

United States District Court
for the
Southern District of Florida

Soneet R. Kapila, Plaintiff,)	
)	
v.)	Civil Action No. 15-61016-Civ-Scola
)	
Davis, Graham & Stubbs LLP and)	
S. Lee Terry, Defendants.)	

Order Denying Motion to Defer Ruling

This matter is before the Court upon the Plaintiff's Motion to Defer Consideration of the Defendants' Motion for Fees and Costs Pending Appeal (ECF No. 45). The Defendants Davis, Graham & Stubbs LLP and S. Lee Terry filed an expedited response (ECF No. 48), and the Plaintiff filed a reply (ECF No. 51). Having considered the supporting and opposing submissions, the record and the applicable law, the Court **denies** the Plaintiff's motion (**ECF No. 45**).

In the motion, the Plaintiff urges the Court to defer ruling on the pending motion for costs until after the resolution of the appeal in this case. The Plaintiff characterizes his request as arising under Rule 54(d) of the Federal Rules of Civil Procedure, presumably relying upon an advisory committee note, which states that "[i]f an appeal on the merits of the case is taken, the court may rule on the claim for fees, may defer its ruling on the motion, or may deny the motion without prejudice, directing . . . a new period for filing after the appeal has been resolved." Fed. R. Civ. P. 54(d), Notes of Advisory Committee on Rules—1993 Amendment. He therefore asks the Court to exercise its discretion to defer ruling upon the motion until the resolution of the pending appeal. The Defendants, on the other hand, characterize the Plaintiff's motion as a request for an unsecured stay under Rule 62. The Plaintiff maintains that the Court should grant his request to defer under either Rule.

The Court's "regular practice is not to stay matters collateral to a final judgment, principally involving fees or costs issues, to avoid piecemeal appeals to the Eleventh Circuit." *TYR Tactical, LLC v. Protective Prods. Enters., LLC*, No. 15-cv-61741, 2016 WL 10647252, at *1 (S.D. Fla. Nov. 16, 2016) (Bloom, J.) (quoting *King Cole Condo. Ass'n v. QBE Ins. Corp.*, 2010 WL 3212091, at *1 (S.D. Fla. Aug. 12, 2010) (Torres, Mag. J.) (internal quotations and alterations omitted)).

Upon review of the Plaintiff's motion, the Court will not defer ruling upon the pending motion for costs. First, while the Plaintiff maintains that a ruling

upon costs at this juncture could be undone should he prevail on appeal, the same could be argued in virtually every case, and the Local Rules expressly provide that “[t]he prospects or pendency of supplemental review or appellate proceedings shall not toll or otherwise extend the time for filing a bill of costs with the Court,” and that such motions should be filed “regardless of the prospect or pendency of supplemental review or appellate proceedings.” S.D. Fla. L.R. 7.3(a)(1),(c). Second, the Plaintiff did not oppose the Defendants’ request for additional time to file their motion for costs following the Court’s order adopting the bankruptcy court’s report and recommendation and his notice of appeal filed in December of 2017. The Plaintiff raises the issue now for the first time three months later. Finally, as the Court has noted several times, the Plaintiff’s objections throughout this case, and the basis of his appeal, is his disagreement with the bankruptcy court’s and this Court’s characterizations of the issues involved.

Accordingly, the Court **denies** the motion to defer ruling (**ECF No. 45**). As a result, the Plaintiff shall file his response to the motion for costs (ECF No. 39) no later than **ten (10) days from the date of this order**.

Done and ordered at Miami, Florida, on April 10, 2018.



Robert N. Scola, Jr.
United States District Judge