

EXHIBIT C

LEXSEE 1996 U.S. DIST. LEXIS 10838

**RICHARD LE MOINE d/b/a LE MOINE STUDIOS, Plaintiff, v. COMBINED
COMMUNICATIONS CORPORATION d/b/a GANNETT OUTDOOR CO. OF
CHICAGO, EMPRESS RIVER CASINO CORPORATION and MEAGAN
O'MEARA, Defendants.**

No. 95 C 5881

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
ILLINOIS, EASTERN DIVISION**

1996 U.S. Dist. LEXIS 10838

**July 30, 1996, Decided
July 31, 1996, DOCKETED**

DISPOSITION: [*1] Defendant's bill of costs granted in part.

ion"). Empress filed its bill of costs pursuant to Fed. R. Civ. P. 54(d). Le Moine filed timely objections.

COUNSEL: For RICHARD LE MOINE dba Le Moine Studio, plaintiff: Daniel S. Hefter, Lynda T. Roundtree, Matthew Sean Elvin, Hefter & Radke, Chicago, IL.

For EMPRESS RIVER CASINO CORPORATION, defendant: James K. Meguerian, William K. Bass, D'Ancona & Pflaum, Chicago, IL.

JUDGES: Suzanne B. Conlon, United States District Judge

OPINION BY: Suzanne B. Conlon

OPINION

MEMORANDUM OPINION AND ORDER

Richard Le Moine sues Combined Communications Corporation d/b/a Gannett Outdoor Company of Chicago ("Gannett"), Empress River Casino Corporation ("Empress"), and Meagan O'Meara for copyright infringement. Gannett and O'Meara were dismissed with prejudice by stipulation. Summary judgment was entered in Empress' favor. See Memorandum Opinion and Order, No. 95 C 5881 (N.D. Ill. June 6, 1996) ("the June 6 opin-

DISCUSSION

Rule 54(d) provides, "costs shall be allowed as of course to the prevailing party unless the court otherwise directs." Section 1920 specifies the costs that may be recovered pursuant to Rule 54(d). *Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437, 441, 96 L. Ed. 2d 385, 107 S. Ct. 2494 (1987). The costs allowed by § 1920 are: (1) fees of the clerk; (2) fees for transcripts; (3) fees for printing and witnesses; (4) fees for copies "of papers necessarily obtained for use in the case"; (5) docket fees; and (6) compensation of court-appointed experts and interpreters. Rule 54(d) creates a presumption favoring the award of costs. *Plair v. E.J. Brach & Sons, Inc.*, No. 94 C 244, 1995 WL 387789, at *1 (N.D. Ill., June 28, 1995) (citing *Coyne-Delany Co., Inc. v. Capital Development Bd.*, 717 F.2d 385, 392 (7th Cir. 1983)). The losing party must affirmatively demonstrate the prevailing party is not entitled to costs. *Id.* (citing *M.T. Bonk Co. v. Milton Bradley Co.*, 945 F.2d 1404, 1409 (7th Cir. 1991)). The court must independently review the bill of costs in scrupulous detail.

Empress seeks the following fees in their bill of costs:

Fees of the court reporter	\$ 1,883.86
Fees for exemplification and copies of papers necessarily obtained for use in the case	2,304.58

	Total	\$ 4,188.44
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In support of the bill of costs, Empress submits an affidavit of its attorney James [*3] K. Meguerian. The court reviews each of the claimed costs in turn.

I. CONTINUANCE

As an initial matter, Le Moine requests a continuance of the taxation of costs pending the outcome of his appeal. Le Moine bases his request on concerns for judicial economy, hypothesizing that if the summary judgment is reversed on appeal, the parties and the court will have wasted time and effort litigating the bill of costs. *See American Infra-Red Radiant Co. v. Lambert Industries, Inc.*, 41 F.R.D. 161, 164 (D. Minn. 1966); *cf.* Fed. R. App. P. 8(a) (granting district court discretion to stay a judgment pending appeal).

Le Moine's request for a continuance is denied. The bill of costs was submitted and objections were filed. The issues are not complicated. Thus, the court will review the bill of costs while the case is still fresh.

II. COURT REPORTER FEES

Court reporter fees are recoverable if stenographic transcripts are "necessarily obtained for use in the case." 28 U.S.C. § 1920(2). Empress seeks \$ 1,883.86 for court reporter fees. Meguerian attests the costs were billed through his law firm of D'Ancona & Pflaum and chargeable to Empress. Meguerian Aff. P 4. [*4] Meguerian states the \$ 1,883.86 includes costs for court reporter fees, transcripts, diskettes and exhibits in connection with depositions necessarily obtained for use in this case. *Id.* Meguerian attaches a list of the eight deponents and the dates their depositions were taken. *See* Meguerian Aff., attachment 1. Meguerian attests six of the depositions were noticed by Le Moine, and portions of all depositions were cited in connection with Empress' successful summary judgment motion. Meguerian Aff. P 4.

