



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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March 15, 2018

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*Re: Leta LaVonne Boyer, as Trustee of the Leta LaVonne Boyer Trust  
v. Julie C. Cambra, Case No. CL-2017-14969*

Dear Counsel:

This matter comes before the Court on Plaintiff's Plea in Bar to Defendant's Counterclaim. The Counterclaim contains two counts: Declaratory Judgment and Judgment for Fees in Excess of Reasonable. Plaintiff argues that the Voluntary Payment Doctrine bars both counts of the Counterclaim.

Plaintiff and Counter-Defendant, Leta LaVonne Boyer as Trustee of the Leta LaVonne Boyer Trust ("Ms. Boyer"), brought an action against Defendant and Counter-Plaintiff, Julie C. Cambra ("Ms. Cambra"), for the enforcement of a defaulted note. In an effort to sell a collateral townhouse to pay off the note, Ms. Cambra paid Ms. Boyer's attorney's fees, despite her belief that the fees were unreasonable. Consequently, Ms. Cambra counterclaimed, requesting that the Court find the attorney's fees to be unreasonable and reimburse Ms. Cambra. In

**OPINION LETTER**

response, Ms. Boyer filed a Plea in Bar arguing that Virginia's Voluntary Payment Doctrine bars Ms. Cambra's claim. This Motion raises one question:

Does the Voluntary Payment Doctrine's limitation of "immediate and urgent necessity" apply when an individual believes that she is obligated to pay unreasonable attorney's fees to sell a house that she placed on the market of her own accord for the satisfaction of a defaulted note?

Upon consideration of the pleadings, memoranda, authorities, and oral arguments presented by counsel, the Court finds that the Voluntary Payment Doctrine bars the Counterclaim. Thus, the Court grants the Plea in Bar.

## I. BACKGROUND

### A. Facts Alleged

The parties' relationship, within the context of this case, began in 2007 with the execution of a Deed of Trust Promissory Note between Ms. Cambra, a borrower, and Ms. Boyer, a lender. After Ms. Cambra defaulted on the original note, the parties agreed upon a Settlement and Modification Agreement to enter into a new note. On November 4, 2011, Ms. Cambra executed the new Deed of Trust Promissory Note ("Note No. 2"), payable to the Trust in the principal amount of \$124,574.49, with a fixed interest rate of six percent per annum on the unpaid principal balance and annual payments of interest in the amount of \$7,474.47, due on the first day of November annually, beginning on November 1, 2012. Note No. 2 was collateralized by a townhouse in Fairfax County. Ms. Cambra failed to pay the sums due. Consequently, Ms. Boyer provided notice of default to Ms. Cambra and made a demand for payment.

Ms. Cambra, aware of the default and the demand, placed the townhouse on the market in 2017. When Ms. Boyer first filed the Complaint, the townhouse was under contract for sale, with a settlement date on or before November 30, 2017. On November 14, 2017, Ms. Boyer's counsel sent Ms. Cambra's counsel the payoff figures for Note No. 2. Ms. Cambra's counsel replied, by email, to request a breakdown and reduction of the attorney's fees. The fees totaled \$23,702.02. Ms. Boyer's counsel refused all requests to compromise on the attorney's fees and provided a payoff statement to the settling entity, SMS Title Company. Under Section 5 of Note No. 2, if the borrower is in default, the borrower must pay for the lender's attorney's fees, but no fixed amount is stated. Therefore, Ms. Cambra felt obligated, in order to complete the sale, and without waiving her rights, to pay off the debt and to convey clear title so that the title company could pay the attorney's fees. Payment in full was produced through the real estate sale and settlement.

B. Procedural History

On October 23, 2017, Ms. Boyer brought the original action in this case, alleging one count for Breach of Promissory Notes against Ms. Cambra. Ms. Cambra requested an extension to file responsive pleadings so that the sale be allowed to settle and the debts be paid off without further legal efforts. The Court granted the extension. Ms. Cambra then sold the townhouse and paid Ms. Boyer's attorney's fees under protest. On December 20, 2017, Ms. Cambra filed an Answer and Counterclaim, requesting a refund of all attorney's fees paid as part of the \$23,702.02, which she deemed to be unreasonable.

