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SENATE BILL DRS15401-MUZ-17

Short Title: GSC Attorneys' Fees in Debt Instruments.

(Public)

Sponsors: Senators Galey and Overcash (Primary Sponsors).

Referred to:

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

6 The General Assembly of North Carolina enacts:

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

8 **"§ 6-21.2. Attorneys' fees in notes, etc., in addition to interest, debt instruments.**

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

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



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

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

16 a. A copy of the contract or other writing evidencing the original debt,
17 which must contain a signature of the defendant. If a claim is based on
18 credit card debt and no such signed writing evidencing the original
19 debt ever existed, then copies of documents generated when the credit
20 card was actually used must be attached.

21 b. A copy of the assignment or other writing establishing that the plaintiff
22 is the owner of the debt. If the debt has been assigned more than once,
23 then each assignment or other writing evidencing transfer of
24 ownership must be attached to establish an unbroken chain of
25 ownership. Each assignment or other writing evidencing transfer of
26 ownership must contain the original account number of the debt
27 purchased and must clearly show the debtor's name associated with
28 that account number.

29 Notwithstanding the foregoing, however, if debtor has defaulted or violated
30 the terms of the security agreement and has refused, on demand, to surrender
31 possession of the collateral to the secured party as authorized by G.S.
32 25-9-609, with the result that said secured party is required to institute an
33 ancillary claim and delivery proceeding to secure possession of said collateral;
34 no such written notice shall be required before enforcement of the provisions
35 relative to payment of attorneys' fees in addition to the outstanding balance.

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

37 (1) Creditor. – A person seeking to collect an amount owed pursuant to a debt
38 instrument, including an assignee or debt buyer as defined in
39 G.S. 58-70-15(b)(4).

40 (2) Debt instrument. – A note, conditional sale contract, lease agreement, credit
41 agreement, or other evidence of indebtedness. The term does not include a
42 residential rental agreement governed by Article 5 of Chapter 42 of the
43 General Statutes.

44 (3) Debtor. – A person from which a creditor is seeking to collect an amount owed
45 pursuant to a debt instrument, including a guarantor or accommodation party.

46 (4) Person. – An individual, a firm, a partnership, an association, a corporation, a
47 limited liability company, or any other organization or group acting as a unit.

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

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

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

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

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

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

19 **"§ 45-21.31. Disposition of proceeds of sale; payment of surplus to clerk.**

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

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

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

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

- 49 (1) In all cases when the owner of the property sold is dead and there is no
50 qualified and acting personal representative of ~~his estate,~~ and the owner's
51 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.