

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
ROOM 211
FEDERAL BUILDING AND U.S. POST OFFICE
225 SOUTH PIERRE STREET
PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT
BANKRUPTCY JUDGE

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November 20, 1989

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Re: Jarrett Ranches, Inc.
Chapter 11 88-10117
Adversary 89-1001

Dear Counsel:

The Court currently has before it Jarrett Ranches' motion for costs stemming from the successful completion of the above captioned adversary proceeding. A bill of costs totalling \$8,656.98 was attached to the motion. Farm Credit Bank of Omaha (FCBO) objects to the motion, claiming that several items requested are not recoverable as costs, that the bill of costs is incomplete and that no itemized sworn statement of costs sufficient for a meaningful review was supplied by Jarretts. After reviewing the request, arguments by counsel and the applicable authorities, the Court will grant Jarretts' request in part.

Jarrett's request may be itemized as follows:

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Clerk Fees	\$ 100.00
Transcripts:	
TRO Hearing	1,140.46
Deposition of Korkow	499.15
	277.25
Witness Fees:	246.00
Parsons	
Kline	
Copies:	
Original Request	\$ 2,269.52
minus first	
month's copies -	<u>841.85¹</u>
	1,427.67
Docket Fees	20.00
Premium-Letter of Credit	2,000.00
Long Distance	
Calls	289.40
Postage/Delivery	197.87
Computerized Legal Research	<u>1,617.33</u>
Total	\$ 7,815.13

Aside from the blanket objection regarding the specificity of the costs, FCBO objects to the amounts requested in the following areas: cost of Donald Korkow's deposition, cost of mileage of witnesses Kline and Parsons, copying costs, long distance telephone, postage and delivery expenses, cost of the premium for the letter of credit and costs for computerized legal research.

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After the hearing, Jarretts agreed to reduce their request for copy costs by deleting the copy expenses incurred during the first month of Fruth & Anthony's involvement. Thus, Jarretts are no longer asking to be reimbursed for copies which were produced in order to bring Fruth & Anthony "up to speed" in this adversary.

FCBO also contends that the matter of determining costs in this action should be delayed pending the resolution of this adversary on appeal.

Appeal

FCBO first claims that the taxation of any costs at the present time is improper because it has filed a notice of appeal in this matter. The Court disagrees. The taxation of costs is recognized as a nonsubstantial "ministerial" function which may be completed after a notice of appeal has been filed. See *Chore-Time Equipment, Inc. v. Cumberland Corp.*, 713 F.2d 774 (C.A. Fed. 1983) (citing *Swalley v. Addressograph-Multigraph Corp.*, 168 F.2d 585, 587 (7th Cir. 1948)). Thus, the taxation of costs at this juncture is proper regardless of the fact that a notice of appeal has been filed.

Deposition of Korkow

FCBO contends that costs for the deposition of Donald Korkow are not properly taxable because his deposition merely was investigatory or preparatory in nature. Jarretts counter this objection, noting that Korkow's deposition would have been used if this matter had proceeded to trial rather than being decided by summary judgment and that his deposition was necessitated in the first place due to statements by FCBO's agents that Korkow made key decisions concerning Jarretts' repurchase rights.

The Eighth Circuit has noted that the expense of depositions not used at trial may be taxed provided that they were reasonably necessary to the case and not purely investigative in nature. *Koppinger v. Cullen-Schlitz & Assoc.*, 513 F.2d 901 (8th Cir. 1975). It is clear that the deposition of Korkow was necessary in the preparation of Jarretts' case given Korkow's involvement in this entire episode. It is further clear that his deposition was not purely investigative in nature. The Court thus holds that the cost of Donald Korkow's deposition is properly taxable.

Witness Mileage

FCBO next asks this Court to exercise its discretion and limit the mileage of witnesses Clayton Kline and Phillip Parsons, contending that it is improper to tax mileage costs in excess of one hundred miles. Jarretts contend that the applicable statutory provisions, ~ 5 U.S.C. §5704(c) (2), 28 U.S.C. §1920(3) and 28 U.S.C. §1821(c) (2), make no such limitation.

The one hundred mile limit previously had been implemented in some courts because of the corresponding one hundred mile limitation on the court's subpoena power. However, courts now have the discretion to award travel expenses beyond their one hundred mile subpoena power. *Farmer v. Arabian American Oil Co.*, 379 U.S. 227, 85 S.Ct. 411, 13 L.Ed. 2d 248 (1964). Mr. Kline travelled 384 miles round trip from Watertown and Mr. Parsons travelled 500 miles round trip from Faribault, Minnesota. Each was away from home for three days. The Court understands FCBO's concern regarding these mileage expenses; however, one who lives in the upper midwest must resign himself to the fact that travelling great distances for whatever purpose is occasionally necessary. Here, such travel was necessary in order for the witnesses to participate in this adversary. The Court does not believe that the mileage costs are objectionable and will grant Jarretts' request for mileage in full.

Copying Costs

Jarretts, in their bill of costs, originally asked for \$2,269.52 to cover copying expenses. FCBO objected to this figure, arguing that it was extravagant. At the hearing for taxation of costs, held October 16, 1989 in Aberdeen, the Court likewise expressed its opinion that the costs for copies were too high and that Jarretts' co-counsel, Fruth & Anthony, should not be able to recover those copying costs expended to bring that firm "up to speed" in this case. In a letter sent to the Court on October 18, Fruth & Anthony advised that copying costs of \$841.45 were incurred during the first month of that firm's involvement with the Jarrett case and that the firm would subtract that amount from its request for copying costs. This left a balance of \$1,427.67 for copies.

