

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CONSTANCE FINLEY,

Plaintiff,

v.

HARTFORD LIFE & ACCIDENT INSURANCE
CO.; THE BOSTON FINANCIAL GROUP LONG-
TERM DISABILITY PLAN; and DEMPSEY
INVESTIGATIONS, INC.,

Defendants.

No. C 06-06247 CW

ORDER GRANTING IN
PART AND DENYING IN
PART PLAINTIFF'S
MOTION FOR REVIEW OF
CLERK'S TAXATION OF
COSTS
(Docket No. 248)

_____/

Plaintiff Constance Finley moves the Court to review the Clerk's taxation of costs against her. Defendant Hartford Life and Accident Insurance Co. opposes Plaintiff's motion. The motion was taken under submission on the papers. Having considered the papers submitted by the parties, the Court GRANTS Plaintiff's motion in part and DENIES it in part.

BACKGROUND

On December 1, 2010, the Clerk taxed costs in the amount of \$12,637.75 against Plaintiff. This amount was the sum of the following costs: \$531.75 for fees for service of deposition subpoenas; \$2,460.00 for printed or electronically recorded transcripts necessarily obtained for use in this case; \$455.00 for the fee to file an appeal with the Ninth Circuit; and \$9,191.00 for the supersedeas bond obtained to secure a stay of the Court's judgment pending appeal. Plaintiff opposed Hartford's motion to

1 obtain a stay without bond, stating that she "is willing to take
2 the risk that the bond premium will be taxed to her later should
3 the Court's judgment in her favor be overturned." Pl.'s Opp'n to
4 Def.'s Mot. to Stay Enforcement of J. Pending Appeal Without Bond
5 3.

6 Plaintiff's current annual income is \$57,000 per year, based
7 on her total monthly income of \$4,737.00, which consists of
8 \$3,000.00 from her private disability insurance and \$1,737.00 from
9 Social Security Disability Insurance (SSDI). She currently owns a
10 home.

11 Plaintiff claims that her basic monthly living expenses total
12 \$7,115.00. Plaintiff asserts that, of this amount, she pays
13 \$3,931.00 for her mortgage. She proffers an October 18, 2010
14 mortgage statement, showing that she was \$15,724.00 past due on her
15 loan payments as of that date. Finley Decl., Ex. B. Plaintiff
16 claims that she also missed her subsequent loan payment, causing
17 her to become approximately \$21,000 in arrears. Plaintiff also
18 claims that she spends \$1,200 for medical treatment each month,
19 apparently because her condition was exacerbated by a November,
20 2009 car accident. See Finley Reply Decl. ¶ 2; Finley Decl., Ex. D
21 (listing medical bills under heading "St. Helena rear-ender").
22 Plaintiff also provides a monthly checking account statement, dated
23 November 16, 2010, which states that she had \$510.28 in her
24 account. Id., Ex. C. The statement reflects \$4,256.00 in credits
25 and \$4,856.70 in debits. However, only seven debit transactions,
26 totaling \$3,075.00, are shown; the remaining twenty-four debits
27 were redacted. Id. Plaintiff asserts that she has only one
28 checking account, and no savings or retirement accounts.

1 In October, 2009, Plaintiff declared bankruptcy. On November
2 24, 2009, the bankruptcy court confirmed her debtor's plan. Def.'s
3 Request for Judicial Notice (RJN), Ex. 3.¹ In her bankruptcy
4 petition, she stated that she had an average income of \$5,923.00
5 per month, which included the insurance proceeds discussed above
6 and \$1,200.00 she earned by renting out a room in her home. Id.,
7 Ex. 1, at 9. She also claimed that her medical expenses amounted
8 to \$150.00 per month, not including her Medicare premium. Id., Ex.
9 1, Sch. J.

10 DISCUSSION

11 Federal Rule of Civil Procedure 54(d)(1) authorizes the Court
12 to grant the prevailing party its costs. The determination of
13 taxable costs is governed by 28 U.S.C. § 1920 and, more
14 particularly, Civil L.R. 54-3, which specifically enumerates the
15 standards for costs recoverable in this District. This Court may
16 only tax costs explicitly authorized by § 1920. See Alflex Corp.
17 v. Underwriters Labs., Inc., 914 F.2d 175, 177-78 (9th Cir. 1990);
18 see also Crawford Fitting Co. v. J.T. Gibbons, Inc., 482 U.S. 437,
19 442 (1987). Section 1920 permits the taxing of costs for various
20 items, such as deposition transcripts and copying of papers, if
21 they are "necessarily obtained for use in the case." 28 U.S.C.
22 § 1920.

23 Rule 54(d)(1) creates a presumption in favor of awarding all
24 costs to a prevailing party. Despite this presumption, a district
25 court has discretion to refuse to award costs. Ass'n of Mexican-
26

27 ¹ Because Plaintiff does not oppose Hartford's request for
28 judicial notice of documents related to her bankruptcy, the Court
GRANTS Hartford's request.

1 Am. Educators v. California (AMAE), 231 F.3d 572, 591 (9th Cir.
2 2000). To justify a departure from the general rule, a losing
3 party must demonstrate that a case is not "'ordinary' and why, in
4 the circumstances, it would be inappropriate or inequitable to
5 award costs." Id. at 593. Costs may be refused for various
6 reasons, including the "losing party's limited financial
7 resources." Save Our Valley v. Sound Transit, 335 F.3d 932, 945
8 (9th Cir. 2003) (citations omitted).

