

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL GARNES,

Plaintiff,

v.

No. 08-14109

Hon. Arthur J. Tarnow

BED BATH & BEYOND, INC.,

Defendant.

OPINION AND ORDER
DENYING DEFENDANT'S MOTION FOR COSTS [24]

The Court has reviewed Defendant's Motion for Costs [24] pursuant to the Federal Rules of Civil Procedure. Fed. R. Civ. P. 68. Defendant filed the motion on January 15, 2010. *See* Def.'s Mot. for Costs. To date, Plaintiff has not responded.

In the instant case, Defendant presented an Offer of Judgment to Plaintiff on December 16, 2009 for \$10,000. Def.'s Mot. for Costs 3. Plaintiff made a counteroffer for \$100,000, rejecting Defendant's offer. *Id.* The parties went to trial on January 5, 2010. The jury found no cause of action as to Defendant on January 7, 2010.

Defendant now seeks costs pursuant to Federal Rule of Civil Procedure 68. A defendant may serve an offer of judgment on an opposing party more than ten days before trial begins. If the offer is not accepted, Rule 68(d) states: "If the judgment that the offeree finally obtains is not more favorable than the unaccepted offer, the offeree must pay the costs incurred after the offer was made." Fed. R. Civ. P. 68(d). Rule 68(d) does not apply to judgments obtained by defendants. *Delta Air Lines, Inc. v. August*, 450 U.S. 346, 352 ("[I]f we limit our analysis to the

text of the Rule itself, it is clear that it applies only to offers made by the defendant and only to judgments obtained by the plaintiff.”); *see also Danese v. City of Roseville*, 757 F.Supp. 827, 831 (E.D. Mich. 1991).

Here, Plaintiff was awarded nothing. Judgment was entered in favor of Defendant.

There is no basis to award attorney fees or costs.

IT IS ORDERED that Defendant’s Motion for Costs is DENIED.

S/ARTHUR J. TARNOW
Arthur J. Tarnow
United States District Judge

Dated: September 27, 2010

I hereby certify that a copy of the foregoing document was served upon counsel of record on September 27, 2010, by electronic and/or ordinary mail.

S/LISA M. WARE
Case Manager