

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Chief Judge Wiley Y. Daniel

Civil Action No. 06-cv-01054-WYD-MEH

EDWARD K. QUICK,

Plaintiff,

v.

FRONTIER AIRLINES, INC.,

Defendant.

ORDER

THIS MATTER is before the Court on Plaintiff's Motion to Review Taxation of Costs [doc. #121, filed April 11, 2008]. In his Motion, Plaintiff asks the Court to review the \$7,023.65 in costs awarded to Defendant on April 8, 2008, pursuant to summary judgment granted in its favor by Judge Nottingham of this Court. Plaintiff had objected to Defendant's Proposed bill of Costs on March 26, 2008, arguing that costs under the Uniformed Services Employment and Reemployment Rights Act (USERRA) should not be assessed against veterans. Plaintiff makes the same argument in the present Motion.

Plaintiff appealed the summary judgment order to the Tenth Circuit, which abated the appeal on May 5, 2008. It found that the automatic stay provisions of the United States Bankruptcy Code applied to the appeal. On November 5, 2008, this case was transferred to me, and on November 10, 2008, I ordered the parties to file a status report indicating whether the present Motion properly remained pending before this

Court. On November 24, 2008, Plaintiff filed a status report indicating that Defendant's bankruptcy proceeding remained pending in the United States Bankruptcy Court for the Southern District of New York. He argued that although the automatic stay under 11 U.S.C. § 362(a) remained in effect, this Court could still rule on the present Motion. Plaintiff argued that while the stay applies to all parties, this Court is not stayed from ruling on the present Motion, and he cited a case from United States Bankruptcy Court for the Southern District of New York in support. See *In re Overmyer*, 32 B.R. 597 (Bankr. S.D.N.Y. 1983).

I find that the authority provided by Plaintiff does not sufficiently support my authority to rule on the present Motion at this time. Precedent from a different district court is only slightly persuasive, and in the cited case, the court discussed case law from different jurisdictions that is contrary to Plaintiff's proposition. See *id.* at 600-01 (noting that the proposition "that courts are not bound by the automatic stay provisions of Code § 362[] has been rejected by several courts of appeals"). Furthermore, that case does not appear to be directly on point, as it involves ruling on a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). Finally, in the present case, the Tenth Circuit abated its appeal in light of the stay provisions. Accordingly, I find that I should not rule on the present Motion at this time. It is hereby

ORDERED that Plaintiff's Motion to Review Taxation of Costs [doc. #121, filed April 11, 2008] is **DENIED WITHOUT PREJUDICE**.

Dated: March 3, 2009

BY THE COURT:

s/ Wiley Y. Daniel
WILEY Y. DANIEL,
CHIEF UNITED STATES DISTRICT JUDGE