

Ford Motor Credit Co. v. Drury, No. 475-8-06 Wncv (Teachout, J., Jan. 18, 2007)

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**STATE OF VERMONT
WASHINGTON COUNTY**

FORD MOTOR CREDIT CO.,)	
Plaintiff,)	Washington Superior Court
)	Docket No. 475-8-06 Wncv
v.)	
)	
JENNIFER B. DRURY,)	
Defendant.)	

ENTRY

Ford seeks reconsideration of the court’s decision granting default judgment but declining to award attorney’s fees for lack of any apparent right to attorney’s fees. Ford claims a contract right to attorney’s fees in Section F of the underlying contract.

Section F spells out the events of default, and the consequences of default. If the vehicle is repossessed and sold, the amount owed is reduced by the proceeds of the sale less expenses. Expenses may include “[l]awyer’s fees and legal costs permitted by law” Ford has not suggested and the court is unaware of what law would support the imposition of attorney’s fees related to the sale of the vehicle, or even if there were any such fees in this case. Buyer remains liable for any amount remaining due at that point.

In this case, the amount remaining due following the sale was \$5,138.36, which presumably included any Section F attorney’s fees (related to the conduct of the sale) that Ford was entitled to by law, if any. The attorney’s fees currently sought by Ford do not fall under Section F; Ford seeks attorney’s fees for dealing with the ensuing collection case.

Contractual waivers of the American Rule “must be strictly construed to avoid inferring duties that the parties did not intend to create.” *Oscar Gruss & Son, Inc. v. Hollander*, 337 F.3d 186, 199 (2d Cir. 2003) (applying New York law on the American Rule, which is consonant with Vermont’s). Section F does not include a clear waiver of the American Rule applicable in the circumstances of this case.

Ford’s Motion to Reconsider is denied.

Dated at Montpelier, Vermont this __ day of January 2007.

Mary Miles Teachout
Superior Court Judge