On January 11, 2018, Ms. Boyer filed a Plea in Bar to dismiss Ms. Cambra's Counterclaim on the grounds that the Voluntary Payment Doctrine bars the claim. At oral argument, counsel for Ms. Cambra conceded that he took no steps or actions to appear before the Court prior to the closing on the property. He further admitted that the Court's Calendar Control Judge was available on a daily basis prior to the sale of the property. Counsel, for whatever reason, failed to avail himself of the opportunity to place the disputed fees before the Court prior to the closing. After hearing oral arguments on the Plea in Bar, without a court reporter, the Court took this matter under advisement.

II. **STANDARD OF REVIEW**

A plea in bar is a defensive pleading which "shortens the litigation by reducing it to a distinct issue of fact which, if proven, creates a bar to the plaintiff's right of recovery." *Tomlin v. McKenzie*, 251 Va. 478, 480 (1996) (citation omitted). A plea in bar does not address the merits of the complaint, but raises a single issue of fact that might constitute an absolute defense to the suit. *Angstadt v. Atlantic Mut. Ins. Co.*, 254 Va. 286, 292 (1997). The moving party carries the burden of proof on that issue of fact. *See Campbell v. Johnson*, 203 Va. 43, 47 (1961). Where no evidence is taken in support of the plea, the trial court, and the appellate court upon review, must rely solely upon the pleadings in resolving the issue presented. *See Weichert Co. of Va., Inc. v. First Commercial Bank*, 246 Va. 108, 109 (1993). "When considering the pleadings, 'the facts stated in the plaintiffs' motion for judgment [i.e., the complaint] [are] deemed true.'" *Tomlin*, 251 Va. at 480 (quoting *Glascock v. Laserna*, 247 Va. 108, 109 (1994)).

III. **ARGUMENTS**

A. Plaintiff/Counter-Defendant's Argument

Ms. Boyer asserts that Ms. Cambra's Counterclaim is precluded by the Voluntary Payment Doctrine based on the single issue of fact that the attorney's

fees payment was made voluntarily outside of Court. The Counterclaim contains mostly undisputed allegations of fact, which demonstrate that Ms. Cambra paid Ms. Boyer's attorney's fees of her own free will instead of timely contesting them through legal means. Therefore, the disputed attorney's fees are now unrecoverable, regardless of whether Ms. Cambra deems them to be "reasonable."

Virginia Courts have strictly applied the Voluntary Payment Doctrine for more than a century. *D.R. Horton, Inc. v. Bd. of Supervisors for Warren*, 285 Va. 467, 472 (2013). The doctrine precludes a party from recovering voluntary payments, even when those payments were made under protest. *See Newton v. Newton*, 202 Va. 515, 520 (1961). Virginia courts objectively consider payments "voluntary" and, thus, unrecoverable when a party makes a payment in response to an unreasonable or unjust demand, though attempted or threatened to be enforced by proceedings, with full knowledge of the facts that rendered the demand illegal. *See Williams v. Consolvo*, 237 Va. 608, 613 (1989). The Supreme Court of Virginia has repeatedly stressed the significance of this doctrine in "advancing certainty and finality between parties." *D.R. Horton*, 285 Va. at 473 (citing *Mayor of Richmond v. Judah*, 32 Va. (5 Leigh) 305, 322 (1834)). As a result, all payments are presumed to have been made voluntarily. *Id.* at 472. An involuntary payment exists only under three circumstances: where courts deem a payment compulsory (1) because of an immediate and urgent necessity, (2) to release property from detention, or (3) to prevent an immediate seizure of property. *Id.* An immediate and urgent necessity requires that the movant allege facts demonstrating that she "did not have time and opportunity to relieve [herself] of [her] predicament by resorting to legal methods." *Id.* at 474. Merely stating that she paid "out of necessity" is insufficient. *Id.* Here, the Counterclaim fails to allege that any of these conditions apply.

