

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION**

**WILLIAM WADE WALLER CO., d/b/a  
OUTONTHEROCK.COM**

**PLAINTIFF**

**V.**

**NO. 4-10-CV-00764 GTE**

**NEXSTAR BROADCASTING, INC.,  
d/b/a KARK TELEVISION, and  
RK COLLECTIONS, INC.**

**DEFENDANTS**

**ORDER**

Before the Court is a motion for attorney's fees filed by Defendant RK Collections ("RKC").

Plaintiff William Wade Waller Co. ("Waller") has filed a response opposing the motion.

The Court declines to exercise its discretion to award attorney's fees in this case. See 17 U.S.C. § 505 (providing courts with the discretion to award a reasonable attorney's fee to the prevailing party).

"In exercising its discretion under 17 U.S.C. § 505, a court should consider factors such as frivolousness, motivation, objective unreasonableness (both in the factual and legal components of the case) and the need in particular circumstances to advance considerations of compensation and deterrence." *Silberstein v. Digital Art Solutions, Inc.*, 2003 WL 21297291, \*2 (S.D. N.Y. 2003) (omitting internal quotations and citation).

This was not, as RKC asserts, a case with no factual basis. Although Waller was unable to prove damages, there is no question that Waller's photographs were used for RKC's benefit.

IT IS THEREFORE ORDERED THAT the motion for attorney's fees (docket no. 48) filed by Defendant RK Collections be, and it is hereby, DENIED.

IT IS SO ORDERED THIS 15<sup>th</sup> day of August, 2011.

/s/Garnett Thomas Eisele  
UNITED STATES DISTRICT JUDGE