IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

LAURA LYNN HAMMETT **PLAINTIFF**

v. **Case No. 4:21-cv-00189-LPR**

PORTFOLIO RECOVERY ASSOCIATES LLC **DEFENDANT**

ORDER

Pending before the Court is Defendant PRA's Motion for Taxable Costs.[1] Pursuant to Rule 54(d)(1) and 28 U.S.C § 1920, PRA requests $8,356.18 in costs. Plaintiff makes numerous arguments as to why the Court should not impose the requested costs. Plaintiff's arguments are not persuasive. Accordingly, the Court GRANTS PRA's Motion.[2]

Some of Plaintiff's arguments can be quickly dispatched. Plaintiff argues that Defendant is not entitled to costs because Plaintiff is the real prevailing party.[3] For the reasons set forth in Section II of Defendant's Reply Brief,[4] Plaintiff is wrong. Defendant is the prevailing party in this case.[5] Plaintiff argues that Rule 54(d)(1) and 28 U.S.C. § 1920 are "preempted" by 15 U.S.C. §

[1] Def.'s Mot. for Taxable Costs (Doc. 240).

[2] The Court stays enforcement of this Order until the Eighth Circuit resolves the summary judgment decision currently on appeal (as well as this costs decision if the Plaintiff decides to appeal it). To be clear, the Court's decision to award costs is a final and immediately appealable order. If Plaintiff wishes to appeal it, she must do so within 30 days of the date of this Order. *See* Fed. R. App. P. 4(a)(1)(A). But enforcement of the Order is stayed for now. Defendant is ordered to submit a status report to the Court as soon as the Eighth Circuit resolves the summary judgment decision currently on appeal.

[3] *See* Pl.'s Resp. to Def.'s Mot. for Taxable Costs (Doc. 252) at 2.

[4] *See* Def.'s Reply in Supp. of Def.'s Mot. for Taxable Costs (Doc. 259) at 2. For this document, the page number cited in this Order is the actual number at the bottom of the page rather than the number in the ECF stamp at the top. This document is the only one where those two numbers are different.

[5] *See* Aug. 16, 2022 Consolidated Order (Doc. 173).

1692k(a)(3).[6] For the reasons set forth in Section I of the Defendant's Reply Brief,[7] Plaintiff is wrong. Rule 54(d)(1) and 28 U.S.C. § 1920 are applicable with respect to costs in the instant case. Plaintiff makes several different arguments about Rule 68.[8] All of those arguments are basically irrelevant. The request for costs here does not come under the auspices of Rule 68.[9] It is true that Defendant's Motion mentioned Rule 68, but it did so only in passing and seemingly as background information.[10] Finally, Plaintiff argues that the cost request for the Pivot production is too high.[11] For the reasons set forth in Section III of the Defendant's Reply Brief,[12] Plaintiff is wrong.[13]

Plaintiff's remaining arguments are best understood as several facets of one unified, overarching argument: that awarding Defendant costs in this case would be inequitable. In the Eighth Circuit, as in many other circuits, "there is a strong presumption that a prevailing party shall recover" taxable costs "in full measure."[14] In order to overcome that strong presumption, a

[6] *See* Pl.'s Resp. to Def.'s Mot. for Taxable Costs (Doc. 252) at 2, 5. Plaintiff mostly cites to 15 U.S.C. § 1692(k). But that appears to be a mistake, because § 1692 does not have a subsection (k). *See* 15 U.S.C. § 1692. She means § 1692k. Also, "preempted" really isn't the right word here. But the Court understands the Plaintiff's point.

[7] *See* Def.'s Reply in Supp. of Def.'s Mot. for Taxable Costs (Doc. 259) at 1; *see supra* note 4.

[8] *See* Pl.'s Resp. to Def.'s Mot. for Taxable Costs (Doc. 252) at 2, 6–10.

[9] *See* Def.'s Mot. for Taxable Costs (Doc. 240).

[10] *See* Def.'s Br. in Supp. of Def.'s Mot. for Taxable Costs (Doc. 242) at 1–3.

