

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION AT LAFAYETTE

IN RE: CASE NO. 08-40482)
)
TERRY L. SALRIN)
TAMARA D. SALRIN)
)
Debtors)
)
FIFTH THIRD BANK)
)
Plaintiff)
)
vs.) PROC. NO. 08-4034
)
TERRY L. SALRIN)
TAMARA D. SALRIN)
)
Defendants)

DECISION AND ORDER

At Fort Wayne, Indiana, on March 9, 2009.

By the court's order of January 22, 2009, following a hearing held on the matter, the court granted plaintiff's motion to compel. That order went on to provide that the defendants were to reimburse the plaintiff for the reasonable attorney fees and expenses incurred as a result of preparing for and attending the hearing on plaintiff's motion. The plaintiff was directed to file any affidavits itemizing those fees and expenses and the defendant was given the opportunity to file any objections thereto. The plaintiff timely filed such an affidavit, seeking \$1,773.50, to which the defendants objected, challenging the reasonableness of the time spent and the fees sought.

The plaintiff's request for fees and defendants' objection thereto are scheduled to come before the court for a hearing on March 18, 2009 at 1:20 p.m. in order to receive evidence and arguments. On March 5, 2009, plaintiff's counsel filed a motion to vacate the hearing. That motion

states the parties have attempted, without success, to resolve the dispute over the fees, that attending the upcoming hearing will not be cost-effective for plaintiff's counsel, and that he is willing to reduce the amount sought to \$1,000. (While less than originally requested, given the lack of any settlement, the reduced amount apparently is not satisfactory to defendant's counsel.) As a result, plaintiff asks that the court to vacate the scheduled hearing and decide the matter without further evidence or argument.

The party seeking an award of fees has the burden of proving their reasonableness. See e.g., Hensley v. Eckerhart, 461 U.S. 424, 433, 103 S.Ct. 1933 (1983); Spegon v. Catholic Bishop of Chicago, 175 F.3d 544, 550 (7th Cir. 1999). If, in light of the defendants' objection, the plaintiff would like to forgo the opportunity for a hearing at which he would satisfy that burden he is free to do so. Yet, by doing so, he may not deprive the defendant of the opportunity to cross-examine counsel concerning the reasonableness of the time spent and the fees sought or expect the court to decide the matter without answers to defendants' questions. To do so effectively forfeits the relief sought. Cf., 1 McCormick on Evidence § 19 (6th ed.) (without the opportunity for cross-examination, direct testimony should be stricken).

Plaintiff's motion to vacate the hearing scheduled for March 18, 2009, is GRANTED, and the plaintiff's requested fees are DENIED.

SO ORDERED.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court