unenforceable under the Statute of Frauds. (R
3) The trial court erred by allowing the jury to award attorney's fees without evidence of the reasonableness of those fees.

STATEMENT OF THE CASE

This appeal arises from a dispute between Plaintiff/Appellee Michael Reynolds and Defendant/Appellant Legacy Ford of McDonough, Inc. ("Legacy Ford") concerning an attempted vehicle trade-in that occurred on or about August 29, 2014. Mr. Reynolds attempted to trade in a commercial tractor-trailer known as a Freightliner for a Ford F-250 truck. Legacy Ford conditionally agreed to accept the

vehicle for trade-in for proposed terms, pending a satisfactory appraisal and credit approval.

I. The Parties Negotiate the Trade-in Value Based on New Tires.

Mr. Reynolds initially presented the Freightliner with new tires, which significantly contributed to the Legacy Ford's appraised trade-in value of $34,000. This was reflected in the Customer Trade-in Evaluation Survey, which states at the top, "TRUCK HAS NEW TIRES." (R1-335 (Trial Transcript ("TT") at 282)). Because Mr. Reynolds still owed $24,630, he had $9,730 of equity in the Freightliner that would be applied to his down payment as part of the preapproved financing.

Mr. Reynolds executed a Buyer's Order for the F-250 that was admitted as evidence at trial. (V1-305 (TT at 253). The Buyer's Order provided that the trade-in value of the Freightliner was $34,000, based in part on the new tires. The Buyer's Order further states, "Balance of Cash Price or Amount to Finance: 27946.79." (*Id.*). It was undisputed that Mr. Reynolds would use financing for the transaction, and he did not propose purchasing the F-250 with cash.

The next document that Mr. Reynolds signed was the Georgia Vehicle Retail Installment Contract ("Proposed Installment Contract"), which was admitted as evidence at trial. (R1-310 (TT at 258-59)). This document described the proposed details for Mr. Reynolds to finance the F-250 through Ford Motor Credit, and it stated that his equity in the trade-in was valued at $9,370.00. (*Id.*). Legacy Ford did

not execute the Proposed Installment Contract, as it first had to finalize the terms of the credit arrangement, which included the submission of a credit application with an accurate trade-in value.

While it was finalizing the terms of the deal with the financial institution, Legacy Ford allowed Mr. Reynolds to take possession of the F-250 and leave the Freightliner at the dealership. To do so, Mr. Reynolds executed a Bailment Agreement, which was also admitted as evidence at trial. (R1-334 (TT at 281)). It was undisputed that the bailment agreement provided the following terms:

> Pending credit approval of Purchaser(s) by a financing institution and completion of the sales transaction, delivery of the described vehicles by Dealership is hereby made to Purchaser(s) as a convenience to Purchaser(s) and is subject to all terms and conditions in said Sales Order and the promissory note and security agreement, if any, executed concurrently of in accordance therewith said vehicle shall remain the property of the Dealer.

(*Id.*).

II. Mr. Reynolds Devalued the Freightliner by Switching out the New Tires for Used Tires, Thereby Rendering Credit Unavailable.

After the initial inspection of the Freightliner and prior to finalizing the credit application, Legacy Ford discovered that Mr. Reynolds had removed the new tires and replaced them with worn, bald tires. This alteration materially diminished the value of the trade-in and rendered the prior valuation inaccurate and unusable for a credit application. (R1-370 (TT at 286:13-22)).

As a result, Legacy Ford could not finalize and submit the paperwork for the credit application. There was no evidence that Mr. Reynolds offered to pay cash or secure his own financing. When Mr. Reynolds failed to surrender the vehicle as required by the Bailment Agreement, Legacy Ford repossessed the F-250. (R1-141 (TT at 88:8-9)).

III. Mr. Reynolds Filed Suit for Breach of Contract.

After filing and dismissing suit in the State Court of Henry County, Mr. Reynolds filed suit against Legacy Ford in State Court of Fulton County, claiming breach of contract and conversion.[1] (R1-8). He alleged that the terms of the contract had been finalized when he left Legacy Ford with the F-250. Legacy Ford breached the contract by failing to submit the application for credit. By repossessing the F-250 after he had bought it, Legacy Ford caused his furniture delivery business to collapse. (*Id.*).

