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3 UNITED STATES BANKRUPTCY COURT
4 EASTERN DISTRICT OF CALIFORNIA
5

6 In re:) Case No. 06-22225-D-7
7)
7 BETSEY WARREN LEBBOS,)
8)
8 Debtor.)
9)
9)
10 LINDA SCHUETTE,)
11) Adv. Pro. No. 07-2006-D
11 Plaintiff,) Docket Control No. MPD-8
12)
12 v.)
13 BETSEY WARREN LEBBOS,) DATE: June 18, 2008
13 et al.,) TIME: 10:00 a.m.
14) DEPT: D
14 Defendants.)
15)

16 This memorandum decision is not approved for publication and may
17 not be cited except when relevant under the doctrine of law of
18 the case or the rules of claim preclusion or Issue preclusion.

18 MEMORANDUM DECISION

19 Plaintiff Linda Schuette seeks an award of costs against the
20 defendants in this action, Betsey Warren Lebbos, Jason Gold, and
21 Thomas Carter, in the sum of \$1,133.40. For the reasons set
22 forth below, the court will grant the plaintiff's motion.

23 I. INTRODUCTION

24 On January 3, 2007, the plaintiff filed the complaint herein
25 seeking to set aside alleged fraudulent transfers, to recover
26 property and/or monetary damages, for turnover of property, and
27 for declaratory relief. The defendants are Betsey Warren Lebbos,
28 individually and as a trustee of the Aida Madeleine Lebbos No. 2

1 Trust, and Jason Gold and Thomas Carter, as co-trustees of the
2 Aida Madeleine Lebbos No. 2 Trust.

3 On April 17, 2008, this court issued findings of fact and
4 conclusions of law on the plaintiff's motion for default judgment
5 against all the defendants, and a judgment against all the
6 defendants. Pursuant to paragraph 9 of the judgment, the
7 plaintiff was permitted to file, within 30 days from the date of
8 the judgment, a motion seeking to recover her costs incurred in
9 this adversary proceeding, to the extent not previously awarded.
10 On May 13, 2008, within the 30-day period, the plaintiff filed a
11 Motion for Award of Costs in the Sum of \$1,133.40 Against All
12 Defendants ("the Motion").

13 Defendant Betsey Warren Lebbos filed opposition and a
14 declaration on June 3, 2008, and a hearing was held on June 18,
15 2008. The following parties appeared and presented oral
16 argument: John Read (by telephone), making a special appearance
17 for defendant Betsey Warren Lebbos (by telephone), and Howard
18 Nevins, making a special appearance for Michael Dacquisto,
19 counsel for the plaintiff.

20 The Motion having been briefed and argued by those parties
21 wishing to be heard, the court took the Motion under submission.

22 II. ANALYSIS

23 This court has jurisdiction over the motion pursuant to 28
24 U.S.C. §§ 1334 and 157(b)(1). The Motion is a core proceeding
25 under 28 U.S.C. § 157 (b)(2)(A), (E) & (H).

26 Pursuant to Federal Rule of Bankruptcy Procedure 7054(b),
27 the court may allow costs to the prevailing party in an adversary
28 proceeding except when a statute of the United States or the

1 Federal Rules of Bankruptcy Procedure otherwise provide. No
2 party in interest has suggested that any statute or rule
3 otherwise provides in this case.

4 The court finds that the plaintiff, having had judgment
5 entered in her favor in this proceeding against all the
6 defendants, is the prevailing party, and as such, is entitled to
7 an award of her costs incurred. The court further finds that the
8 costs sought by the plaintiff in the Motion, \$250 for the filing
9 fee for the adversary complaint, \$585 for nonappearance fees
10 charged by a deposition reporting firm, and \$298.40 for certified
11 copies of documents used as exhibits in support of the
12 plaintiff's motion for default judgment, were reasonable and
13 necessary, and are therefore allowable and chargeable against all
14 the defendants.

15 The court has considered defendant Lebbos' opposition and
16 the arguments made on her behalf at the hearing. First, Lebbos
17 argues that the nonappearance fees were unreasonable,
18 unnecessary, and unconscionable as the depositions were cancelled
19 over one week in advance. She fails to mention that the
20 defendants purported to cancel the depositions unilaterally and
21 without the consent of the plaintiff or a protective order from
22 this court. Thus, this argument fails.

23 Lebbos next argues that the documents of which the plaintiff
24 submitted certified copies were in the records of various courts
25 and were available free of charge on the Internet. However, the
26 availability of documents on the Internet does not do away with
27 the need to authenticate documents in public or official records,
28 such as by the use of certified copies, pursuant to Federal Rule

1 of Evidence 902(4), made applicable in bankruptcy cases by
2 Federal Rule of Bankruptcy Procedure 9017. Thus, this argument
3 fails.

4 Defendant Lebbos' next argument -- that the plaintiff did
5 not need a certified copy of the application for a sister-state
6 judgment -- is contradicted by the record, which establishes that
7 the plaintiff used that judgment to prove the existence of
8 creditors at the time of the fraudulent transfers at issue in
9 this adversary proceeding.

10 Defendant Lebbos' remaining arguments -- that the costs are
11 fraudulent, unconscionable, unnecessary, unreasonable, excessive,
12 and subject to offset for previously-awarded fraudulent charges
13 -- are not supported by the record.

14 III. CONCLUSION

15 The plaintiff has submitted her declaration setting forth
16 her costs incurred in this proceeding which have not been
17 previously awarded, together with exhibits evidencing such costs.
18 The court concludes that the costs were reasonably and
19 necessarily incurred, and that the amounts charged are
20 reasonable.

21 Thus, in accordance with Federal Rule of Bankruptcy
22 Procedure 7054(b), the court will award the plaintiff costs in
23 the amount of \$1,133.40 against all the defendants. The court
24 will issue an order consistent with this memorandum.

25 Dated: June 18, 2008

26 /s/
27 ROBERT S. BARDWIL
28 United States Bankruptcy Judge