Le Moine objects that Empress failed to attach the reporter's invoice to the bill of costs. Le Moine is not aware of the diskettes referenced in Meguerian's affidavit. Nor, Le Moine contends, does he understand which exhibits "were necessarily obtained for use in this case." Without greater detail, Le Moine asserts he is unable to determine the necessity and reasonableness of the amount sought for court reporter fees and expenses. "While the conclusory statement that ' . . . each item of cost or distribution claimed above is correct and has been necessarily incurred in the above action . . . ' may be sufficient in support of an unopposed motion to tax costs, such evidence clearly [*5] falls short of meeting defendants' burden of proof after the necessity and reasonableness of the costs have been challenged by plaintiff."

Berryman v. Hofbauer, 161 F.R.D. 341, 344 n.2 (ED. Mich. 1995).

Le Moine's objection is well founded. Empress fails to sufficiently itemize the claimed costs for court reporter fees. Empress does not identify the court reporter's per page fee, the cost and necessity of computer diskettes, and the necessity of and number of exhibits used in connection with the depositions. In light of Le Moine's objections and without copies of the invoices and a more specific accounting of Empress' costs, Empress cannot be awarded the costs claimed for reporter fees.

III. EXEMPLIFICATION AND COPYING

Empress seeks \$ 2,304.58 for exemplification and copying charges. Copies of documents for a party's personal use, extra copies of filed papers and correspondence, and copies of cases are not recoverable. *See Haroco v. American Nat'l Bank & Trust of Chicago*, 38 F.3d 1429, 1441 (7th Cir. 1994); *McIlveen v. Stone Container Corp.*, 910 F.2d 1581, 1584 (7th Cir. 1990); *Arachnid, Inc. v. Valley Recreation Products, Inc.*, 143 F.R.D. 192, 193 [*6] (N.D. Ill. 1992).

Meguerian explains that color reproduction of the material at issue and copies of audio and video tapes were necessary to effectively present Empress' case. Meguerian Aff. P 4. Meguerian attests Empress incurred \$ 208.86 for color reproduction of advertising artwork and \$ 240 for dubbing and producing audio and visual tapes in discovery. *Id.* Le Moine does not object to these costs. Accordingly, Empress is awarded \$ 448.86 (\$ 208.86 + \$ 240).

Meguerian further attests Empress incurred \$ 1,855.72 for document production from Empress' advertising agency, Keroff & Rosenberg Advertising, Inc., including color copies of some disputed material. Meguerian Aff. P 4. He states the photocopying was performed by an outside print shop at a rate of 16.5 cents per page for regular copies and \$ 1.25 per page for color copies. *Id.* Meguerian attests Empress relied heavily on substantial portions of the documents obtained from Keroff in discovery and in connection with the summary judgment motion. *Id.*

Le Moine objects to the \$ 1,855.72 copying cost associated with discovery from Keroff. Le Moine submits the affidavit of his counsel, Matthew S. Elvin, who attests that [*7] he reviewed Keroff's documents and had relevant copies made for \$ 445.25. *See* Elvin Aff. P 4. Elvin further attests he rejected Empress' counsel's request to copy the documents Le Moine selected based on the work product privilege. *Id.* Le Moine argues Empress

apparently copied Keroff's entire file given the disparity in the photocopying costs. Le Moine notes that Empress concedes that it did not rely on all documents it copied from Keroff. *See* Meguerian Aff. P 4. Le Moine contends, "the party seeking recovery of photocopying costs must come forward with evidence showing the nature of the documents copied, including how they were used or intended to be used in the case. A prevailing party may not simply make unsubstantiated claims that such documents were necessary, since the prevailing party alone knows for what purpose the copies were made." *Helms v. Wal-Mart Stores, Inc.*, 808 F. Supp. 1568, 1570 (N.D. Ga. 1992), *aff'd*, 998 F.2d 1023 (11th Cir. 1993), *criticized on other grounds by*, *DiCecco v. Dillard House, Inc.*, 149 F.R.D. 239 (N.D. Ga. 1993).

Le Moine's objection is persuasive. Empress failed to reply to the objection and provide the basis for and invoices [*8] supporting its claimed costs. There is a large disparity in the costs Empress and Le Moine purportedly incurred in copying Keroff's documents. Appar-

ently, after Le Moine rejected Empress' request to simply copy Le Moine's copies of relevant Keroff documents, Empress copied Keroff's entire file. Empress fails to explain the necessity of its excessive copying costs. While Empress may not have relied simply on copies Le Moine made, the amount Le Moine spent in copying Keroff's documents is an appropriate award. Accordingly, Empress is awarded \$ 445.25, for a total of \$ 894.11 (\$ 448.86 + \$ 445.25).

CONCLUSION

Defendant's bill of costs is granted in part. Empress River Casino Corporation is awarded \$ 894.11 in costs.

ENTER:

Suzanne B. Conlon

United States District Judge

July 30, 1996