

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
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In re: Case No. 8:11-bk-01927-CED
Chapter 7

Frank M. Mongelluzzi,

Debtor.

Angela Welch, as Chapter 7
Trustee for the Bankruptcy Estate of
Frank Michael Mongelluzzi,

Plaintiff,

v. Adv. Pro. No. 8:14-ap-653-CED

Regions Bank,

Defendant.

**ORDER DEFERRING RULING ON
REGIONS' MOTION TO TAX COSTS**

THIS PROCEEDING came before the Court for hearing on December 12, 2019, to consider *Regions' Motion to Tax Costs* (the "Motion")¹ and Plaintiff's objection to the Motion (the "Objection").² For the reasons set forth in this Order, ruling on the Motion is deferred pending further order of the Court.

Background

Defendant Regions Bank ("Regions") asserts that on October 10, 2019, the Court entered a final judgment³ in its favor on all counts of Plaintiff's Second Amended Complaint (the "Final

Judgment"). (Plaintiff's appeal of the Final Judgment is pending in the District Court.⁴) Regions contends that as the prevailing party in this adversary proceeding, it is entitled to an award of its costs against Plaintiff under Federal Rule of Bankruptcy Procedure 7054(b)(1).⁵ The specific costs that Regions claims are compensable are copy costs of \$1,426.50, transcript costs of \$42,926.55, and deposition subpoena and witness fees of \$634.39, for a total award of \$44,987.44.⁶ At the hearing on the Motion, the parties agreed that Regions' compensable costs are in the lower amount of \$35,180.19.⁷

In her Objection, Plaintiff points out that in its March 4, 2019 *Order Granting Regions Bank's Motion for Partial Summary Judgment on Claims Asserted by Trustee Angela Welch and Denying in Part Plaintiff's Motion for Terminal Sanctions*,⁸ the Court denied Plaintiff's June 2017 motion for sanctions "to the extent that it requests the Court to strike Regions' affirmative defenses and enter a default judgment in Plaintiff's favor." However, the Court reserved ruling on the motion for sanctions to the extent of a lesser sanction.⁹

Discussion

Federal Rule of Bankruptcy Procedure 7054(b)(1) applies in adversary proceedings. It provides that the Court "may allow costs to the prevailing party except when a statute of the United States or these rules otherwise provides."¹⁰ Bankruptcy Rule 7054(b)(1) differs from Rule 54(d)(1) of the Federal Rules of Civil Procedure, which does not apply in bankruptcy proceedings,¹¹ and which provides that costs other than attorney's fees "should be allowed to the prevailing party," unless a federal statute, rule or court order provides otherwise.¹²

The bankruptcy court in *In re Phillips* described the distinction between Bankruptcy Rule

¹ Doc. No. 670.

² Doc. No. 682.

³ Doc. No. 667.

⁴ Case No. 8:19-cv-02751-MSS, United States District Court, Middle District of Florida.

⁵ Fed. R. Bankr. P. 7054(b)(1).

⁶ The costs requested by Regions are included in the types of costs that may be taxed as costs by a judge or a clerk under 28 U.S.C. § 1920.

⁷ Doc. No. 688.

⁸ Doc. No. 643.

⁹ Doc. No. 643, p. 14.

¹⁰ Fed. R. Bankr. P. 7054(b)(1)(emphasis added).

¹¹ Fed. R. Bankr. P. 7054(a).

¹² Fed. R. Civ. P. 54(d)(1)(emphasis added).

7054(b)(1) and Federal Rule of Civil Procedure 54(d)(1), as follows:

“Although the rules are quite similar, the Bankruptcy Rule utilizes permissive language (i.e., ‘may’), whereas the Civil Rule utilizes presumptive language (i.e., ‘should’).”

. . . Accordingly, the decision to award costs under Fed. R. Bankr. P. 7054(b) is wholly within this Court’s sound discretion, and the Court is free to consider all relevant factors, including whether there is any bad faith by the prevailing party in incurring unnecessary costs and whether the non-prevailing party is able to afford the costs sought.¹³

In other words, in bankruptcy adversary proceedings—unlike in federal civil cases—there is no presumption for an award of costs to prevailing parties, and an award of costs is within the broad discretion of the bankruptcy court.¹⁴

Because the issues raised in Plaintiff’s motion for sanctions remain pending at this time, the Court will exercise its discretion under Bankruptcy Rule 7054(b)(1) and defer ruling on the Motion until the motion for sanctions is resolved.

Accordingly, it is

ORDERED that ruling on Regions’ Motion to Tax Costs is deferred pending further order of the Court.

DATED: January 7, 2020.

/s/ Caryl E. Delano

Caryl E. Delano
Chief United States Bankruptcy Judge

¹³ *In re Phillips*, 2009 WL 3378511, at *1-2 (Bankr. D. Kan. Oct. 16, 2009)(citations omitted).

¹⁴ *In re Whitaker*, 2017 WL 354314, at *11 (Bankr. D. N. Mex. Jan. 24, 2014).