

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.:05-cv-61225-KAM

COBRA INTERNATIONAL, INC.,
a Florida corporation,

Plaintiff,

vs.

BCNY INTERNATIONAL, INC., a New
York corporation, et al.,

Defendants.

ORDER

This matter is before the Court on Defendants' Motion to Bifurcate the Issue of Entitlement to Attorneys' Fees and Costs From Amount of Award (DE 592) and Defendants' Motion for Sanctions and for Attorney Fees and Costs (DE 600). Defendants first filed their motion to bifurcate the issues of entitlement and amount. Later, without a ruling on whether they could so, Defendants filed a motion for attorneys' fees and costs that only addressed entitlement. The motion to bifurcate has been fully briefed while Plaintiff has not yet responded to the motion for fees and costs. Nevertheless, the parties have address the threshold issue of timeliness in their briefing on the motion for bifurcation. The Court finds the timeliness issue dispositive as to both motions, thus obviating the need for any further briefing.

Local Rule 7.3(a)(1) provides that a motion for attorneys' fees or non-taxable costs must "be filed within sixty (60) days of the entry of the final judgment or order giving rise to the claim, regardless of the prospect or pendency of supplemental review or appellate proceedings." The 60

days began to run in this case on January 29, 2016, when the Court entered its final order dismissing and closing this case. (DE 579.) Any motion for attorneys' fees or costs was due no later than March 29, 2016. Defendants filed their motion to bifurcate on May 18, 2016 and their motion for fees and costs on June 17, 2016.

Relying on *Members First Federal Credit Union v. Members First Credit Union of Florida*, 244 F.3d 806 (11th Cir. 2001) (per curiam), Defendants argue that Plaintiff's filing of a Rule 59 motion for reconsideration tolled the time for them to move for fees under the local rule. In *Members First*, a local rule required that "a motion for award of attorney's fees . . . shall be filed and served within the time specified in the scheduling order" and the scheduling order required such a motion to be filed "within 30 days after judgment." *Id.* at 807. The pendency of a Rule 59 motion tolled the time for the prevailing party to move for fees because "the finality of a judgment is effectively postponed by the timely filing of a motion under Rule 59." *Id.*

Defendants' reliance on *Members First* is misplaced. The local rule at issue in that case was silent as to whether supplemental review tolled the deadline. Contrarily, the local rule at issue in this case is clear that the deadline is 60 days "regardless of the prospect or pendency of supplemental review or appellate proceedings." S.D. Fla. L.R. 7.3(a)(1). As the local rule in this case specifies that supplemental review does not affect the deadline, *Members First* is distinguishable. Indeed, before the comments to the local rules were removed, the comments to this rule specifically reiterated: "[I]n *no event* may a motion for fees or costs be made later than the date provided for in this Local Rule." S.D. Fla. L.R. 7.3 (2012) cmt. to 1999 amendment (emphasis added).

Based on the plain language of Local Rule 7.3(a)(1), Plaintiff's motion for reconsideration did not toll Defendants' time to move for attorneys' fees and costs. Both motions are thus untimely.

To the extent Defendants' motion to bifurcate can be construed as a motion to be excused from the procedures set forth in Local Rule 7.3, Defendants still should have at least filed that motion within the rule's 60-day deadline.

Accordingly, it is hereby **ORDERED AND ADJUDGED** that Defendants' Motion for Sanctions and for Attorney Fees and Costs (DE 600) is **DENIED** and Defendants' Motion to Bifurcate the Issue of Entitlement to Attorneys' Fees and Costs From Amount of Award (DE 592) is **DENIED AS MOOT**.

DONE AND ORDERED in chambers at West Palm Beach, Palm Beach County, Florida, this 22nd day of June, 2016.



KENNETH A. MARRA
United States District Judge