

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

JASON D. CROOK,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 00C-02-111 RRC
)	
FORD MOTOR COMPANY AND)	
CARMAN FORD, INC.)	
)	
Defendants.)	

Submitted: October 16, 2001

Decided: November 1, 2001

**ON DEFENDANTS' MOTION FOR COSTS. GRANTED IN PART;
DENIED IN PART**

This 1st day of November, 2001, upon consideration of the submissions of the parties, it appears to this Court that:

1. Before the Court is an application by Defendants for the allowance of certain costs to be assessed against Plaintiff. Plaintiff was originally granted an award of \$9,700 during arbitration and subsequently filed an appeal for a trial *de novo*. The case was tried before a jury on September 24 and 25, 2001. The jury found that a warranty covering an automobile that Plaintiff had purchased from Defendant Carman Ford had not failed in its essential purpose and accordingly rendered a verdict for Defendants. Plaintiffs therefore recovered nothing.

As part of their case, Defendants presented the live testimony of Mark K. Taylor, a Ford Motor Company employee with an extensive background in the engineering of various Ford motor vehicles, including the automobile

at issue in this case. Mr. Taylor was flown in for trial from Detroit, Michigan.

Defendants now seek costs in the amount of \$1,946.39. \$100 of that amount represents the fees associated with arbitration, which Defendants seek to recover pursuant to Superior Court Civil Rule 16.1(h)(4). The remaining amount represents the flight, rental car, parking, and hotel expenses that Mr. Taylor incurred during trial, as well as the expenses Mr. Taylor incurred during two pre-trial investigations of Plaintiff's vehicle; Defendants seek to recover these costs pursuant to Superior Court Civil Rule 54(d). For the reasons below, the Court DENIES Defendants' request insofar as that request relates to an award of Mr. Taylor's pre-trial investigative expenses, but GRANTS Defendants the award of those costs associated with trial.

2. Plaintiff contests the award of costs relating to Mr. Taylor's pre-trial investigations, maintaining that Defendant Ford Motor Company could just as easily have utilized an employee of comparable background but who lived in Delaware. Plaintiff maintains that it is unreasonable to require him to pay all of the costs associated with Mr. Taylor's assistance of the defense in this case, and therefore requests the Court to deny or reduce the amount requested by Defendants in their motion.

Defendants cite the case of Nygaard v. Lucchesi¹ for the proposition that all of Mr. Taylor's travel expenses associated with the trial are recoverable because Defendants prevailed at trial. Defendants also believe they are entitled to the \$100 arbitrator's fee because Plaintiff was the

¹ Del. Super., C.A. No. 92C-11-099, Del Pesco, J. (October 28, 1994) (Mem. Op.) (holding that, subject to judicial discretion, travel expenses including meals and lodging are generally recoverable by party prevailing at trial).

prevailing party and subsequently filed an appeal for a trial *de novo*, but did not obtain a verdict equal to or greater than the arbitrator's award.

3. Costs are allowed as of course to the prevailing party upon application to the Court unless the Court otherwise directs.² Generally, a party for whom final judgment is given shall recover costs of suit against the adverse party.³ Determining when costs should be awarded is a matter of judicial discretion.⁴ Final judgment does not automatically lead to costs being awarded to the prevailing party.⁵ In certain situations, "it is right [] and just and fair for the defendant to bear the defense cost burden of the successful defense."⁶

4. Superior Court Civil Rule 16.1(h)(4) provides that if a party who demands a trial *de novo* from an arbitration award fails to obtain a verdict more favorable than the award, the party is responsible for the costs related to the arbitration. That being the case here, the costs associated with arbitration (the \$100 arbitrator's fee) are recoverable by the Defendants.

With regard to the travel expenses incurred by Mr. Taylor, the Court holds that only those costs associated with the actual trial should be

² Super. Ct. Civ. R. 54(d)

³ 10 Del. C. § 5101

⁴ Donovan v. Delaware Water & Air Resources Comm'n, Del. Supr., 358 A.2d 717, 722-723 (1976) (holding that Super. Ct. Civ. R. 54(d) and 10 Del. C. § 5101 are consistent in that an award of costs is a matter of judicial discretion).

⁵ Id.

⁶ Welsh v. Delaware Clinical & Laboratory Physicians, P.A., Del. Super., C.A. No. 98C-06-003, Witham, J. (March 19, 2001) (ORDER), quoting Moore v. Garcia, Del. Super., C.A. No. 93C-08-26, Quillen, J. (July 10, 1995) (Letter Op.) (denying defendant's motion for expert witness fees following a defense verdict and judgment in a case that the Court stated deserved a "full explanation" by defendant).

recoverable by Defendants. The Court finds Plaintiff's argument that an employee of the Ford Motor Company who lived closer to Delaware could have conducted the pre-trial investigations to have some merit, especially in the absence of any showing as to why an expert who lived closer to Delaware was not utilized. Accordingly, the Court finds that Defendants should bear the costs associated with Mr. Taylor's pre-trial investigations. The Court will, however, in its discretion, award costs incurred by the expert in connection with the trial.

For the foregoing reasons, the Court hereby grants Defendants \$1478.30 for the costs associated with arbitration in this matter as well as that part of Mr. Taylor's travel expenses associate with trial, to be taxed against Plaintiff. The award is broken down as follows:

Arbitration Fee	\$100.00
Mark K. Taylor's plane ticket for trial	\$789.50
Mark K. Taylor's rental car for trial	\$127.33
Mark K Taylor's hotel room for trial	\$425.47
Mark K Taylor's parking for trial	\$ 36.00

	\$1478.30

IT IS SO ORDERED.

cc: Darryl K. Fountain, Esquire, Attorney for Plaintiff

Christian J. Singewald, Esquire, Attorney for Defendants
Prothonotary