UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

MICHAEL J. SCALZI,

Plaintiff,

v.

CITY OF NORTH LAS VEGAS,

Defendant.

Case No. 2:08-cv-01399-MMD-VCF

ORDER

(Plf's Mtn to Retax Costs – dkt. no. 110)

Before the Court is Plaintiff's Motion to Re-Tax Costs. (Dkt. no. 110.) The Court has reviewed Defendant's Bill of Costs and considered Plaintiff's Objection and grants Plaintiff's Motion in part and denies it in part.

Plaintiff argues that costs should not be awarded because the judgment is mixed and neither party prevailed. Rule 54(d)(1) of the Federal Rules of Civil Procedure instructs that "costs should be allowed to the prevailing party" unless a statute, the procedural rules or a court provides otherwise. Rule 54 establishes a presumption that costs should be awarded to the prevailing party. *Amarel v. Connell*, 102 F.3d 1494, 1523 (9th Cir. 1997). "In the event of a mixed judgment, however, it is within the discretion of a district court to require each party to bear its own costs." *Id.* Plaintiff contends that this case presents such an event of mixed judgment because the Court found in favor of Defendant on Plaintiff's claims and in favor of Plaintiff on Defendant's counterclaim for breach of the duty of loyalty.

While each party prevailed on the claims asserted against them, the Court finds that fairness requires costs to be awarded to Defendant. Plaintiff commenced this action in September 2008 while Defendant asserted a counterclaim in response to Plaintiff's Second Amended Complaint filed in February 2010. The main issues in the case involved Plaintiff's employment related claims against Defendant and these issues controlled the discovery and motion practice in this case. The Court granted summary judgment on Plaintiff's gender discrimination and retaliation claims and claim for violation of NRS §281.641. The Court found Defendant failed to respond to Plaintiff's request for summary judgment on its counterclaim for breach of the duty of loyalty and granted summary judgment on this claim. Accordingly, Defendant should be awarded costs relating to the defense of Plaintiff's claims.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Re-Tax Costs (dkt. no. 110) is GRANTED IN PART and DENIED IN PART. Defendant has fourteen (14) days to submit a revised Bill of Costs to identify allowable costs relating to its defense of Plaintiff's claims. Plaintiff has seven (7) days to file an objection to the revised Bill of Costs to object to any costs that Plaintiff claims are not taxable.

DATED THIS 13th day of August 2013.

MIRANDA M. DU
UNITED STATES DISTRICT JUDGE