At the trial, Mr. Reynolds argued that he and Legacy Ford had entered into an enforceable contract when Mr. Reynolds agreed to the terms of the Proposed Installment Contract. (R1-438 (TT at 354:3-20)). He testified that, before he accepted the terms of the offer for trade-in, he told a Legacy Ford sales representative that he had switched the tires on the Freightliner, so that information was baked into

[1] The Court entered a directed verdict for Legacy Ford as to the conversion claim. (R1-211 (TT at 158:21-22)).

the terms of the offer that he had accepted. (R1-140 (TT at 87:13-20)). According to Mr. Reynolds, Legacy Ford breached the contract by not submitting the credit application for approval. (R1-488 (TT at 365:12-18)).

Legacy Ford moved for a directed verdict on the basis that there was no enforceable contract due to lack of mutual assent because the deal was contingent on financing. (R1-202 (TT at 149:1-10)). Further, Legacy Ford argued that any contract would not be enforceable under the Statute of Frauds. (R1-203 (TT at 150:16-20)). Appellant also moved for directed verdict on attorney's fees because there was no evidence of reasonableness. (R1-419 (TT at 335:15-19)). The trial court denied all of the motions. (R1-211 (TT at 158:22-23)).

The jury returned a Verdict that stated, "We, the jury, find in favor of the Plaintiff Michael Reynolds in the amount of $74,000.00." (R1-74). The Verdict also stated, "We, the jury, find that Defendant Legacy Ford of McDonough, Inc., acted in bad faith or has been stubbornly litigious or has caused the Plaintiff unnecessary trouble and expense. We award Plaintiff $20,000.0 in attorney's fees." (*Id.*).

ARGUMENT

The trial court reversibly erred when it denied Legacy Ford's various motions for directed verdict. A directed verdict is proper "[i]f there is no conflict in the evidence as to any material issue and the evidence introduced, with all reasonable deductions therefrom, shall demand a particular verdict[.]" *Vickery Insurance*

Agency, Inc. v. Chambers, 215 Ga. App. 48, 50 (1994). "On appeal from the denial of a motion for a directed verdict or for j.n.o.v., [this Court] construe[s] the evidence in the light most favorable to the party opposing the motion, and the standard of review is whether there is any evidence to support the jury's verdict." *Legacy Academy, Inc. v. PACU Enterprises, Inc.*, 349 Ga. App. 403, 403 (2019) (internal citation and quotation marks omitted). In other words, when the evidence demands a different verdict, the trial court errs by not directing the verdict according to the evidence.

I. The Trial Court Erred by Denying the Motion for Directed Verdict Because There Was No Evidence Presented at Trial to Support a Finding that a Contract Existed Between Mr. Reynolds and Legacy Ford.

The trial court erred by denying Legacy Ford's motion for directed verdict on the basis that there was no evidence of an enforceable contract. First, there was no evidence that Mr. Reynolds and Legacy Ford mutually assented to the same material terms of a contract because the condition precedent of financing never occurred. Second, the Legacy Ford salesperson lacked authority to bind Legacy Ford to a credit agreement.

A. There Was No Evidence of Mutual Assent Because the Condition Precedent of Credit Approval Never Happened.

The evidence at trial was undisputed that Mr. Reynolds never received credit approval to trade the Freightliner for the F-250, and therefore the trial court erred by denying a directed verdict as to breach of contract. This Court has held that if an

agreement is subject to credit approval and that credit approval never occurs, then there was no "meeting of the minds or mutuality." *AgriCommodities, Inc. v. J.D. Heiskell & Company, Inc.*, 297 Ga. App. 210, 211 (2009).

1. Mutual Assent as a Requirement for Contract Formation

Mutual assent is a cornerstone of contract law in Georgia. *See, e.g.*, *Fraser v. Jarrett*, 153 Ga. 441, 442 (1922) ("There must be mutual assent by the parties . . ., and they must assent to the same thing in the same sense."). "The consent of the parties being essential to a contract, until each has assented to all the terms, there is no binding contract; until assented to, each party may withdraw his bid or proposition." O.C.G.A. § 13-3-2.

"In order to make a binding contract, both parties must assent to the same thing." *Fletcher v. C.W. Matthews Contracting Co., Inc.*, 322 Ga. App. 751, 753 (2013) (internal alterations and citation omitted).

> In determining whether there was a mutual assent, courts apply an objective theory of intent whereby one party's intention is deemed to be that meaning a reasonable man in the position of the other contracting party would ascribe to the first party's manifestations of assent, or that meaning which the other contracting party knew the first party ascribed to his manifestations of assent.