In *D.R. Horton*, the Supreme Court of Virginia rejected the plaintiff's attempts to mischaracterize his payment of the building permit fees as "involuntary." 285 Va. at 473-75. The Court dismissed plaintiff's contention that the payment was involuntary because he "faced breach of contract actions by third parties" if construction was delayed. *Id.* at 473-74. Potential risk of third-party contract liability is insufficient to establish an involuntary payment, absent a threshold showing of an immediate and urgent necessity for paying. *Id.* The Court noted that an urgent necessity required plaintiff to show "that it had no time or opportunity before paying the unlawful demand to at least seek an appropriate legal remedy." *Id.* at 474.

Here, any attempt by Ms. Cambra to claim that an "urgent necessity" compelled her payment contradicts her own motion, which is premised on the notion that the real estate settlement may be delayed for "various reasons" and anticipates that such a delay might occur. Her refusal to seek injunctive or interpleader relief should bar her Counterclaim. Ms. Boyer unequivocally made known to Ms. Cambra

that her claim to the fees was non-negotiable around mid-November. Ms. Cambra had sufficient time to interplead the contested sum into this Court's jurisdiction, which would not have delayed settlement or impaired title to the house. Moreover, if Ms. Cambra truly claimed entitlement to a portion of the attorney's fees, she should have made her claim known to the title company, which would have then been obliged to file its own interpleader action. For these reasons, the Plea in Bar should be granted.

B. Defendant/Counter-Plaintiff's Response

Ms. Cambra claims that her payment of the attorney's fees was involuntary. She listed the townhouse for sale, under prior demand for payoff by Ms. Boyer, for the sole purpose of paying off the debt on the note. The house was under contract for a late November settlement when the Complaint was served. Ms. Cambra asserts that her payment of unreasonable attorney's fees falls within one of the exceptions to "voluntary" in the *Horton* analysis: "without an immediate and urgent necessity therefor." *Horton*, 285 Va. at 472. Here, Ms. Cambra was faced with an immediate and urgent necessity to complete the sale, preserve the contract, and pay off Ms. Boyer before the available equity diminished to a point where it was not possible to pay off the total sum owed.

Ms. Cambra's counsel states that he consulted the Virginia State Bar resources regarding attorney fee resolution forums, as well as the Virginia Trial Lawyers Association listserv, where the only suggested remedy was to docket the attorney's fees dispute before a court. In counsel's judgment, it was not possible to bring the issue before this Court during the Thanksgiving holiday without disrupting the sale and settlement. Additionally, Ms. Cambra's counsel did not feel that he could adequately allege the "irreparable harm" required when seeking an injunction. Consequently, Ms. Cambra chose to pay the excessive fees rather than disrupt the real estate sale (a greater harm), while waiting to docket the case on the issue of fees. Furthermore, counsel felt that suing the settlement company to hold the attorney's fees would have been inappropriate and dilatory. He also believed that this situation was not an emergency that was appropriate for Calendar Control and could not have been resolved without an evidentiary hearing on the fees.

Moreover, Ms. Boyer's attorney argues that the burden falls on Ms. Boyer's counsel to justify the reasonableness of the fees sought. Not only did Ms. Boyer's counsel not provide a statement itemizing or justifying his fees, but he reaffirmed that the meter would continue to run during any discussions on the subject. Therefore, Ms. Cambra is not barred from contesting the attorney's fees. The necessity to justify her involuntary payment has been explained and she now seeks a hearing on the quantity of \$23,702.12 of attorney's fees, which were paid involuntarily.

