IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

FIRST EXPRESS, Plaintiff, vs. MICAH A. FRETT, Defendant.	)	SMALL CLAIMS NO. ST-13-SM-51 ACTION FOR DEBT

SMITH, ALAN D., Magistrate

MEMORANDUM OPINION AND ORDER
(Filed: March 19, 2013)

Summary

This matter is before the Court on the Defendant's counterclaim for reimbursement of court costs and fees for service of process that she paid Plaintiff before she appeared in court but after the complaint had been filed and she been served with the complaint and summons. Under these circumstances, the Defendant's counterclaim will be dismissed.

Facts

This action for debt arose out of a loan that Micah A. Frett obtained from First Express. The loan was secured by a consumer note signed by Ms. Frett on April 21, 2009. Sometime thereafter Ms. Frett became delinquent in her payments. On December 10, 2012 First Express filed its complaint for $2,256.66. On February 4, 2013, approximately one week after she was served with the summons and complaint, Ms. Frett paid First Bank $2,176.61 in full and final payment of the loan. In addition to paying off the loan, Ms. Frett, under protest, paid First Express $100.00 to cover expenses it incurred in filing the complaint and having her served. At trial Ms. Frett did not contest the allegations in the complaint. Rather, she argued that the consumer note did not state that she would be obligated to pay the court fees and costs should she default on the loan. Ms. Frett, therefore, contends that she is entitled to the return of the $100.00. As this was an issue of impression for the Court, it was taken under advisement.

Discussion

Court costs and filing fees are recoverable, at the discretion of the Court, by the prevailing party under 5 V.I.C. § 541. Generally, one is not considered a prevailing party if the matter is settled after the complaint is filed and there has been no court appearance or disposition in favor of the party seeking to recover these costs. The parties are at any time after the complaint is filed;

however, free to negotiate payment of filing fees and service of process fees as part of a settlement. Frett contends that absent a contractual obligation to pay these court costs upon default, First Express had no right to condition acceptance of the loan payoff upon payment of the court costs.

First Express could not, upon notice of default and prior to filing its complaint, have conditioned acceptance of the loan payoff amount on anything other than payment of the late fees due and owing at the time. But, Frett did not pay off the loan upon receipt of notice of default from First Express. Instead, she waited until after First Express had gone to the expense of filing its complaint and having her served. Had Frett not waited until after First Express' complaint was filed and served her argument would have had some merit. However, once the complaint was filed and Frett was served, First Express was free to negotiate settlement of its claim with Frett and condition acceptance of payoff of the loan on payment of the expenses it had incurred to file the law suit against her.

Accordingly, it is hereby

ORDERED that the Defendant's counterclaim is **DISMISSED WITH PREJUDICE**; and it is further

ORDERED that a copy of this Order be directed to the parties.

DATED: March 19, 2013

ALAN D. SMITH
Magistrate of the Superior Court
of the Virgin Islands

ATTEST:
VENETIA H. VELAZQUEZ, ESQ.
Clerk of the Court

By: Colleen Salem
for **HYACINTH M. LOCKHART**
Senior Deputy Clerk 3/19/2013