

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

U.S. FRAME, LLC,

Plaintiff,

v.

ERA SPORTS, INC.,

Defendant.

ORDER

07-C-0298-C

This civil case for monetary relief is before the court for a determination of attorney fees and costs. The case is based on a state law claim of breach of a supply contract; it was removed to this court by defendant Era Sports, Inc. on the asserted ground of diversity of citizenship and more than \$75,000 in controversy. It was remanded to state court when defendant was unable to show that the amount in controversy exceeded \$75,000. (The state court has returned the case file for the purposes of defendant's appeal to the Court of Appeals for the Seventh Circuit.), In the remand order, I found that defendant had no objectively reasonable ground for removing the case. I granted plaintiff's request for reimbursement of costs and attorney fees under 28 U.S.C. § 1447(c) and ordered plaintiff to file an itemization of the fees incurred in moving for remand.

Plaintiff U.S. Frame, LLC, has now filed such an itemization. It seeks reimbursement in the amount of \$3,744.00. Although this seems a modest sum for the preparation of two briefs and review of defendant's notice of removal and response brief, defendant attacks it as excessive for the work accomplished. It has four arguments in support of its challenge to the fee request. First, it argues that plaintiff misstated the holding in Lott v. Pfizer, 492 F.3d 789 (7th Cir. 2007), by quoting only the first sentence to the effect that a district court should award attorney fees incurred in resisting removal if the clearly established law shows that the movant had no basis for removal. The second sentence reads, "By contrast, if clearly established law did not foreclose a defendant's basis for removal, then a district court should not award attorney's fees." Id. at 793. It is defendant that is misstating the situation. Plaintiff had no reason to quote the second sentence, because this court had already determined that defendant had no basis for removal.

Second, defendant objects to paying for the work done by plaintiff's attorneys in preparing the motion to remand. It says that the brief does not reflect any serious effort to research and update case law from this jurisdiction and it surmises that the brief was merely a repackaging of a brief prepared for submission to the District Court for the Eastern District of Wisconsin in some other case. My own reading of the brief does not support defendant's characterization of it. It is common for briefs on jurisdictional matters to cite more Eastern District cases than one from this district; the judges in the Eastern District publish their

decisions more frequently than the judges in this district.

Third, defendant complains that plaintiff cited cases overturned by Martin v. Capitol Corp., 546 U.S. 132 (2005), and failed to locate current law in this district. Defendant is correct that plaintiff cited two cases that were decided by judges of this court without reference to Martin. One was decided before Martin; one after. The earlier case would have been decided the same way had Martin been taken into consideration because it involved an objectively unreasonable removal and perhaps Judge Shabaz would have decided the second one the same way as well. However, I will reduce plaintiff's fee request by \$195 (the cost of one hour of work) to reflect its counsel's failure to find and cite Martin, which is the operative law governing awards of fees for resisting removal.

Defendant's final criticism hardly requires attention. Defendant objects to plaintiff's fee request because this court did not cite in its opinion any of the cases cited by plaintiff in its briefs. Not citing them does not mean that they were not read and considered.

ORDER

IT IS ORDERED that plaintiff U.S. Frame, LLC, is awarded attorney fees in the

amount of \$3,549.00 against defendant Era Sports, Inc.

Entered this 14th day of September, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge