

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

In re

KENNETH L. SELLERS,  
Case No. 8:01-bk-08262-8B7

Debtor.

ACUSHNET COMPANY,

Plaintiff,

vs.

Adversary No. 01-919

KENNETH L. SELLERS,

Defendant.

ORDER ON DEFENDANT'S VERIFIED  
AMENDED MOTION FOR TAXATION OF  
COSTS

THIS CASE came on for consideration on May 10, 2005, on the Verified Amended Motion for Taxation of Costs (Document No. 68, the "Motion"), filed by Kenneth Sellers (the "defendant").

The Motion seeks taxation of costs in the amount of \$3,589.46. Acushnet Company (the "plaintiff") filed an Opposition to the Motion (Document No. 74), arguing that (1) the Motion was not timely filed and all costs should be disallowed, and (2) the requested costs are not justified. After hearing argument of counsel for both parties and reviewing the record, the Court grants the Motion, in part, for the reasons stated below.

First, the issue of timeliness has already been decided. On January 25, 2005, an order was entered giving the defendant, who prevailed in the litigation, until January 25, 2005, to file additional

information in support of the original motion for taxation of costs, filed on November 23, 2004 (Document Nos. 69 and 63). The amended motion was filed on January 24, 2005. Plaintiff did not object to the timeliness of the original motion; nor did it file a motion to reconsider the January 25, 2005, order.<sup>1</sup> Therefore, plaintiff's argument of timeliness is moot.

There is a strong presumption in favor of awarding costs to the prevailing party, but costs are awarded at the discretion of the court. See Bishara v. O'Callaghan (In re O'Callaghan), 304 B.R. 887, 889 (Bankr. M.D. Fla. 2003).

The Court has examined each invoice attached to the Motion to determine the taxable costs. A number of the invoices and checks lacked any identifiable relation to this proceeding; others were duplicative or illegible.<sup>2</sup> Nevertheless, the Court finds supporting documentation for taxation of costs in the amount of \$1,933.56. Attached to this Order, as Exhibit "A", are copies of the invoices for the allowed costs.<sup>3</sup> All other costs are disallowed.

Accordingly, it is hereby

ORDERED

1. The Motion is granted as set forth in this Order.

2. The plaintiff, Acushnet Company, is directed to pay Kenneth Sellers the sum of \$1,933.56, as allowed costs in this litigation, within thirty (30) days of the date of this Order.

<sup>1</sup> In the January 25, 2005 Order, the plaintiff was also given a deadline. The plaintiff had until February 2, 2005, to file a response. The plaintiff filed a Motion to Extend Time to Respond (Document No. 71) which was granted, giving the plaintiff until February 14, 2005, to respond (Document No. 72). The plaintiff did not file its response until February 22, 2005.

<sup>2</sup> For example, one check had "Happy Birthday" written on the memo line, while another check was made out to "Windsor Park Homeowners." Another document offered in support of the Motion included costs incurred in May 2001; but this adversary proceeding was not commenced until December 27, 2001.

<sup>3</sup> This amount includes a two-day witness fee totaling \$80.00, which does not appear on an invoice.

DONE and ORDERED in Tampa, Florida,  
this 8th day of June, 2005.



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K. RODNEY MAY  
United States Bankruptcy Judge

[Note: Exhibit "A" viewable in CM/ECF.]

Certificate of Service

I certify that a copy of this Order  
was served by United States Mail to the following  
persons:

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