

STATE OF MAINE
CUMBERLAND, ss

SUPERIOR COURT
CIVIL ACTION
Docket No. CV-12-384
NM-CUM-3/1/2014

DUANE MANNING,

Plaintiff

v.

ORDER ON DEFENDANT'S
MOTION FOR COSTS

MAS HOME CARE OF
MAINE,

Defendant

Before the court is the defendant's motion for costs. The court concludes that such an award is not available because the requisite finding regarding plaintiff's claims has not been made. See Tejada-Batista v. Fuentes-Agostini, 267 F.Supp.2d 156, 159 (D. Puerto Rico 2003) (explaining that the court must find that the plaintiff's claims were "frivolous, unreasonable and without foundation" to award attorney's fees); Allen v. City of Los Angeles, 66 F.3d 1052, 1058 n.2 (9th Cir. 1995) (denying request for attorney's fees where plaintiff's claims were not "unreasonable, frivolous, meritless, or vexatious"). The standard applied to attorney's fees has been applied to litigation expenses. See Dowdell v. City of Apopka, Florida, 698 F.2d 1181, 1190 & n.13 (11th Cir. 1983). The Hoffman case, relied on by the defendant, does not apply a different standard to costs. See Hoffman v. Applicators Sales & Serv., Inc., 2006 WL 5218268 (Me. Super. Oct. 16, 2006). In Hoffman, the court awarded costs on the two counts decided by the Superior Court, claims for defamation and breach of agreement. Id. The U.S. District Court decided the discrimination claim and the issue of an award of attorney's fees was returned to federal court for determination. Id.

The entry is

Defendant's Motion for Costs/ Application for Taxation is DENIED.

Date: March 11, 2014



Nancy Mills
Justice, Superior Court

CUMBERLAND CV-12-384

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