McKenna v. Capital Resource Partners, IV, L.P., 286 Ga. App. 828, 832 (2007). Said another way, in deciding whether there was a meeting of the minds, courts look to the contract's express language, as well as to relevant extrinsic evidence of

correspondence and discussions. *Cox Broad. Corp. v. Nat'l Collegiate Athletic Ass'n*, 250 Ga. 391, 395 (1982).

The evidence construed in favor of the jury verdict does not sustain a finding that the Parties agreed to the material terms of the trade-in. It is undisputed that Mr. Reynolds believed he had a deal when left the dealership based on credit preapproval to the terms of the deal. It is also undisputed that Legacy Ford knew that preapproval was not final approval, and that it had to finalize further details to secure financing before the deal could close.

2. Credit-Approval as Material Term to Contract Formation

This case is analogous to the facts in *AgriCommodities, Inc. v. J.D. Heiskell & Company, Inc.*, 297 Ga. App. 210, 211 (2009). In that case, the parties entered into an agreement contingent upon credit approval that was never given, so this Court affirmed the trial court's grant of summary judgment on the basis that no contract existed. Specifically, the parties entered into an agreement "for the purchase of sixteen truck loads of cottonseed at $130 per ton to be delivered at the rate of two truckloads per month from January 2004 through August 2004." 297 Ga. App. at 211. This deal was reduced to writing in "a confirmation sheet to both parties setting out the terms of the sale, and noting 'Subject to Credit Approval.'" The appellant testified that he received a credit application from the appellee, completed it, and faxed it to the appellee. However, the appellant also testified that he did not "receive

written or oral notification from [appellee] approving or disapproving the credit application." *Id.*

In affirming the trial court's grant of summary judgment, this Court observed, "It is clear from the confirmation sheet that any trade between [appellant] and [appellee] was contingent upon [appellant] receiving credit approval from [appellee]." *Id.* at 214. Because there was no evidence that approval was ever given, "there was no mutuality." This Court specifically held:

> While [appellant] and [appellee] had reached an agreement on the amount and price of cottonseed, there is no evidence that [appellant] ever received credit approval from [appellee]. Accordingly, there was no valid agreement.

Id.

Similar to this case, the appellant even argued that the confirmation sheet memorializing the terms was sufficient to form an enforceable contract. *Id.* at 215. The Court rejected this argument, specifically holding:

> Even though the UCC makes contracts easier to form by providing that they may be formed through conduct rather than merely through the exchange of communications constituting offer and acceptance, there still must be some evidence of a valid and enforceable agreement between the parties. . . . [T]he alleged contract here was not enforceable, and [the] confirmation does not render an unenforceable contract enforceable.

Id.

3. No Evidence of Credit Approval

There was no evidence that credit had ever been approved for this deal. Indeed, Mr. Reynolds never testified that he offered to secure his own financing or that he would pay for the F-250 in cash. Instead, he simply refused to return the F-250, claiming that he deal was done. (R1-140 (TT at 87:25-88:5)).

Legacy Ford's representatives testified that the deal was not done because it could not get credit with the trade-in's reduction in value. Justin Murray, the Fixed Operations Manager of Legacy Ford, testified as follows:

> Q: Earlier you testified on cross-examination that the papers were not -- the loan documents were not completely -- they were not submitted to the bank. Can you explain that?
>
> A: Yeah. So what I meant by that way the original preapplication was submitted to the bank but it was contingent based upon the terms of the deal. The terms of the deal, unfortunately, had been altered so we could [not] submit the final paperwork to the bank for final approval.

(R1-351 (TT at 267:18-25)).

Senator Emmanuel Jones—the owner of Legacy Ford—testified as follows regarding the formation of a deal after preapproval:

> And as long as the conditions -- depending on who finance[s] the vehicle, as long as those conditions are met, then we have the authority with my deal agreement between the lending institution to enter into a contract with the lender and the customer. At that point, the vehicle is sold.

(R1-227 (TT at 174:14-18)).

To drive the finance contingency home because the deal was not final at the time Mr. Reynolds executed the Proposed Installment Contract, Legacy Ford only permitted him to take the F-250 after he executed a Bailment Agreement. It is undisputed that this Bailment Agreement provided that the F-250 remained the property of Legacy Ford. It further explicitly advised him of the credit approval process, the first sentence being:

> Pending credit approval of Purchaser(s) by a financing institution and completion of the sales transaction, delivery of the described vehicle by Dealer is hereby made to Purchaser(s) as a convenience to Purchaser(s) and is subject to all terms and conditions in said Sales Order and the promissory note and security agreement, if any, executed concurrently of in accordance therewith said vehicle shall remain the property of the Dealer.