#### IV. ANALYSIS

##### A. Voluntary Payment Doctrine

In *D.R. Horton*, the Supreme Court of Virginia has defined the common law Voluntary Payment Doctrine as follows:

Where a party pays an illegal demand with a full knowledge of all the facts which render such demand illegal, [i] without an immediate and urgent necessity therefor, or [ii] unless to release his person or property from detention, or [iii] to prevent an immediate seizure of his person or property, such payment must be deemed voluntary, and cannot be recovered back. And the fact that the party at the time of making the payment, files a written protest, does not make the payment involuntary.

285 Va. at 472 (internal citations omitted). The Supreme Court of Virginia has further stated that, in the context of this doctrine, all payments are “presumed to be voluntary until the contrary is made to appear” and that the respondent to the plea in bar “has the burden to show that its payment was not voluntary.” *Id.* (internal citations omitted). Although this view may appear to be somewhat harsh, the Supreme Court of Virginia has held in “decidedly few” cases that the payments were involuntary. *See id.* (citing *Williams v. Consolvo*, 237 Va. 608, 613-14 (1989); *Vick v. Siegel*, 191 Va. 731, 734-36 (1951)). The Supreme Court of Virginia has stressed the significance of the Voluntary Payment Doctrine in “advancing certainty and finality between parties in the resolution of their legal affairs.” *Id.* at 473 (citing *Mayor of Richmond v. Judah*, 32 Va. (5 Leigh) 305, 322 (1834)). Furthermore, the Court has decided that “[t]o establish the requisite necessity to pay an unlawful demand, a plaintiff must prove that it ‘did not have time and opportunity to relieve [itself] of [its] predicament by resorting to legal methods.’” *Id.* at 474 (citing *Vick*, 191 Va. at 735-36).

##### B. Applying the Voluntary Payment Doctrine to the Instant Case

Here, the issue before the Court is whether the Counterclaim has pled an exception to the Voluntary Payment Doctrine, which would otherwise bar the Counterclaim from proceeding. I conclude that it has not done so, and that the Plea in Bar should be granted.

In this case, the “illegal demand” complained of by Ms. Cambra in the Counterclaim is Ms. Boyer’s request for allegedly “unreasonable” attorney’s fees.

There is no fixed sum for attorney's fees in Note No. 2. Def.'s Countercl. ¶ 15 [sic]<sup>1</sup>. Ms. Cambra asserts that this payment was involuntary under the "immediate or urgent necessity" exception to the Voluntary Payment Doctrine. However, the facts alleged in the Counterclaim do not demonstrate such a necessity. The Counterclaim asserts that in 2017, Ms. Cambra listed the townhouse for sale of her own accord, after falling into default on Note No. 2. Def.'s Countercl. ¶ 3 [sic]. The Counterclaim does not assert that the buyer threatened to pull out of the sale, nor that the title company pressured Ms. Cambra to pay the fees. The only demand made was by Ms. Boyer for "unreasonable" attorney's fees on November 14, 2017. These facts do not indicate "immediate or urgent necessity" to pay the fees. Additionally, Ms. Cambra even stated in her Opposition to the Plea in Bar that this situation was not an "emergency" that was suited for Calendar Control. Def.'s Opp'n 3.

In *Consolvo*, a debtor who faced unexpected foreclosure due to a deed indexing error was still found to have made "voluntary payments" on the rogue lien. 237 Va. at 612. The Supreme Court of Virginia reasoned that the payments were voluntary because the debtor made them on the advice of counsel, did not face the immediate loss of his property, and had ample opportunity to resort to litigation to test the validity of the noteholder's demand for payment. *See id.* at 615. Such is the case here. Ms. Cambra paid the full sum of attorney's fees after consultation with counsel, did not face an immediate foreclosure on the house, and had adequate time to contest the fees in Court.

