



Baker & Taylor, Inc. v. College Book Rental Company, LLC et al

2015 | Cited 0 times | W.D. North Carolina | March 23, 2015

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NORTH CAROLINA

CHARLOTTE DIVISION DOCKET NO. 3:12-cv-00553-MOC

THIS MATTER is before the court on Motion for Attorneys Fees (#301). motion on January 7, 2015, and an Order (#357) determination of amount of attorneys fees. A second round of briefing was allowed on the

amount of fees, focusing on the issue of whether the use of the fee

of 15 percent. Plaintiff and Defendant Griffin have both filed timely supplements, making the issue ripe for resolution.

At the hearing, the parties discussed whether the language contained in the guaranty modified the statutory obligation under Chapter 6-21.2(2) of the North Carolina General Statutes The language of the uarantor agrees to pay all costs, expenses, and fees, including BAKER & TAYLOR, INC.,)

Plaintiffs,) Vs.) ORDER

DAVID GRIFFIN CHARLES JONES COLLEGE BOOK RENTAL COMPANY, LLC,

Defendants.) which may be incurred by Baker & Taylor in enforcing this personal (emphasis added).

In its supplemental pleading, plaintiff has pointed the court to two decisions in which nearly identical language was used in the agreement and the court enforced the statutory provision. See Trull v. Central Carolina Bank & Trust, 124 N.C.App. 486, 490 (1996) affirmed in part, review dismissed in part 347 N.C. 262 (1997); Meineke Car Care Centers, Inc. v. RLB Holdings, LLC, 3:08-cv-240, 2010 U.S. Dist. LEXIS 37184, at *7 (W.D.N.C. Mar. 18, 2010). Both courts held that to invoke on of a 15 , the underlying writing need only contain: (1) evidence of an indebtedness; and (2) provision for reasonable attorneys fees. As in this case, both writings also contained the phrase

In Trull, the North Carolina Court of Appeals addressed an argument by the debtor that as follows:



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Plaintiff additionally argues that an award of attorneys' fees to CCB under these circumstances amounts to a windfall, in that the statutory 15% exceeds the actual attorneys' fees incurred by CCB. The promissory note at issue in this case in G.S. 6-21.2 subsection (2), not subsection (1). Under subsection (1) an award of attorneys' fees must be supported by evidence and findings of fact supporting the reasonableness of the award, however, subsection (2) has predetermined that 15% is a reasonable amount. G.S. 6-21.2(2) expressly provides that when a contract authorizing attorneys' fees does not specify the fee percentage then it instrument. In this case, the trial court did not err by calculating the fee awarded in accordance with the statutory mandate. Trull, 124 N.C.App. at 493-494 (emphasis added). must apply the relevant state law in determining the substantive rights and duties of the parties Auer v. Kawasaki Motors Corp., U.S.A., 830 F.2d 535, 537 (4th Cir.1987) (en banc), Trull lends substantial on the award of fees under North Carolina law. Further, a learned colleague, Honorable T.S.

Ellis, Senior United States District Judge for the Eastern District of Virginia, had occasion to under Virginia law in Airlines Reporting Corp. v. Sarrion Travel, Inc., 846 F.Supp.2d 533 (E.D.Va. 2012). Judge Ellis noted, as follows:

such, is not restricted to referencing the past. See Waag v. Permann (In re Permann), 418 B.R. 373, completion, but is not restricted to pas quoting S. Chalker and E.

Weiner, The Oxford Dictionary of English Grammar at pages 282 and 286 87 (1994)). Id. at 539, n. 7. While this -- the late Honorable H. Brent McKnight -- that the ordinary meaning of certain words does not always comport with initial impressions of

those words. an award o capable of inclusion in a lodestar figure,

see Robinson v. Equifax Information Services, LLC, 560 F.3d 235, 243 244 (4th Cir.2009), but future fees such as for collection of the judgment and defense of this co phrase encompasses future fees.

If the award of fees was governed by Chapter 6-21.2(1), the court would agree award is governed by Chapter 6-21.2(2), which provides for recovery of a flat 15 percent of the indebtedness Because it is the statute itself which allows the shifting of the fees, it is the statute itself which sets the amount of the fees. Thus, Chapter 6-21.2(2) operates not as a sword, but as a shield for this debtor. North Carolina law is very clear that where the Trull, 124 N.C.App. at 494. Neither North Carolina law nor

federal decisions would support a way impacts a Chapter 6-

Even if this interpretation is wrong, it is readily apparent from its supplemental brief that plaintiff would have little trouble showing a loadstar amount well in excess of 15 percent of the outstanding indebtedness. Further, such interpretation actually works in favor of Defendant Griffin as it is apparent that an award of fees actually incurred would be well in excess of the statutory 15 percent.



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making both defendants jointly and severally liable f

As all of the conditions of Chapter 6-21.2(2) have been met and it appearing that the use of the phrase which may be incurred of \$2,915,279.33.

ORDER IT IS, THEREFORE, ORDERED that Motion (#301) is GRANTED as previously provided in Order (#357) and further GRANTED as to the amount of such award, which the court determines to be \$2,915,279.33, for which Defendants Jones and Griffin are jointly and severally liable.

IT IS FURTHER ORDERED that the Clerk enter an Amended Judgment to reflect the damages awarded by the Jury in the amount of \$18,304,464.47, an award of \$8,451,630.54 in prejudgment interest, and an award of s in the amount of \$2,915,279.33, for a total award of \$29,671,374.30, in favor of plaintiff and against Defendants Jones and Griffin, both jointly and severally, and that such award run with interest at the lawful federal Judgment rate, nunc pro tunc, from the date the original Judgment (#294) was entered.

Signed: March 20, 2015