(R1-334 (TT P-34)).

Thus, the uncontroverted trial evidence shows that Mr. Reynolds executed a Bailment Agreement stating that the F-250 was the property of Legacy Ford pending credit approval. There was no contravening evidence in the trial record showing that Legacy Ford believed that—despite this Bailment Agreement—the F-250 was the property of Mr. Reynolds when he signed the Buyer's Order or the Proposed Installment Contract.

Under *AgriCommodities*, Legacy Ford was not under an obligation to pursue a credit application on behalf of Mr. Reynolds. But even if it were, the evidence was undisputed that the conditions were not met to consummate the preapproved deal

because the Freightliner no longer carried the same value as when it was preapproved. Even though the Freightliner was in plain view such that Legacy Ford could have seen the bald tires at the time Mr. Reynolds executed the Buyer's Order, Proposed Installment Contract, and Bailment Agreement, that plain view does not impact the undisputed fact that financing had to be approved before the deal was final.

Upon discovering the bald tires, Legacy understood that the value of the Freightliner had changed sufficiently such that credit could not be secured for this deal. Specifically, Mr. Murray testified as follows:

Q: So without the new tires?

A: It has a negative equity.

(R1-349 (TT2 at 265:19-20)).

Mr. Reynolds' theory of the case is that Legacy Ford failed to do its due diligence before agreeing to the general terms with the condition precedent. That could be true—and it very well may have avoided this litigation as a practical matter—but it does not change the fact that credit was never approved in this case. Overall, the plain view of the Freightliner and it bald tires does not change what Legacy Ford understood to be the condition precedent to a binding contract with Mr. Reynolds. And without that mutual understanding, a contract simply did not exist.

4. Legacy Ford Had No Obligation to Submit the Credit Application, Nor Was There Evidence that Credit Would Have Been Approved

Mr. Reynolds makes much ado about the fact that Legacy Ford declined to submit the credit application after he signed the Proposed Installment Contract and took possession of the F-250. However, Mr. Reynolds cannot point to any testimony or written terms stating that Legacy Ford was required by contract to submit the credit application, regardless of the value of the trade-in, and that the credit application would have been approved, regardless of the value of the trade-in. Under the precedent in *AgriCommodities*, the general terms did not create an obligation for Legacy Ford to pursue credit approval on behalf of Mr. Reynolds.

Further, there is no evidence in the record establishing that, had Legacy Ford submitted the credit application, it would have been approved. In fact, the only evidence in the record shows the opposite.

Indeed, Mr. Reynolds did not call any financial institution as a witness for testimony to state that, had it received the credit application from Legacy Ford, it would have approved this deal. Instead, Mr. Reynold's position was rebuffed by the only competent testimony about the credit application process. On cross examination, Senator Jones testified as follows:

> Q: As a practical matter, the only reason why this deal didn't go through was because your company, apparently under your authority, did not submit the financing agreement to Ford Motor Credit even though it was preapproved?

> A: That is patently false. No. And let me tell you why. Again, when a customer comes in and we start working a deal, we a conditional approval from a bank based on those conditions.
>
> Q: Okay.
>
> A: And if we cannot satisfy those conditions in one day we will put the customer in the bailment agreement so that we can get additional information the financial institution needs to go from a conditional approvement -- approval to an approval where I can actually send them a contract.
>
> In this particular case that did not happen. We had a conditional approval, we put Mr. Reynolds out on the bailment agreement, and once we tried to satisfy those conditions from the lender, we discovered, oh, we're in the hole anyway from six to $20,000 because the conditions of his vehicle had changed, and it changed in a negative manner. We -- then that condition we had with out lending institution was denied.

(R1-291 (TT 238:23-239:18)).

There simply is no other evidence in the record to contravene Senator Jones' testimony. In fact, Mr. Reynold's counsel conceded this fact when he asked Senator Jones, "Are you bringing Ford Motor Company's financier to testify that they had a chance to review this and that they rejected the deal?" (TT 241:1-3). Contrary to the premise of that question, Mr. Reynolds actually bore the burden of providing evidence that, had a financing institution received the application, it would have been approved and the deal would have gone through. *See* O.C.G.A. § 24-4-1 ("The burden of proof generally lies upon the party who is asserting or affirming a fact and to the existence of whose case or defense the proof of such fact is essential.").

