

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

FILED SENATE
Apr 24, 2024
S.B. 767
PRINCIPAL CLERK

S

D

SENATE BILL DRS15401-MUZ-17

Short Title: GSC Attorneys' Fees in Debt Instruments.

(Public)

Sponsors: Senators Galey and Overcash (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED
AN ACT TO CLARIFY HOW A CREDITOR MAY ENFORCE AN OBLIGATION TO PAY
ATTORNEYS' FEES IN A DEBT INSTRUMENT AND TO REMOVE THE DEFAULT
RATE FOR THESE FEES, AS RECOMMENDED BY THE GENERAL STATUTES
COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 6-21.2 reads as rewritten:

"§ 6-21.2. Attorneys' fees in notes, etc., in addition to interest, debt instruments.

Obligations to pay attorneys' fees upon any note, conditional sale contract or other evidence of indebtedness, in addition to the legal rate of interest or finance charges specified therein, shall be valid and enforceable, and collectible as part of such debt, if such note, contract or other evidence of indebtedness be collected by or through an attorney at law after maturity, subject to the following provisions:

- (1) If such note, conditional sale contract or other evidence of indebtedness provides for attorneys' fees in some specific percentage of the "outstanding balance" as herein defined, such provision and obligation shall be valid and enforceable up to but not in excess of fifteen percent (15%) of said "outstanding balance" owing on said note, contract or other evidence of indebtedness.
- (2) If such note, conditional sale contract or other evidence of indebtedness provides for the payment of reasonable attorneys' fees by the debtor, without specifying any specific percentage, such provision shall be construed to mean fifteen percent (15%) of the "outstanding balance" owing on said note, contract or other evidence of indebtedness.
- (3) As to notes and other writing(s) evidencing an indebtedness arising out of a loan of money to the debtor, the "outstanding balance" shall mean the principal and interest owing at the time suit is instituted to enforce any security agreement securing payment of the debt and/or to collect said debt.
- (4) As to conditional sale contracts and other such security agreements which evidence both a monetary obligation and a security interest in or a lease of specific goods, the "outstanding balance" shall mean the "time price balance" owing as of the time suit is instituted by the secured party to enforce the said security agreement and/or to collect said debt.
- (5) The holder of an unsecured note or other writing(s) evidencing an unsecured debt, and/or the holder of a note and chattel mortgage or other security agreement and/or the holder of a conditional sale contract or any other such



* D R S 1 5 4 0 1 - M U Z - 1 7 *

security agreement which evidences both a monetary obligation and a security interest in or a lease of specific goods, or his attorney at law, shall, after maturity of the obligation by default or otherwise, notify the maker, debtor, account debtor, endorser or party sought to be held on said obligation that the provisions relative to payment of attorneys' fees in addition to the "outstanding balance" shall be enforced and that such maker, debtor, account debtor, endorser or party sought to be held on said obligation has five days from the mailing of such notice to pay the "outstanding balance" without the attorneys' fees. If such party shall pay the "outstanding balance" in full before the expiration of such time, then the obligation to pay the attorneys' fees shall be void, and no court shall enforce such provisions.

(6) If the attorneys' fees are for services rendered to an assignee or a debt buyer, as defined in G.S. 58-70-15, all of the following materials setting forth a party's obligation to pay attorneys' fees shall be provided to the court before a court may enforce those provisions:

- a. A copy of the contract or other writing evidencing the original debt, which must contain a signature of the defendant. If a claim is based on credit card debt and no such signed writing evidencing the original debt ever existed, then copies of documents generated when the credit card was actually used must be attached.
- b. A copy of the assignment or other writing establishing that the plaintiff is the owner of the debt. If the debt has been assigned more than once, then each assignment or other writing evidencing transfer of ownership must be attached to establish an unbroken chain of ownership. Each assignment or other writing evidencing transfer of ownership must contain the original account number of the debt purchased and must clearly show the debtor's name associated with that account number.

Notwithstanding the foregoing, however, if debtor has defaulted or violated the terms of the security agreement and has refused, on demand, to surrender possession of the collateral to the secured party as authorized by G.S. 25-9-609, with the result that said secured party is required to institute an ancillary claim and delivery proceeding to secure possession of said collateral; no such written notice shall be required before enforcement of the provisions relative to payment of attorneys' fees in addition to the outstanding balance.

(a) Definitions. – The following definitions apply in this section:

- (1) Creditor. – A person seeking to collect an amount owed pursuant to a debt instrument, including an assignee or debt buyer as defined in G.S. 58-70-15(b)(4).
- (2) Debt instrument. – A note, conditional sale contract, lease agreement, credit agreement, or other evidence of indebtedness. The term does not include a residential rental agreement governed by Article 5 of Chapter 42 of the General Statutes.
- (3) Debtor. – A person from which a creditor is seeking to collect an amount owed pursuant to a debt instrument, including a guarantor or accommodation party.
- (4) Person. – An individual, a firm, a partnership, an association, a corporation, a limited liability company, or any other organization or group acting as a unit.

(b) Scope. – This section applies to debt instruments governed by the law of this State.

