

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re:)	Case No. 02-10306
)	
PETER BILYJ,)	Chapter 7
Debtor.)	
)	
HOUSE OF LAROSE)	Adversary Proceeding No. 02-1151
CLEVELAND, INC.,)	
Plaintiff,)	
)	Judge Arthur I. Harris
v.)	
)	MEMORANDUM ON MOTION
PETER BILYJ,)	FOR COSTS
Defendant.)	

On December 3, 2003, this Court issued a memorandum of opinion and judgment finding in favor of plaintiff House of LaRose Cleveland, Inc. (LaRose) that the \$26,458.62 wage benefits paid to debtor/defendant Peter Bilyj (Bilyj) is a non-dischargeable debt under §523(a)(2)(A), and that LaRose is not entitled to its request for an award of \$71,886.34 in punitive damages or \$71,886.34 in attorneys' fees (docket nos. 37 and 38).

Presently before the Court is LaRose's motion for an award of \$4,606.09 in costs (docket no. 41) and bill of costs (docket no. 42) related to the Court's judgment. Bilyj has filed a brief in opposition to the request for costs (docket no. 43), and LaRose has filed a reply (docket no. 44). For the reasons that follow, the Court shall grant LaRose's motion for costs in the amount of \$3,156.44.

THE PARTIES' POSITIONS

In its motion LaRose requests the Court award it costs of \$4,606.09 for actual out of pocket expenses related to this adversary proceeding. Bilyj opposes the request on two grounds: (1) LaRose was not the prevailing party, and thus not entitled to costs, and (2) even if the Court allows costs, LaRose is not entitled to recover Lexis research costs of \$1,449.65.

LAW

“Under Rule 54(d) the ‘prevailing party’ automatically is entitled to costs ‘unless the court otherwise directs.’ ” *Buchanan v. Stanships, Inc.*, 485 U.S. 265, 268 (1988). However, this automatic entitlement is not incorporated into Bankruptcy Rule 7054. Bankruptcy Rule 7054(b) provides that the bankruptcy court may *in its discretion* award costs to the prevailing party in an adversary proceeding depending upon the equities of the case.¹ *See In re Gioioso*, 979 F.2d

¹LaRose seeks its award of costs as a motion for reconsideration under the authority of Bankr. Rule 3008. Rule 3008 addresses reconsideration of orders disallowing claims against the estate and does not provide authority for a post-judgment request for costs. Nor is it clear whether a motion to alter or amend under Bankruptcy Rule 9023 and Fed.R.Civ.P.59(e) is necessary to award costs when a bankruptcy court’s judgment is silent as to costs. *Compare Buchanan v. Stanships*, 485 U.S. at 268-69 (motion for costs in *district court*, even though designated as a Rule 59 motion, was properly viewed as “a Rule 54(d) motion for costs rather than a Rule 59 motion to alter or amend a judgment”), *with* Instructions accompanying Bankruptcy Court Form B-263 – “Bill of Costs” (“The Clerk will not tax costs unless the judgment signed by the court specifically

956, 962 (3rd Cir. 1992); *In re Consolidated Partners Investment Co.*, 156 B.R. 982, 987 (Bankr. N.D. Ohio 1993). The bankruptcy court’s decision whether to award costs pursuant to Rule 7054(b) is reviewed for abuse of discretion. *Gioioso* at 962. *See also In re Fordu*, 201 F.3d 693, 696 n.1 (6th Cir. 1999).

LaRose is clearly the “prevailing party” in this adversary proceeding for purposes of Rule 7054(b), as it was successful on the fundamental issue of fraud in its complaint. *See Hensley v. Eckerhart*, 461 U.S. 424, 432 (1983) (plaintiff is a “prevailing party” if successful on any significant issue which achieved some of the benefits sought); *see also Texas State Teachers Association v. Garland Independent School District*, 489 U.S. 782, 792 (1989)(citing *Hensley*).

28 U.S.C. § 1920 provides specific fees that a judge or clerk of any court of the United States may tax as costs:

- (1) Fees of the clerk and marshal;
- (2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case;
- (3) Fees and disbursements for printing and witnesses;
- (4) Fees for exemplification and copies of papers

awards costs to the prevailing party.”). Nevertheless, the Court need not decide the appropriate procedural vehicle, since the Court deems it appropriate to award costs in response to LaRose’s motion, whether it be viewed as under Bankruptcy Rule 9023 and Fed.R.Civ.P. 59(e) or directly under Bankruptcy Rule 7054(b).

necessarily obtained for use in the case;

(5) Docket fees under section 1923 of this title;

(6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.

Allowable costs are limited to the specific categories in § 1920, and expenses that are not authorized by statute must be borne by the party incurring them. *Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437, 441-45 (1987).

The Court finds that the majority of expenses requested by LaRose are properly taxed as costs pursuant to Bankruptcy Rule 7054(b) and 28 U.S.C. § 1920. Of the total \$4,606.09 costs requested, Bilyj objects to \$1,449.65 for Lexis research expenses. Lexis research expenses are not costs specifically allowed under § 1920 and, therefore, the Court shall disallow \$1,449.65 from the amount requested. The remaining costs requested by LaRose are specifically allowed under § 1920, and Bilyj has not objected to them. It appears that LaRose has provided adequate documentation for the balance of the costs requested, and has verified that the costs are correct and were necessarily incurred in this adversary proceeding.

CONCLUSION

LaRose's motion for costs is granted in part. The Court amends its judgment dated December 3, 2003, to include an award of costs to LaRose, and costs are taxed against Bilyj in the amount of \$3,156.44.

A separate entry shall be entered in accordance with this memorandum.

/s/ Arthur I. Harris 02/23/2004
Arthur I. Harris
U.S. Bankruptcy Judge