He did not do so. The only competent testimony introduced at trial showed that the loss of value prevented the condition precedent to the formation of a contract. Because the condition precedent never occurred—i.e., credit approval—the deal did not close. *See Walter R. Heller & Company v. Aetna Business Credit, Inc.*, 158 Ga. App. 249, 258 (1981) ("Title does not pass until the condition precedent is fulfilled.").

B. There Was No Evidence that Legacy Ford's Salesperson Was Authorized to Close the Credit Transaction.

Mr. Reynolds relies heavily on representations made by Legacy Ford's salesperson Luke Joseph. However, there was no evidence to sustain a finding that Mr. Joseph was authorized to enter into a contract that included financing on behalf of Legacy Ford. Such a finding would be necessary to circumvent all of Legacy Ford's witnesses' uncontroverted testimony that there was no final deal until the financing was secured.

Mr. Joseph did not testify at the trial, so any competent testimony about his authority—real or apparent—would have to come from Legacy Ford. Indeed, Mr. Reynolds offered no testimony about why he believed that Mr. Joseph had authority to enter a binding credit agreement on behalf of Legacy Ford and a financial institution.

Legacy Ford's witnesses testified that Mr. Joseph was not authorized to compose deals or make assessments of values for trade-in vehicles. For example, Mr. Murray testified as follows:

> Q: "In your capacity working at Legacy, have you ever heard employees say they can adjust trade values?"
>
> A: "No. No employee can do that, only managers."

(R1-350 (TT at 266:11-13)).

Mr. Reynolds' counsel cross-examined Senator Jones—the owner of Legacy Ford—about Mr. Joseph's authority:

> Q: Were [Mr. Joseph] to have told Mr. Reynolds that the condition of the tires made no difference on the trade-in[,] Mr. Reynolds would have had a right to rely on that, wouldn't he?
>
> . . . .
>
> A: Okay. No. And my explanation is very simple. My salespeople do not appraise vehicles They do not tell customers what the value of their vehicles are.
>
> . . . .
>
> The salesperson is simple [*sic*] to get the information, complete the survey form with the customer, give that information to my used car manager.

(R1-276 (TT at 223:1-19)).

Mr. Reynolds offered no contradicting evidence other than his own speculation as to Mr. Joseph's authority to bind Legacy Ford to the terms contained in the Proposed Installment Contract—which Mr. Joseph did not sign. Indeed, the

Court sustained Legacy Ford's objection to the admission of any statements by Mr. Joseph regarding this transaction. (TT 72:12-13, 74:13-17). Further, there is no testimony about why Mr. Reynolds believed that Mr. Joseph had the authority to compose and execute a credit contract for Legacy Ford, especially in light of the terms of the Bailment Agreement.

II. The Trial Court Erred by Denying The Motion for Directed Verdict Because, if a Contract Existed, then It Was Unenforceable Under the Statute of Frauds.

The Court erred by denying Legacy Ford's motion for directed verdict on the basis that it was barred by the Statute of Frauds. (R1-203 (TT at 150:18-21, 157:25-158:5)). The evidence was undisputed that there was no document containing the material terms of the alleged contract that was executed by an authorized representative of Legacy Ford. This deal was governed by the Statute of Frauds because the value of the sale of the good exceeded $500:

> [A] contract for the sale of goods for the price of $500.00 or more is not enforceable by way of action or defense unless there is a record sufficient to indicate that a contract for sale has been made between the parties *and signed by the party against whom enforcement is sought or by the party's authorized agent or broker*.

O.C.G.A. § 11-2-201(1) (emphasis added).

Senator Jones testified that the lack of signature on the Proposed Installment Contract document was evidence that there was no deal:

> Q: And on page 2 of it, is this signed by Legacy?

> A: No, it is not.
>
> Q: In Legacy's understanding, is that a contract? Is that a -- in Legacy's understanding, does it have an obligation to go forward with an unsigned contract?
>
> . . . .
>
> A: Absolutely not. Once the deal is approved and the conditions are satisfied based on that condition that we received with it was first submitted to a lender . . ., then we print this contract in my finance and insurance department and we would submit this contract to Ford Motor Company for payment.

(R1-214 (TT 188:8-189:7)).

During closing arguments, Mr. Reynolds' counsel cited the Proposed Installment Contract as evidence that a contract existed because those documents detailed the preapproved transaction. (R1-438 (TT at 354:3-20)). However, it is undisputed that no Legacy Ford agent executed the Proposed Installment Contract. Further, immediately below the blank space for Legacy Ford's signature, that documents states, "THIS CONTRACT IS NOT VALID UNTIL YOU *AND SELLER* SIGN IT." (TT at 259 (emphasis added)). Accordingly, even if this writing and its contents formed the basis of a contract, it does not meet the requirements of the Statute of Frauds. Thus, the Court reversibly erred when it denied Legacy Ford's motion for directed verdict on the basis that the Statute of Frauds bars the cause of action for breach of contract. *See* O.C.G.A. § 11-2-201(1).