9 I. Service of Deposition Subpoenas

10 Plaintiff objects to the \$531.75 fee Hartford incurred in
11 serving deposition subpoenas related to Plaintiff's motion for
12 attorneys' fees and costs, which was made prior to the resolution
13 of Hartford's appeal. Hartford does not dispute that, at the time
14 it served the subpoenas, the Court had not re-opened discovery.
15 Indeed, the Magistrate Judge assigned to discovery quashed the
16 subpoenas, noting that they were "unauthorized." Docket No. 212,
17 at 1. Because they were not authorized, the Court finds that the
18 subpoenas were not reasonably required and disallows the \$531.75
19 fee to serve them.

20 II. Deposition Transcripts

21 Plaintiff objects to various costs arising from deposition
22 transcripts. She objects to the copies of transcripts Hartford
23 obtained of the depositions of Jarred Bernard Morgan, Shawn Dempsey
24 and Donald Richard Sawn. Hartford did not take these individuals'
25 depositions and, thus, did not receive an original transcript of
26 them. Under Civil L.R. 54-3(c)(1), only the cost of an original
27 and a copy of any deposition is allowable.

28 With respect to Morgan, the invoice proffered by Hartford

1 shows the following charges for transcripts: (1) "Transcript
2 Copies" for \$82.50, (2) "Rough Draft E-Mail" for \$61.25 and (3) "E-
3 Transcript" for \$25.00. Def.'s Bill of Costs 7. As noted above,
4 Hartford is allowed only one copy of the deposition. Accordingly,
5 based on Plaintiff's objection, the Court disallows the costs
6 related to the rough transcript sent by email and the "E-
7 Transcript," for a total of \$86.25.

8 The invoice pertaining to the Dempsey and Sawn depositions
9 lists \$335.50 and \$294.25 for their depositions, respectively.
10 However, the invoice also includes a charge of \$309.15 for "ROUGH
11 DISK." Although Hartford does not explain what was stored on this
12 disk, it presumably contained electronic versions of the
13 transcripts of the depositions. Hartford does not establish that
14 this was necessarily obtained for this case. Accordingly, based on
15 Plaintiff's objection, the Court disallows \$309.15 for the "ROUGH
16 DISK."

17 Finally, Plaintiff objects to various charges related to
18 "litigation support packages." Neither Hartford nor the invoices
19 explain the purpose of the "litigation support packages." Thus, it
20 is not clear whether these packages were necessarily obtained for
21 this case. Accordingly, based on Plaintiff's objection, the Court
22 disallows \$75.00 for "litigation support packages."

23 In sum, the Court disallows \$470.40 for costs related to
24 deposition transcripts based on Plaintiff's well-founded
25 objections. However, based on Plaintiff's financial resources, the
26 Court exercises its discretion to disallow the remaining costs for
27 deposition transcripts.

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1 III. Supersedeas Bond Premium

2 As noted above, Plaintiff was taxed \$9,191.00 for the premium
3 Hartford paid to obtain a supersedeas bond. This amount reflected
4 a non-refundable premium paid to maintain the bond in force for one
5 year.

6 Plaintiff asserts that this premium should be discounted by
7 two-thirds because the bond was required only from July 23, 2010
8 until November 10, 2010, the date the Ninth Circuit's mandate
9 issued. Plaintiff's objection is not well taken. The premium was
10 for a one-year term and was non-refundable. Plaintiff does not
11 assert that Hartford could have obtained a bond on different terms.
12 Further, as noted above, Plaintiff insisted that Hartford obtain
13 such a bond, notwithstanding its financial resources, and stated
14 that she assumed the risk that costs related to obtaining a bond
15 would be taxed against her if she did not prevail on appeal. As
16 Plaintiff observes now, Hartford had substantial assets at the time
17 she opposed its request to seek a stay without bond.

18 Accordingly, the Court permits Hartford to recover the full
19 amount of the supersedeas bond premium.

20 IV. Filing of Notice of Appeal

21 Plaintiff was taxed \$455.00 for the fee Hartford paid to file
22 its notice of appeal. Based on Plaintiff's financial resources,
23 the Court exercises its discretion to disallow this cost.

24 CONCLUSION

25 For the foregoing reasons, the Court GRANTS in part
26 Plaintiff's motion for review of the Clerk's taxation of costs and
27 DENIES it in part. (Docket No. 248.) Plaintiff does not justify
28 disallowing all of Hartford's costs. Many of her objections,

1 however, are well-taken; based on them, the Court disallows
2 \$1,002.15 in Hartford's costs. Based on Plaintiff's financial
3 resources, the Court exercises its discretion to disallow the
4 remainder of Hartford's costs, other than the premium it paid for
5 the supersedeas bond.

6 Accordingly, \$9,191.00 in costs is taxed against Plaintiff.
7 Plaintiff shall pay this amount forthwith.

8 IT IS SO ORDERED.

9
10 Dated: 1/31/2011



CLAUDIA WILKEN
United States District Judge