[11] *See* Pl.'s Resp. to Def.'s Mot. for Taxable Costs (Doc. 252) at 2, 19.

[12] *See* Def.'s Reply in Supp. of Def.'s Mot. for Taxable Costs (Doc. 259) at 2–4; *see supra* note 4.

[13] The Court has reviewed all the evidence supporting Defendant's costs request, as well as the evidence referenced in Plaintiff's opposition to the costs request. In summary, the Court concludes that all of the $8,356.18 falls within 28 U.S.C. § 1920's definition of taxable costs. As to the Pivot production issue specifically, the copies made by Defendant were "necessarily obtained for use in the case" as that phrase is used in § 1920 and explained in cases like *Concord Boat Corp. v Brunswick Corp.*, 309 F.3d 494, 498 (8th Cir. 2002).

[14] *See Concord Boat Corp.*, 309 F.3d at 498 (citations omitted).

"losing party bears the burden of making the showing that an award is inequitable under the circumstances."[15] Plaintiff has not met that burden.

First, Plaintiff argues that Defendant multiplied the costs of litigation.[16] The Court does not agree. As a threshold matter, it is not clear exactly what Plaintiff is saying Defendant did during the litigation that causally resulted in specific taxable costs which were avoidable. That is, Plaintiff does not link up Defendant's alleged wrongful conduct with a specific taxable cost. In any event, nearly all of Plaintiff's assertions concerning the wrongfulness of Defendant's litigation conduct are unsubstantiated. For example, Plaintiff's assertion that Defendant altered business documents is rank speculation.[17] For another example, Plaintiff's assertion that Defendant paid its expert doctor to lie about Plaintiff remains unproven.[18] It is true that Defendant has aggressively defended against Plaintiff's claims. But it is just as true that Plaintiff has aggressively prosecuted her claims. Both parties are entitled to do so. And, while each side has at times put a foot very close to the out-of-bounds line, nothing suggests Defendant was vexatiously, intentionally, or even accidentally running up costs.

Second, Plaintiff argues that she is in dire straits financially. Although it is a little hard to follow the entire financial story told by Plaintiff, the bottom line appears to be that Plaintiff says

---

[15] *Id.* (quoting *In re Paoli R.R. Yard PCB Litig.*, 221 F.3d 449, 462–63 (3d Cir. 2000)). Following the *Paoli* citation backwards in time suggests that this standard was gleaned from an older version of Rule 54(d)(1), which noted that "costs . . . shall be allowed as of course to the prevailing party unless the court otherwise directs." *Paoli*, 221 F.3d at 462. Courts emphasized the phrase "as of course" to support the judicially-developed standard. *See* 10 James Moore, *Moore's Federal Practice* § 54.101 (Daniel Coquillette et al. eds., 3d ed. 2023). In 2007, the "as of course" language was dropped from the Rule. *Compare* Fed. R. Civ. P. 54(d)(1) (2007) *with* Fed. R. Civ. P. 54(d)(1) (2006). But the Advisory Committee Notes explain that the relevant 2007 Amendments were "intended to be stylistic only." *Id.* There has been no suggestion that the relevant wording changed in Rule 54(d)(1) vitiates the binding force of the Eighth Circuit's pre-2007 caselaw on this topic.

[16] *See* Pl.'s Resp. to Def.'s Mot. for Taxable Costs (Doc. 252) at 10.

[17] *See id.* at 11.

[18] *See id.* at 13.

she has income of only $639 per month.[19] But she does not note what her expenses are. And she appears to concede that she has assets of at least $70,000 in a capital account.[20] Overall, Plaintiff has not shown that she is currently so destitute that awarding taxable costs would be inequitable.

Third, Plaintiff argues that she has already been forced to spend a lot of money in this litigation based on the Court's "unconstitutional" refusal to allow her to use the electronic filing system.[21] To the extent it needs saying, the Constitution does not require electronic filing—which is a good thing since electronic filing wasn't possible for the first 200-plus years of federal court operations. And electronic filing rules distinguishing between counsel (who are officers of the court and members of the bar) and *pro se* parties (who are not) easily survives rational basis scrutiny for purposes of the Equal Protection Clause. As to Plaintiff's point that she has already had to pay a lot of money to pursue this lawsuit, that is the nature of the beast. She chose to bring this lawsuit and to pursue it vigorously.[22] And, as noted in the preceding paragraph, she has not shown herself to be in such awful financial circumstances (even after the money she has spent in the litigation) that awarding costs to the Defendant would be inequitable.

