

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**  
**IN AND FOR NEW CASTLE COUNTY**

AL BOSLER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No.: 99C-10-295-FSS
	)	
UP THE CREEK, INC.,	)	
	)	
Defendant.	)	

Submitted: April 10, 2002  
Decided: July 24, 2002

**ORDER**

*Upon Motion of Prevailing Party for Costs -- **GRANTED***

Plaintiff prevailed at a jury trial in March. The trial followed Plaintiff’s appeal from an arbitrator’s order in favor of Defendant. The arbitrator held that:

I find no bailment as there was no possession, and even if there was a bailment neither the terms thereof nor the time during which the bailment was to remain in effect was not specified as existing as the [] time of loss.

Plaintiff now, as the prevailing party, asks for his costs. Under Superior Court Civil Rule 54(d) “[C]osts shall be allowed as a matter of course to the prevailing party. . . .” *See also* 11 *Del. C.* §5101 (“Generally a party for whom final

judgment in any civil action . . . shall recover, against the adverse party, costs of suit, to be awarded by the court.”) It now is well established that the court has some discretion over the amount to be awarded as costs. The authority and nature of the court’s discretion concerning costs is discussed in *McMillan v. Masten Lumber and Supply Co.*, C.A. No.: 97C-01-089-FSS (Del. Super. September 29, 2000).

In this case, the verdict was generous. It appeared that Defendant was hamstrung by the absence of a key witness. That left Plaintiff’s version of the parties’ transaction unrebutted.

Under the circumstances, the court will award the costs associated with filing the complaint and for service by the sheriff. The court will not award the costs associated with a private skip tracer and process server. The court also will not award the arbitration fee, because Plaintiff did not prevail at arbitration. The court, however, will award the fee for the *De Novo* appeal from the arbitration. The court will not award any of the expenses incurred by Plaintiff’s counsel, including expenses for legal research, telecopying and postage.

For the foregoing reasons, Defendant shall pay \$265.00 in costs.

**IT IS SO ORDERED.**

---

Judge

cc: Prothonotary - Civil Division