

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

RNS SERVICING, LLC,)	
)	
Plaintiff,)	No. 1:17-CV-00108
)	
v.)	
)	Judge Edmond E. Chang
SPIRIT CONSTRUCTION SERVICES,)	
INC., <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

Way back in 2007, RNS Servicing’s predecessor-in-interest (IFC Credit Corporation) entered into a settlement agreement that was supposed to be worth \$3.9 million but later turned out to be worth nothing. In 2017, RNS brought this lawsuit, alleging that Spirit Construction, Steve Van Den Heuvel, and Sharad Tak fraudulently induced IFC to enter into the agreement. R. 31, Am. Compl.¹ The Defendants argued that the case was filed well beyond the statute of limitations. The Court limited discovery to the limitations issue, R. 51, and then the parties filed cross-motions for summary judgment. The Court agreed with the Defendants that the case was untimely filed and dismissed the case. R. 92. The Defendants now seek reimbursement for their costs under Federal Rule of Civil Procedure 54(d). R. 94, Tak Mot. Costs; R. 98, Spirit Mot. Costs. For the reasons stated below, the proposed costs are granted in part and denied in part.

¹Citation to the docket is “R.” followed by the entry number and, when necessary, the relevant page or paragraph number.

I. Background

Only a brief summary of the litigation is necessary for purposes of this Order. RNS Servicing's predecessor-in-interest, IFC Credit Corporation, was an equipment-lease finance company. IFC entered into a series of lease agreements with a group of tissue-paper manufacturing companies operated by Ron Van Den Heuvel. R. 65, DSOF ¶¶ 10, 12, 14. When the manufacturing companies defaulted on the leasing agreements, IFC sued them for breach of contract. *Id.* ¶¶ 14-18. Initial settlement discussions were unsuccessful until Ron's brother, Steve Van Den Heuvel, got involved and the parties settled for \$23.9 million. *Id.* ¶¶ 23, 29-30. Of that amount, \$20 million was paid upfront to other lenders, while the remaining \$3.9 million was to be paid to IFC in monthly installments. *Id.* ¶¶ 11, 14, 23, 29, 33. But IFC never got paid, so these installments proved worthless. R. 92 at 1. Eventually, RNS purchased all of IFC's rights under the settlement agreement, and in 2017, RNS sued Spirit, Steve, and Tak for fraudulently inducing IFC to enter into the settlement. R. 65 ¶ 45; R. 92 at 1. As noted earlier, discovery was limited to the timeliness of the lawsuit, after which the parties cross-moved for summary judgment. Ultimately, the Defendants prevailed and the Court dismissed the case as untimely. *Id.* Tak now seeks \$2,264.61 in costs; in a separate motion, Spirit and Van Den Heuvel together seek \$3,579.41 (for convenience's sake, this Order will refer to the latter two defendants simply as Spirit). RNS objects to all of the proposed costs as insufficiently documented. R. 94 at 1; R. 98 at 1; R. 104, RNS's Opp.

II. Legal Standard

Under the Federal Rules of Civil Procedure, “costs—other than attorney’s fees—should be allowed to the prevailing party” unless a federal statute, federal rule, or court order says otherwise. Fed. R. Civ. P. 54(d)(1). Pursuant to 28 U.S.C. § 1920, a federal court may tax as costs: (1) fees of the clerk and marshal; (2) fees for printed or electronically recorded transcripts necessarily obtained for use in the case; (3) fees and disbursements for printing and witnesses; (4) fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case; (5) docket fees under 28 U.S.C. § 1923; and (6) compensation of court-appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under 28 U.S.C. § 1828.

“Taxing costs against a losing party requires two inquiries: (1) whether the cost imposed on the losing party is recoverable and (2) if so, whether the amount assessed for that item was reasonable.” *Majeske v. City of Chicago*, 218 F.3d 816, 824 (7th Cir. 2000). “[D]istrict courts enjoy wide discretion in determining and awarding reasonable costs,” *Northbrook Excess & Surplus Ins. Co. v. Procter & Gamble Co.*, 924 F.2d 633, 642 (7th Cir. 1991), but “[t]here is a presumption that the prevailing party will recover costs, and the losing party bears the burden of an affirmative showing that taxed costs are not appropriate,” *Beamon v. Marshall & Ilsley Trust Co.*, 411 F.3d 854, 864 (7th Cir. 2005). That said, if the prevailing party does not adequately document certain costs, the requested costs may be denied. *See Montanez v. Simon*, 755 F.3d 547, 559 (7th Cir. 2014). Although itemization is not necessarily required, the

party must provide “the best breakdown obtainable” from records to demonstrate necessity. *Vigortone Ag Products, Inc. v. PM Ag Products, Inc.*, 2004 WL 1899882 at *7 (N.D. Ill. Aug. 12, 2004).

III. Analysis

In this case, the Defendants collectively seek to recover \$5,844.02 in taxable costs incurred during discovery. R. 94 at 1; R. 98 at 1. RNS asks that the entire amount be denied, arguing that the Defendants provided inadequate documentation to determine the reasonableness or necessity of the requested costs. R. 104 at 1. Alternatively, to the extent that RNS’s across-the-board argument fails, RNS contends that the recoverable amounts be limited to the statutory maximum for each category. *Id.* The Court addresses each cost requested in turn, as well as RNS’s objections.