(c) Attorneys' Fees. – An obligation in a debt instrument to pay attorneys' fees is valid and enforceable if a creditor uses an attorney to collect an amount owed pursuant to the debt instrument after a debtor's default and complies with the requirements of this section. If the debt

instrument specifies an amount or percentage, a court shall award that amount or percentage. If the debt instrument does not specify an amount or percentage, a court shall award reasonable attorneys' fees. In no case shall an award of attorneys' fees exceed fifteen percent (15%) of the principal and interest owed at the time the lawsuit commenced or, in the case of a conditional sale contract, fifteen percent (15%) of the time price balance owed at the time the lawsuit commenced.

(d) Notice. – After the debtor has defaulted, the creditor shall give notice to the debtor if the creditor intends to collect attorneys' fees under this section. The creditor shall include in the notice the total amount owed under the debt instrument at that time, excluding attorneys' fees. If the debtor pays this amount or an amount later determined by a court to be owed under the debt instrument at that time, whichever is lesser, within 14 days after the creditor has given the notice, the obligation to pay attorneys' fees becomes unenforceable. This subsection does not apply, however, to a debtor that has defaulted on a secured indebtedness and has refused to surrender possession of the collateral to the creditor under G.S. 25-9-609.

(e) Assignees and Debt Buyers. – If the creditor is an assignee or debt buyer as defined in G.S. 58-70-15(b)(4), the creditor shall provide the materials described in G.S. 58-70-150 to the court."

SECTION 2. G.S. 45-21.31 reads as rewritten:

"§ 45-21.31. Disposition of proceeds of sale; payment of surplus to clerk.

(a) The proceeds of any sale shall be applied by the person making the ~~sale,~~ sale in the following ~~order, to the payment of~~ order:

- (1) Costs and expenses of the sale, including the trustee's commission, if any, ~~and~~ a reasonable auctioneer's fee if ~~such this~~ expense has been incurred, and reasonable counsel fees for an attorney serving as a trustee if allowed pursuant to subsection (a1) of this ~~section;~~ section.
- (2) Taxes due and unpaid on the property sold, as provided by G.S. 105-385, unless the notice of sale provided that the property be sold subject to taxes ~~thereon on it~~ and the property was so ~~sold;~~ sold.
- (3) Special assessments, or any installments thereof, against the property ~~sold,~~ ~~which sold~~ that are due and unpaid, as provided by G.S. 105-385, unless the notice of sale provided that the property be sold subject to special assessments ~~thereon on it~~ and the property was so ~~sold;~~ sold.
- (4) The obligation secured by the mortgage, deed of ~~trust~~ trust, or conditional sale contract.

(a1) The clerk of the superior court of the county where the sale was ~~had conducted~~ may exercise discretion to allow reasonable counsel fees to an attorney serving as a trustee (in addition to the compensation allowed to the attorney as a trustee) ~~where if~~ the attorney, on behalf of the trustee, renders professional services as an attorney that are different from the services normally performed by a trustee and of a type ~~which that~~ would reasonably justify the retention of legal counsel by a trustee who is not licensed to practice law. Counsel fees are presumed reasonable if ~~in compliance with G.S. 6-21.2(1) and (2), they do not exceed fifteen percent (15%) of the obligation.~~ Nothing in this section, however, ~~shall preclude~~ precludes the clerk of superior court from deeming a higher fee reasonable.

(b) Any surplus remaining after the application of the proceeds of the sale as set out in subsection (a) of this section shall be paid to the person ~~or persons entitled thereto, to it~~ if the person ~~who that~~ made the sale knows ~~who is entitled thereto, that~~ person's identity and location. Otherwise, in the following cases, the surplus shall be paid to the clerk of the superior court of the county where the sale was ~~had conducted~~:

- (1) In all cases when the owner of the property sold is dead and there is no qualified and acting personal representative of ~~his estate, and~~ the owner's estate.

- 1 (2) In all cases when ~~he~~ the person that made the sale is unable to locate the
2 ~~persons person~~ entitled thereto, and to it.
3 (3) In all cases when the ~~mortgagee, trustee or vendor~~ person that made the sale
4 is, for any cause, in doubt as to who is entitled to ~~such the surplus money,~~
5 ~~and money.~~
6 (4) In all cases when adverse claims ~~thereto to it~~ are asserted.
7 (c) ~~Such payment~~ Payment to the clerk pursuant to subsection (b) of this section
8 discharges the ~~mortgagee, trustee or vendor~~ person that made the sale from liability to the extent
9 of the amount so paid.
10 (d) The clerk shall ~~receive such money from the mortgagee, trustee or vendor and shall~~
11 execute a receipt ~~therefor~~ for money received under this section.
12 (e) ~~The clerk is liable on his official bond for the safekeeping of money so received until~~
13 ~~it is paid to the party or parties entitled thereto, or until it is paid out under the order of a court of~~
14 ~~competent jurisdiction."~~
15 **SECTION 3.** This act becomes effective October 1, 2024, and applies to debt
16 instruments executed on or after that date.