Finally, Plaintiff argues about the relative financial resources of the parties.[23] Certainly it is true that Defendant has immeasurably greater resources than Plaintiff. It is also true that Defendant would miss the $8,000-plus dollars far less than Plaintiff would. But the caselaw cited by Defendant teaches that this resource gap is not, absent unusual or special circumstances, a fair

---

[19] *See* Pl.'s Aff. in Supp. of Pl.'s Resp. to Def.'s Mot. for Taxable Costs (Doc. 253) at 16. Plaintiff elsewhere states that her monthly income is $630. *See* Pl.'s Resp. to Def.'s Mot. for Taxable Costs (Doc. 252) at 19.

[20] *See* Pl.'s Aff. in Supp. of Pl.'s Resp. to Def.'s Mot. for Taxable Costs (Doc. 253) at 12; *see also* Pl.'s Resp. to Def.'s Mot. for Taxable Costs (Doc. 252) at 18.

[21] *See* Pl.'s Resp. to Def.'s Mot. for Taxable Costs (Doc. 252) at 2.

[22] *See generally Hammett v. Portfolio Recovery Assoc., LLC*, Case No. 4:21-cv-00189-LPR (E.D. Ark.).

[23] *See* Pl.'s Resp. to Def.'s Mot. for Taxable Costs (Doc. 252) at 24.

reason to cast aside the strong presumption in favor of awarding costs to the prevailing party.[24] And there is nothing special about this case that convinces the Court to bend that principle. In this regard, it is worth noting that this is not a case where a non-litigious, destitute person turned to the courts for the first time and only as a last resort to avoid a major catastrophe. Plaintiff acknowledges that she has "filed about 12 lawsuits and arbitrations" over the course of her life.[25] That's a lot compared to the average person. There is nothing wrong with insisting on one's rights through court action or in arbitral forums. But it certainly cuts against the idea that awarding costs to the prevailing party here is somehow unexpected or will dissuade Plaintiff from filing lawsuits in the future.

The foregoing addresses the most prominent of Plaintiff's arguments. For certain, in her winding 26-page Response and 17-page Affidavit, Plaintiff raises a bevy of other arguments.[26] To the extent the Court has not explicitly addressed all such arguments, the Court notes that none of them—independently or collectively with all the other arguments—meets Plaintiff's burden of showing an award of costs to Defendant would be inequitable here. Accordingly, the Court GRANTS Defendant's Motion for Costs and orders Plaintiff to pay to Defendant $8,356.18. The full amount is immediately due and payable.[27]

---

[24] *See* Def.'s Reply in Supp. of Def.'s Mot. for Taxable Costs (Doc. 259) at 6 (collecting cases); *see supra* note 4.

[25] *See* Pl.'s Aff. in Supp. of Pl.'s Resp. to Def.'s Mot. for Taxable Costs (Doc. 253) at 2.

[26] *See* Pl.'s Resp. to Def.'s Mot. for Taxable Costs (Doc. 252); Pl.'s Aff. in Supp. of Pl.'s Resp. to Def.'s Mot. for Taxable Costs (Doc. 253).

[27] *But see* note 2. While the Court is confident in its summary judgment ruling, the appeal is not frivolous. Because Defendant's resources suggest it does not need the money at present, the wiser course of action is to stay enforcement of this Order until the date on which the appeal of the summary judgment issue is resolved (and the appeal of this Costs Order is resolved, assuming Plaintiff appeals from this Order within 30 days). *See* Fed. R. App. P. 4(a)(1)(A).

IT IS SO ORDERED this 23rd day of August 2023.

LEE P. RUDOFSKY
UNITED STATES DISTRICT JUDGE