

ELECTRONIC ENDORSEMENTS IN ELLIS V. SOLOMON & SOLOMON, P.C., 05 CV 1623(JBA) on Dkts. ##118, 120 & 121

Familiarity is presumed with the Second Circuit's decision in mid-January 2010, which affirmed Judge Arterton's granting summary judgment in plaintiff's favor. Ellis v. Solomon & Solomon, P.C., 591 F.3d 130 (2d Cir. 2010). (See also Dkt. #110). Judgment previously had been entered for plaintiff in mid-April 2009 in the amount of \$1,000 (Dkts. ##104-05), in late October 2009 plaintiff's counsel was awarded attorney's fees in the amount of \$34,720.00 and costs in the amount of \$1,413.00, for an overall award of \$36,133.00 (Dkt. #109), and in mid-March 2010, the parties agreed to additional attorney's fees and costs in the amount of \$15,626.00 (Dkts. ##117, 119). On April 13, 2010, defendants filed for certiorari with the U.S. Supreme Court. No. 09-1241, 78 U.S.L.W. 3629.

Between the time of the Second Circuit's affirmance and the filing of defendants' cert. petition, three motions were filed with this court. First, on March 23, 2010, defendants filed a Motion for Extension of Time until April 28, 2010 (Dkt. #118) to respond to plaintiff's Rule 69 Discovery Requests. Second, on April 9, 2010, plaintiff filed her Motion to Compel Post Judgment Discovery (Dkt. #120), for "information about income and assets in order to enforce the February 2009 judgment," as to which defendants filed their brief in opposition on April 14, 2010 (Dkt. #124). And last, on April 9, 2010, defendants also filed a Motion to Stay and Order Allowing Defendants to Post a Cash Bond with the U.S. District Court (Dkt. #121), as to which plaintiff filed a Memorandum in Response (Dkt. #122), and defendants filed a reply brief four days later (Dkt. #123).

The sole issue at dispute in the Motion for Stay (Dkt. #121) is the amount of the bond, with defendants suggesting a cash bond posted with the Clerk's Office in the amount of \$55,000, which "far exceeds" the \$1,000 judgment and \$51,759 in combined attorney's fees and costs. Plaintiff contends that this amount is inadequate because interest has been accruing on the \$52,759 award of damages and fees since February 24, 2009 and plaintiff "is still incurring fees and costs." (Dkt. #122). As defense counsel has observed, plaintiff did not "propose an alternate amount," and apparently this amount was suggested by Judge Arterton during a status conference on February 25, 2010. (Dkt. #123, at 1). Defendants further dispute that plaintiff is entitled to interest on the attorney's fees, entered in October 2009, and the current paltry interest rate under 28 U.S.C. § 1961 yields only \$337.66 in interest over the past year. (Id. at 1-2). Moreover, as defense counsel has pointed out, the post-March 2010 fees and costs are "unspecified," "uncertain," and have not been the subject of any motion. (Id. at 2).

Accordingly, defendants' Motion to Stay and Order Allowing Defendants to Post a Cash Bond with the U.S. District Court (Dkt. #121) is granted in the amount of \$55,000; and defendants' Motion for Extension of Time (Dkt. #118) and plaintiff's Motion to Compel Post Judgment Discovery (Dkt. #120) are denied without prejudice as moot.