The Court first notes that copying costs are generally taxable by the prevailing party. See, e.g. *Levka v. City of Chicago*, 107 F.R.D.230 (N.D. Ill. 1985). However, as *Levka* states, such costs are allowable only after they have been sufficiently broken down and found to be reasonable. No such documentation has been furnished by Jarretts. Further, assuming a copy charge of twenty-five cents per page, which is not uncommon for copy charges in this district, Jarretts in essence are asking for reimbursement for over 5,700 copies. The Court is hesitant to grant this request without further documentation. Hence, Jarretts' request for the taxation of copying costs will be denied. However, the Court will reconsider its decision if Jarretts provide sufficient documentation to justify these costs to the court and opposing counsel within ten days. FCBO will then be given five days to

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review Jarretts' request and make any objections.

Letter of Credit

Jarretts request that FCBO be taxed \$2,000.00 for the premium paid for the irrevocable letter of credit issued by the First Bank of Fargo, North Dakota. FCBO objects, claiming that the costs of the letter of credit are not recoverable under 28 U.S.C. §1920.

The premium for the letter of credit is properly taxable to FCBO. In this case, the letter of credit was required as the result of the temporary restraining order issued by the Court. It served the same purpose as an injunction bond, and was initially requested by FCBO at the TRO hearing. Injunction bond costs are allowable as they are associated with items that meet the underlying standard of §1920. 10 C. Wright, A. Miller & M. Kane, Federal Practice and Procedure, §2677. See also, Weiss v. Smith, 103 F.Supp. 736 (D. Conn. 1952). The costs of the premium will be allowed.

Long Distance Telephone and Postage Costs

Jarretts next request costs for long distance telephone calls, delivery and postage. These costs are not allowable under §1920 because they are not considered to be necessarily incurred for use in the case. Wright, Miller & Kane, supra, at §2677. See also, Zdunak v. Washington Metropolitan Transit Authority, 100 F.R.D. 689 (D. D.C. 1983) and Wahl v. Carrier Manufacturing Co., 511 F.2d 209 (7th Cir. 1975). Hence, such costs will be denied.

Computerized Legal Research Expenses

Finally, Jarretts wish to be reimbursed for the expense of computerized legal research which was performed in preparation of the case. They cite Wehr v. Burroughs Corp., 619 F.2d 276 (3rd Cir. 1980) and Independence Tube Corp. v. Copperweld Corp., 543 F.Supp. 706 (N. D. Ill. 1982) and supporting authority. As FCBO correctly points out, however, such costs are not recoverable in the Eighth Circuit. Leftwich v. Harris-Stowe State College, 702 F.2d 686 (8th Cir. 1983). Thus, Jarretts' request for computerized legal research expenses will be denied.

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Conclusion

The bill of costs proposed by a winning party should always be carefully scrutinized. Koppinger, supra.

Costs will be awarded to Jarretts for the cost of Donald Korkow's deposition transcript, for witness mileage, and the premium for the letter of credit. Costs will be denied for long distance telephone calls, delivery and postage expenses and for computerized legal research. Costs will be denied for copying expenses; however, the Court will reconsider this request if sufficient documentation to support those expenses is provided to the Court and opposing counsel within ten days. opposing counsel will be given five days thereafter to object.

This constitutes the Court's findings and conclusions in this matter. This is a core proceeding under 28 U.S.C. §157(b). The Court will enter an appropriate order.

Very truly yours,

Irvin N. Hoyt
Chief Bankruptcy Judge

INH/sh

CC: Bankruptcy Clerk

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA

IN RE:)	CASE NO. 88-10117
)	
JARRETT RANCHES, INC.)	ADVERSARY NO. 89-1001
)	
Debtors.)	CHAPTER 11
)	
JARRETT RANCHES, INC.,)	
JARRETT ELEVATORS, INC.;)	
DONALD D. and JEANNINE)	
JARRETT, husband and wife;)	ORDER AWARDING COSTS
and RONALD R. and JACQUELINE)	TO PLAINTIFFS
JARRETT, husband and wife,)	
)	
Plaintiffs,)	
)	
v.)	
FARM CREDIT BANK OF OMAHA,)	
PRODUCTION CREDIT ASSOCIATION)	
OF THE MIDLANDS and FEDERAL)	
LAND BANK ASSOCIATION OF)	
ABERDEEN,)	
Defendants.)	

Pursuant to the letter opinion executed this same date, plaintiffs' request for costs for clerk's fees, transcripts, witness fees, docket fees, and the premium for the letter of credit, all totalling \$4,282.86, hereby is granted.

IT IS FURTHER ORDERED that plaintiffs' request for costs for long distance telephone calls, postage and delivery charges, and computerized legal research hereby is denied.

IT IS FURTHER ORDERED that plaintiffs' request for costs for copies hereby is denied; however, such will be reconsidered by the Court if sufficient documentation of such expenses is provided to the Court and

opposing counsel within ten days. If such is provided, opposing counsel will have five days thereafter to make any objections.

Dated this 20th day of November, 1989.

BY THE COURT:

Irvin N. Hoyt
Chief Bankruptcy Judge

ATTEST:

PATRICIA MERRITT, CLERK

By: _____
Deputy

(SEAL)