

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

FREDRIC RUSSELL MANCE, JR. *et al.*,

VS.

Civil Action No. 4:14-CV-00539-O

ERIC HOLDER, ATTORNEY GENERAL
OF THE UNITED STATES, and B. TODD
JONES, DIRECTOR, BUREAU OF
ALCOHOL, TOBACCO, FIREARMS &
EXPLOSIVES

MOTION FOR REVIEW OF CLERK'S TAXATION OF COSTS

On February 11, 2015, the Court granted Plaintiffs' motion for summary judgment. *See* Mem. Op. and Order [ECF No. 40]. Plaintiffs filed a bill of costs on February 24, 2015 [ECF No. 45]. On March 10, 2015, the Clerk taxed costs against Defendants [ECF No. 48]. Fed. R. Civ. P. 54(d)(1) provides that "[o]n motion served within" 7 days after a clerk has so taxed costs, the Court "may review the clerk's action."

Defendants respectfully submit that any consideration by this Court of Plaintiffs' bill of costs should await the conclusion of any appeal in this case, or the exhaustion of the time for taking an appeal. At this juncture, it is uncertain whether the government will elect to appeal and, if so, what the result will be. It is therefore not clear whether Plaintiffs will be a "prevailing party" entitled to costs, or the extent to which Plaintiffs will have achieved any success at the conclusion of this litigation. Interests of judicial economy weigh strongly in favor of waiting for any appeals before Plaintiffs' bill of costs is considered by the Court.

Under the Federal Rules of Appellate Procedure, a timely notice of appeal of the final

judgment in this case must be filed by April 13, 2015. Fed. R. App. P. 4(a)(1)(B). Therefore, the bill of costs is premature and should be held in abeyance until April 13, 2015, or the conclusion of any appeal, whichever is later. If costs were to be assessed now, pending the possibility of an appeal, and Defendants were to later substantively prevail on an appeal to the Fifth Circuit, Defendants, as the prevailing parties, would be entitled to recover such costs from Plaintiffs and, indeed, would themselves be eligible for an award of costs.

Denying Plaintiffs' application without prejudice to later re-file after the time for any appeal has passed and/or any appeal has concluded, or holding the application in abeyance until after the time for any appeal has passed and/or any appeal has concluded, avoids this situation and represents the appropriate approach under the circumstances. *See Art Midwest, Inc. v. Clapper.*, No. 99-2355, 2004 WL 877613 (N.D. Tex. Apr. 20, 2004) (denying plaintiffs' bill of costs without prejudice to renewal after disposition of the case's appeal).

Accordingly, Defendants respectfully request that the Court deny Plaintiffs' application without prejudice to later re-file after the time for any appeal has passed and/or any appeal has concluded. In the alternative, Defendants respectfully request that the Court hold Plaintiffs' application in abeyance until after the time for any appeal has passed and/or any appeal has concluded.

Dated: March 11, 2015

Respectfully submitted,

BENJAMIN C. MIZER
Acting Assistant Attorney General

JOHN R. PARKER
Acting United States Attorney

/s/ Daniel Riess
JOHN TYLER
Assistant Branch Director
DANIEL RIESS

Trial Attorney
U.S. Department of Justice
Civil Division, Rm. 6122
20 Massachusetts Avenue, NW
Washington, D.C. 20530
Telephone: (202) 353-3098
Fax: (202) 616-8470
Email: Daniel.Riess@usdoj.gov
Attorneys for Defendants

CERTIFICATE OF CONFERENCE

Pursuant to Local Rule 7.1(a) and (b), I hereby certify that on March 11, 2015, I conferred with Counsel for Plaintiffs regarding the relief sought in this motion. Counsel indicated that Plaintiffs oppose the relief sought in this motion.

/s/ Daniel Riess
Daniel Riess

CERTIFICATE OF SERVICE

On March 11, 2015, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2) or the local rules.

/s/ Daniel Riess
Daniel Riess