

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

HENRI EISENBAUM,	:	
	:	NO. 1:10-CV-701
Plaintiff,	:	
	:	
v.	:	
	:	OPINION & ORDER
SENIOR LIFESTYLE CORPORATION,	:	
	:	
Defendant.	:	
	:	
	:	

This matter is before the Court on Plaintiff's Motion to Review and Set Aside the United States District Court's Taxation of Costs (doc. 66), Defendant's Response in Opposition (doc. 67), and Plaintiff's Reply (doc. 68). For the reasons indicated herein, the Court DENIES Plaintiff's motion and AFFIRMS the Clerk's taxation of costs of \$1,340.80.

I. BACKGROUND

On December 9, 2010, Plaintiff Henri Eisenbaum filed an Amended Complaint raising numerous federal and state claims arising from the termination of his employment with Senior Lifestyle Corporation ("Defendant") (doc. 4). Plaintiff alleged that his employment was improperly terminated by Defendant and claims that (1) Defendant created and maintained a sexually-hostile work environment in violation of Title VII of the Civil Rights Act, 42 U.S.C. § 2000e (2006); (2) Defendant terminated Plaintiff in retaliation for complaints that he was sexually harassed in violation of Title VII of the Civil Rights Act, 42 U.S.C. § 2000e (2006); (3) Defendant terminated Plaintiff in retaliation for

filing a workers compensation claim in violation of Ohio Revised Code Section 4123.90; and (4) Defendant terminated Plaintiff for hiring an attorney in violation of Ohio public policy (Id.).

On July 7, 2013 the Court granted Defendant summary judgment (doc. 49). Such decision was affirmed on appeal (docs. 51, 39). On September 10, 2014, the Clerk allowed \$1,340.80 in costs to Defendant (doc. 64), having reduced Defendant's Bill from \$1,940.80 (doc. 65). Plaintiff now has filed the instant Motion to Review and Set Aside the Clerk's Taxation of Costs (doc. 67), which having been fully briefed is ripe for the Court's review.

II. DISCUSSION

Under Fed. R. Civ. P. 54(d) costs other than attorney's fees should be allowed to the prevailing party. "Costs are generally awarded to a prevailing party as a matter of course. The district court's discretion is more limited than it would be if the rule were nondirective. The unsuccessful party must show circumstances sufficient to overcome the presumption favoring an award of costs to the prevailing party." McHugh v. Olympia Entm't Inc., 37 Fed. Appx. 730, 743 (6th Cir. 2002). In his motion Plaintiff concedes as much, and indicates that although there are a number of factors favoring Defendants, the case was brought in good faith, it was prosecuted correctly, and it was sufficiently close and difficult. Plaintiff's principal argument, however, is that it would be inequitable to impose upon him Defendant's costs (doc. 66). Plaintiff indicates he has been unemployed for four and

a half years, and his savings have been whittled down (Id.).

Defendant responds that this was not a close case and that the court ruled in its favor on all of Plaintiff's claims (doc. 67). Defendant argues that though indigency can weigh in the favor of denying costs, Plaintiff is not indigent, nor has Plaintiff proffered evidence that he is unable to get a job because of the lawsuit (Id.).

Plaintiff in his reply contends that the Court can and should accord substantial weight to the chilling effect the taxation of costs will have on non-prevailing plaintiffs of minimal means (doc. 68). Plaintiff is correct in his citation to Abdulsalaam v. Franklin County Board of Commissioners, 2012 U.S. Dist. LEXIS 4076 at *6 (S.D. Ohio March 26, 2012), that the Court may consider such factor.

However, in reviewing this matter, the Court finds its facts set it apart from the situation in Abdulsalaam, where the Plaintiffs had a total of debt of approximately \$165,000, no cash on hand, stocks, bonds or other property real or chattel, and where the taxation of costs was nearly \$6,000.00. 2012 U.S. Dist. LEXIS 4076 at *3, *8. Here the record shows Plaintiff has sufficient assets to cover the levied amount of \$1,340.80, and that the circumstances here do not overcome the presumption favoring a reward of costs to Defendant, the prevailing party. " McHugh v. Olympia Entm't Inc., 37 Fed. Appx. 730, 743 (6th Cir. 2002).

Accordingly, the Court DENIES Plaintiff's Motion to

Review and Set Aside the United States District Court's Taxation of Costs (doc. 66), and AFFIRMS the Clerk's taxation of costs of \$1,340.80.

SO ORDERED.

Dated: October 14, 2014

s/S. Arthur Spiegel
S. Arthur Spiegel
United States Senior District Judge