III. The Trial Court Erred by Allowing the Jury to Award Attorney's Fees When There Was No Evidence of Reasonableness Under O.C.G.A. § 13-6-11.

In addition to awarding attorney's fees in a case where there was no underlying liability, the trial court erred by allowing the jury to award attorney's fees because Mr. Reynolds failed to introduce evidence of the reasonableness of fees. "It is well-settled that an award of attorney fees is to be determined upon evidence of the reasonable value of the professional services which underlie the claim for attorney fees." *Ga. Dep't of Corr. v. Couch*, 295 Ga. 469, 483 (2014) (quotation marks omitted). "An award of attorney fees is unauthorized if appellee failed to prove the actual costs of the attorney and the reasonableness of those costs." *Hagan v. Keys*, 329 Ga. App. 178, 181 (2014) (citation and alterations omitted). Here, Mr. Reynold's counsel entirely failed to provide any evidence as to the reasonableness of his fees. In fact, the record is unclear as to whether Mr. Reynolds' attorney—Robert Koski—was authorized to practice law in Georgia the majority of the time that this case was pending. (R1-423 (TT at 339:1-25)).

Here, Mr. Koski testified as follows:

> Ladies and gentlemen of the jury, I have been representing Mr. Reynolds since this case began in 2015. My services to Mr. Reynolds in this case have totaled 340 hours of time up until now. My normal billing rate is $350 per hour, representing earned attorney's fees of $119,000, expenses relating to the -- costs of the case have come to $2,200 for a total of expense within my firm of $121,200 in attorney's fees and litigation expenses.

> In addition, Mr. Bell has done 66 hours of time in this case. His normal business rate is $310 per hour for a total of his attorney's fees of $20,460.

(TT2 at 89).

Mr. Koski provided no testimony about the reasonableness of his rate or the reasonableness of the amount of time spent. Further, he failed to provide his invoices to buttress his testimony.

This case is analogous to *Cannon Air Transport Servs., Inc. v. Stevens Aviation, Inc.*, 249 Ga. App. 514, 519 (2001). In that case, this Court reversed the trial court for awarding attorney's fees, even after allowing a finding for unnecessary trouble and expense. "The amount of fees is another matter." *Id.*

> Although Stevens presented evidence that the actual costs of its attorney were $49,263.80, it wholly failed to present any evidence as to the reasonableness of those fees. Even though testimony from its own attorney on this matter would have sufficed, Stevens made no effort to introduce such. Contrary to representations made at appellate oral argument by Stevens's counsel, no witness testified that he or she thought the amount of fees was reasonable. This glaring deficiency in the record requires this Court to vacate the attorney fees award.

Id.

No one testified why Mr. Koski's or his co-counsel's—Mr. Bell—rates or time spent were reasonable.

Further, even though Mr. Koski asserted that he represented Mr. Reynolds on a contingency basis, the mere fact that a contingency was in place is insufficient to prove reasonableness of fees. The Georgia Supreme Court made this clear in *Couch*:

> Thus, while the trial court was entitled to consider Couch's contingency fee agreement with his attorneys and the amount it would have generated as evidence of their usual and customary fees, the court erred in calculating what amount of attorney fees was reasonable based solely, as far as the record reflects, on that agreement rather than on evidence of hours, rates, or other indications regarding the value of the attorneys' professional services actually rendered.

The trial transcript is devoid of any evidence showing the reasonableness of Plaintiff's counsel's fees. Accordingly, the award must be vacated.

CONCLUSION

This trade-in deal was never consummated because Mr. Reynolds never received credit approval. Mr. Reynolds presented no evidence to suggest otherwise. Accordingly, the Court reversibly erred by denying Legacy Ford's motions for directed verdict. Further, the Court erred by allowing the jury to award attorney's fees without evidence of reasonableness. Legacy Ford respectfully requests that the Court vacate the judgment and remand with instruction that the trial court enter a directed verdict and judgment in favor of Legacy Ford.

Respectfully submitted this 1st day of July, 2025.

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

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Certificate of Service

I hereby certify that I have mailed a true and correct copy of the foregoing document with sufficient postage thereon to ensure delivery by first class mail to the following counsel for Appellee:

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