

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

Capitol Records, Inc., et al.,)
)
)
Plaintiffs,)
vs.)
)
Debbie Foster and Amanda Foster,)
)
Defendants.)

Case No. Civ. 04-1569-W

FILED

SEP 6 2007

ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
BY W.H. DEPUTY

ORDER

Before the Court are the plaintiffs’ Motion to Deem Judgment Satisfied and the Defendant Deborah D. Foster’s Motion to Amend Judgment. Both motions relate to a check issued by the plaintiffs on August 30, 2007 in the amount of \$68,685.23 made payable to Ms. Foster. The check was issued in payment of Ms. Foster’s attorneys’ fees as awarded by this Court pursuant to § 505 of the Copyright Act. The Court entered its order awarding Ms. Foster fees in the amount of \$68,685.23 on July 16, 2007. On August 13, 2007, Ms. Foster filed her unopposed request that the Court enter a separate judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure. The Court entered the requested separate judgment on August 16, 2007, and the plaintiffs issued their check to Ms. Foster within the ten-day stay of execution set forth in Rule 62 of the Federal Rules of Civil Procedure. Having paid to the defendant the \$68,685.23 set out in the Court’s judgment, the plaintiffs contend the Court should deem said judgment satisfied. Ms. Foster argues that the payment was deficient and contends that rather than deem the judgment satisfied, the Court should amend it to “include interest, cost/expenses and attorneys’ fees incurred commencing on or around July 5, 2007 and continuing until Plaintiffs have tendered payment in full.”

The “interest” to which Ms. Foster refers is presumably the post-judgment interest mandated by 28 U.S.C. §1961(a) on “any money judgment in a civil case recovered in a district court.” Such interest accrues by operation of law and, under Tenth Circuit authority, is calculated from the date an attorneys’ fee award is reduced to a sum certain. See MidAmerica Federal Savings & Loan v. Sherson/American Exp., Inc., 962 F.2d 1470, 1475-1476 (10th Cir. 1992). There is, however, “ordinarily no occasion for mentioning statutory interest in a judgment since such interest follows as a legal incident from the statute providing for it.” Blair v. Durham, 139 F.2d 260, 261 (6th Cir. 1943); see also Amis v. Smith, 41 U.S. 310, 311 (1842). It is well established that existing statutes affecting judgments at the time of entry become a part of them and must be read into them as if an express provision to that effect were inserted therein. Thus, while the Court finds that the plaintiffs’ payment appears to be deficient, it does not find that to be a proper basis for amendment of the August 16 judgment.

Ms. Foster’s remaining complaints concerning the plaintiffs’ tendered payment likewise fail to present a proper basis for amendment of judgment. She protests the plaintiffs’ refusal to compensate her for exhibits she prepared for the July 5, 2007 evidentiary hearing held in this matter and for five hours her attorney spent appearing at that hearing. Those items, however, were not made part of her application for fees and she has made no motion to the Court to amend her application to include them. Furthermore, it appears that at this point in the proceedings, any such motion to amend would be untimely.

Ms. Foster next complains that the plaintiffs, by refusing to deposit their payment of the attorneys’ fee award into her counsel’s IOLTA trust account, deprived her of immediate access to the funds. She suggests that by issuing a check, the plaintiffs ensured that the funds would be withheld from her until after Labor Day. The timing of the plaintiffs’ payment is explained more plausibly by the date of the Court’s entry of separate judgment at the

defendant's request than the by the holiday calendar. Additionally, it appears from Ms. Foster's motion that any hold placed on the funds was the result of bank policy, not any action on the part of the plaintiffs. Ms. Foster has failed to direct the Court to any authority suggesting that a party is required to comply with instructions to directly deposit funds into a trust account rather than render payment of a money judgment in the form of a check.

Finally, Ms. Foster complains that the plaintiffs made the check for \$68,685.23 payable solely to herself. She submits that the plaintiffs should have instead issued "separate check(s) for Deborah Foster and for each of her attorneys." The Court notes that it awarded fees pursuant to § 505 of the Copyright Act which states in pertinent part that "the court may also award a reasonable attorney's fee to the prevailing party as part of the costs." Section 505 clearly provides that the award be made to the *prevailing party*, not directly to counsel. See Crescent Publishing Group, Inc. v Playboy Enterprises, Inc., 246 F.3d 142, (2nd Cir. 2001); see also Evans v. Jeff D. 475 U.S. 717, n. 19 (1986) (holding that under 42 U.S.C. § 1988 prevailing plaintiff was entitled to award for attorneys' fees, not the plaintiff's lawyer). Ms. Foster has pointed to no case law or statutory authority in support of her proposition that the plaintiffs were required to pay all or a portion of the award directly to her attorneys. Furthermore, Ms. Foster never requested that the Court direct the plaintiffs to pay the attorneys' fee award to anyone other than the defendant herself. The Court finds nothing improper in the plaintiffs having issued the check payable to Ms. Foster.

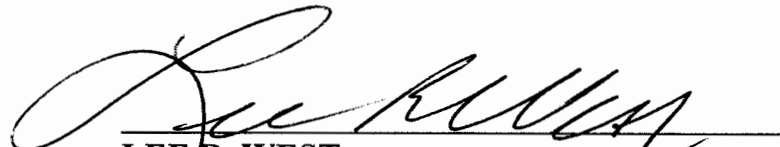
The Court finds that the defendant has shown no cause necessitating amendment of the judgment entered August 16, 2007. Her motion for amendment should, therefore, be denied. As it appears that the plaintiffs have failed to include in their payment to the defendant the required statutory post-judgment interest, the Court shall defer ruling on their Motion to Deem Judgment Satisfied pending proof of payment of any interest accrued from July 16, 2007, the date the award was reduced to a sum certain, until the date of payment.

Accordingly the Court:

1. DENIES the Defendant Deborah D. Foster's Motion to Amend Judgment;
2. DEFERS ruling on the plaintiffs' Motion to Deem Judgment Satisfied pending proof of their payment of any statutory interest owed to the defendant;
3. ORDERS the plaintiffs to calculate and remit to the defendant on or before September 13, 2007, any post-judgment interest due pursuant to 28 U.S.C. §1961;
4. ORDERS the plaintiffs to submit to the Court proof of payment of any interest owed; and
5. GRANTS the defendant three days from the plaintiffs' submission of such proof to file her response, if any, to the plaintiffs Motion to Deem Judgment satisfied.

Upon receipt of the plaintiffs' proof and the defendant's response, the Court shall enter its ruling upon the plaintiffs' Motion to Deem Judgment Satisfied.

ENTERED this 6th day of September 2007.



LEE R. WEST
UNITED STATES DISTRICT JUDGE