IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

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GARY ALLENBRAND,

v.

Plaintiff,

CIVIL ACTION

No. 05-2511-KHV

LOUISVILLE LADDER GROUP, L.L.C., Defendant.

<u>ORDER</u>

On January 11, 2007, the Court sustained defendant's motion for summary judgment. <u>See</u> <u>Memorandum And Order</u> (Doc. #68). On March 12, 2007, the Clerk taxed costs of \$2,055.20 against plaintiff. This matter is before the Court on <u>Plaintiff's [Amended] Motion To Retax Costs</u> (Doc. #73) filed March 23, 2007.

Plaintiff argues that counsel had agreed that if plaintiff waived his right to an appeal, defendant would

be willing to waive costs. See Plaintiff's [Amended] Motion To Retax Costs (Doc. #73) at 1.¹ On January 13,

2007, defense counsel sent an e-mail to plaintiff's counsel as follows:

Jim – if your client is willing to not file any post-judgment motions, or an appeal, my client may be willing to waive costs. I have not asked them yet, but this would wrap this up for everyone.

Affidavit Of Bruce A. Moothart ¶ 3, attached as Exhibit A to Defendant Louisville Ladder Group, LLC's

Response And Memorandum In Opposition To Plaintiff's Motion And Amended Motion To Retax Costs

¹ On May 19, 2007, plaintiff filed his original motion to retax costs. <u>See Plaintiff's Motion To</u> <u>Retax Costs</u> (Doc. #72). Except for a slightly more detailed explanation of counsel's "agreement," the motions are substantially the same.

(Doc. #74) filed March 26, 2007. Defense counsel states that plaintiff's counsel never responded to the e-mail or otherwise agreed to forego filing any post-judgment motions or appeal. See id., ¶4. Plaintiff has not filed a reply on the issue. Based on the record, the Court cannot find any agreement between the parties or counsel on the issue of costs. Accordingly, the Court overrules plaintiff's motions to retax costs.

IT IS THEREFORE ORDERED that <u>Plaintiff's Motion To Retax Costs</u> (Doc. #72) filed March 19, 2007 and <u>Plaintiff's [Amended] Motion To Retax Costs</u> (Doc. #73) filed March 23, 2007 be and hereby are **OVERRULED**.

Dated this 27th day of April, 2007 at Kansas City, Kansas.

s/ Kathryn H. Vratil KATHRYN H. VRATIL United States District Judge