



Court Awards Costs, Not Attorney Fees, Due to American Rule

Claybrook v. Autozone Texas, L.P. (In re American Remanufacturers, Inc.),
2011 Bankr. LEXIS 2808 (Bankr. D. Del. July 28, 2011)

In *Claybrook v. Autozone Texas, L.P.*, the Delaware Bankruptcy Court awarded costs to the defendants based in part on the court's finding that the plaintiff-trustee failed to demonstrate a viable basis for his claims against the defendants. The court, however, declined to award attorney fees, relying on the American Rule "that all parties must pay their own way."

In *Autozone*, the trustee sought to avoid and recover alleged preferential transfers and compel the payment of allegedly overdue account receivables. The defendants contested liability on the grounds that any payable due from the defendants was offset by a receivable due from the debtor. During discovery, the defendants demonstrated substantial doubt regarding the viability of the trustee's claim that the defendants owed any amounts to the debtor. Nevertheless, the trustee continued to pursue his claims. In support of his case, the trustee attempted to rely on the testimony of an alleged expert witness. The trustee, however, did not comply with the expert-related disclosure requirements under the federal rules or the applicable scheduling order. Moreover, at deposition, the trustee's expert was unable to answer questions related to topics on which he was designated to appear. The trustee also failed to produce certain documents as requested by the defendants.

The parties' discovery disputes resulted in motion practice. The court found that the trustee failed to produce requested documents. The court also found that the trustee's expert was not appropriately prepared for deposition, noting that he was "certainly uninformed on important matters and . . . rather evasive if not flippant in his responses." The court therefore granted the defendants' request to re-depose the trustee's expert. The court, however, continued the defendants' request for an award of costs and informed the parties that the court would see how the proceedings developed before deciding whether to award sanctions for the discovery violations.

Subsequent proceedings included additional discovery disputes and determinations against the trustee by the court. Ultimately, the court sanctioned the trustee and his counsel and awarded the defendants \$100,000 in costs, including attorney fees, related to the trustee's discovery-related violations.

The trustee continued to pursue his claims and the court entered judgment for the defendants. The instant case, therefore, addressed the defendants' request for sanctions after the court's entry of final judgment in the defendants' favor.

In its opinion, the court made several findings in support of its award of costs to the defendants. First, the court questioned the trustee's good-faith basis for filing its claims. In this regard, the court noted that the trustee testified at deposition that he did not review



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the complaint before it was filed or take any specific action to verify the allegations of the complaint. Second, the court found that the trustee and his counsel unfairly refused to consider evidence adduced by the defendants during discovery and instead initiated additional and protracted discovery against the defendants. For the court, the trustee's tactics amounted to a "bad faith discovery campaign" for which the court already had awarded \$100,000 to the defendants in sanction against the trustee and its counsel. Third, the court noted that the trustee had failed to present any evidence at trial in opposition to the defendants' essential underlying defenses. Accordingly, the court found that the trustee's "decision to proceed to trial without any evidence supporting his claims can only be seen as harassing."

In light of these findings, the court granted the defendant's request under 11 U.S.C. § 1927 and Fed. R. Bankr. P. 7054(b) for the award of costs in the aggregate amount of \$35,706.30, for costs allowed under 28 U.S.C. § 1920, namely, fees of the clerk and costs for transcripts, witnesses and copies. In light of the American Rule, however, the court declined the defendants' request for an additional award of attorney fees from the trustee.

Keywords: litigation, bankruptcy, 28 U.S.C. § 1927; Fed. R. Bankr. P. 7054(b), American Rule, sanction

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