The facts of this matter are, however, distinguishable from those in *Vick* where the individual did face an immediate foreclosure of the property. In that case, the property owner was forced to pay the trustee \$900 of wrongfully claimed commissions to save his property, which the trustee had threatened to sell. *Vick*, 191 Va. at 733-34. The Supreme Court of Virginia found that the trustee had done nothing to earn commissions and had perpetrated fraud and placed the owner under duress. *Id.* at 734-36. Therefore, an urgent necessity for the payment existed, and the Voluntary Payment Doctrine did not apply. Here, it is not so clear that the attorney's fees were unreasonable/illegal and there is no similar direct pressure on Ms. Cambra to immediately sell the home and pay the fees without contesting them. Ms. Cambra voluntarily placed the townhouse on the market prior to the filing of this lawsuit because she was aware of her lack of payments and the default on Note No. 2. Ms. Cambra requested that this Court hold off on the legal proceedings in order to pay off the debt without incurring additional legal costs. It was Ms. Cambra's decision to sell the house by November 30, 2017. Therefore, the same principles do not apply.

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<sup>1</sup> Ms. Cambra's Counterclaim is incorrectly numbered and contains two paragraphs labeled "2." Therefore, the Court has adjusted its citations accordingly.

Furthermore, the Counterclaim fails to show that Ms. Cambra lacked time and opportunity to relieve herself of her predicament by resorting to legal methods. Although her counsel attempted to confer with Ms. Boyer's attorney about the breakdown of the fees, Ms. Cambra did not file a motion with the Court to decide or reserve the issue for later determination. Ms. Cambra's counsel argued that this was not an emergency that would have been appropriate for Calendar Control. However, this is exactly the type of issue that could have been resolved in Calendar Control. The Fairfax Bar Association's Circuit Court Practice Manual defines the type of emergencies that should be addressed through that channel. These emergencies are "when the passage of time will substantially prejudice one of the parties." Here, counsel had multiple days, despite the Thanksgiving holiday, to consult a Judge in Calendar Control regarding this matter. The attorney's fees could have been interpleaded pursuant to Va. Code Ann. § 8.01-364, which allows an individual to voluntarily tender into the Court property exposed to multiple liabilities. These actions would have allowed time to conduct an evidentiary hearing to decide whether the attorney's fees were reasonable and would not have affected the sale of the townhouse. The arguments that counsel could not have obtained an emergency motion via Calendar Control, that an evidentiary hearing would have required "preparation," and that the Thanksgiving holiday would have prevented him from taking legal action to contest the fees are unpersuasive. Consequently, Virginia's Voluntary Payment Doctrine bars Ms. Cambra's claims for Declaratory Judgment and Judgment for Fees in Excess of Reasonable.

## V. CONCLUSION

For the foregoing reasons, Counter-Defendant's Plea in Bar is granted and the Counterclaim is dismissed with prejudice.

Sincerely,

A large black rectangular redaction box covering the signature of Daniel E. Ortiz.

Daniel E. Ortiz  
Circuit Court Judge

**OPINION LETTER**

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

LETA LAVONNE BOYER, )  
AS TRUSTEE OF THE )  
LETA LAVONNE BOYER TRUST ) CL-2017-14969  
 )  
Plaintiff, )  
 )  
v. )  
 )  
JULIE C. CAMBRA, )  
 )  
Defendant. )

**ORDER**

**IT APPEARING** that this case came before the Court on January 26, 2018, upon the Counter-Defendant's Plea in Bar to the Counter-Plaintiff's Counterclaim, and

**IT FURTHER APPEARING** that the Court took this matter under advisement,

**IT IS THEREFORE ORDERED** that, for the reasons stated in the Court's letter opinion, Counter-Defendant's Plea in Bar to the Counter-Plaintiff's Counterclaim is GRANTED and the Counterclaim is DISMISSED with prejudice.

**ENTERED** this 15 day of March, 2018.



Judge Daniel E. Ortiz

**ENDORSEMENT OF THIS ORDER BY COUNSEL OF RECORD FOR THE PARTIES IS WAIVED IN THE DISCRETION OF THE COURT PURSUANT TO RULE 1:13 OF THE SUPREME COURT OF VIRGINIA.**