A. Transcript Costs

Both Tak and Spirit seek reimbursement for their respective transcript costs. Money spent to obtain a copy of a transcript is “recoverable” under 28 U.S.C. § 190(2) so long as the transcript was “necessarily obtained” and the cost of the transcript does not exceed the “regular copy rate as established by the Judicial Conference of the United State and in effect at the time the transcript ... was filed.” NDIL Local R. 54.1(b). The regular copy rate, in effect since January 26, 2012, is \$3.65 per page for original transcripts and \$0.90 per page for copies.²

²*Maximum Transcript Rates – All Parties (Per Page)*, U.S. District Court for N.D. Ill., available at www.ilnd.uscourts.gov/Pages.aspx?rsp2kxYIAI6Z3skP0PESA+q3bXKkfRyo. It is worth noting that both sets of Defendants seek reimbursement for transcripts charged at the original rate despite being written by the same court reporter for the same deposition. Presumably, one of those transcripts would not be an original. But RNS did not raise this point.

1. Requests by Sharad Tak

Sharad Tak. Tak first requests \$302.25 for his own deposition transcript. R. 94-1 at 1. RNS does not dispute that the \$3.25 per page rate requested for the 93-page transcript falls below the statutory maximum of \$3.65 per page and thus is objectively reasonable. What RNS disputes is whether the transcript was “necessarily obtained,” as required for it to be recoverable. R. 104 at 1-2. But the need for the transcript is obvious: the defense relied on Tak’s deposition transcript in arguing for summary judgment. R. 65, DSOF ¶ 51. This transcript cost is awarded at the full \$302.25.

Steven Van Den Heuvel. Tak also requests \$652.00 for the transcript of Steven Van Den Heuvel’s deposition. R. 94-2 at 7. RNS initially argued that this request should be denied because the Defendants had failed to identify the number of pages in the transcript, but RNS later conceded that Spirit’s Bill of Costs established that the transcript was 202 pages. R. 108 at ¶ 1.³ Based on that page count, the per page rate was \$3.23, well below the \$3.65 statutory maximum and therefore reasonable.

Nonetheless, RNS argues that this cost should be denied because Tak failed to establish the need for the transcript. Again, the Defendants relied on the Van Den Heuvel transcript in their summary judgment briefing, which they won. It was necessary and is recoverable. R. 65, DSOF ¶¶ 1, 16. The Court awards Tak \$652.00 for the Van Den Heuvel transcript.

³Although the Court was unable to locate this page count, the parties are agreed on this point so there is no dispute.

Marc Langs. Tak's third and final transcript-related request is \$781.00 for Marc Langs's deposition transcript. R. 94-2 at 6. Here again, the Defendants relied on the transcript in their summary judgment briefing, so it was a necessary expenditure. R. 65, DSOF ¶ 7. But RNS still objects, arguing that a specific page count was not provided. To be sure, Tak himself did not provide a specific page count for this transcript. But there is record evidence on this issue: Spirit supplemented its costs submission with an itemized invoice from Veritext, attached to the May 18, 2020 Declaration of Romashko as Exhibit 1, establishing that Veritext billed Spirit \$3.95 per page for the same transcript, which was 245 pages. R. 110 ¶ 4; R. 110-1 at 1. Multiplying the statutory maximum of \$3.65 per page by 245 pages yield \$894.25. So the requested amount of \$781.00 comes under the maximum and the amount is granted.

2. Spirit and Steven Van Den Heuvel

Sharad Tak. Spirit requests \$367.35 for Sharad Tak's deposition transcript. R. 98-2 at 2. Again, the Tak deposition transcript was used in the summary judgment briefing, R. 65, DSOF ¶ 51, and was thus a necessary expense. But RNS objects because the transcript is only 93 pages, so the recovery should be limited to \$339.45 (based on the statutory maximum rate of \$3.65 per page). R. 104 at 5. The Court agrees that the cap must apply, so \$339.45 is awarded to Spirit for this transcript.

Marc Langs. Spirit requests \$967.75 for the Marc Langs deposition transcript. R. 98-2 at 4. After RNS objected that Spirit had not set forth the number of pages for this transcript, Spirit supplemented its submission with an invoice establishing that the transcript was 245 pages—but also that Spirit was billed at a rate of \$3.95 per

page. R. 110-1 at 2. The \$3.95 rate exceeds the statutory maximum of \$3.65. So the recoverable amount is capped at \$894.25. Again, the Court also finds the cost was reasonably necessary because the Defendants relied on this transcript in their successful motion for summary judgment. R. 65, DSOF ¶ 7. At bottom, \$894.25 is awarded to Spirit for this transcript.

Steven Van Den Heuvel. Spirit requests \$606.00 for the transcript of Steven Van Den Heuvel's deposition. R. 98-2 at 6. RNS initially argued that this request should be denied because Spirit failed to identify the number of transcript pages, but RNS later conceded that Spirit's Bill of Costs in fact had established that the transcript was 202 pages. R. 108. Working backwards, the per page cost for this transcript was billed at \$3.00 per page, well under the statutory limit. So the Court awards the requested amount of \$606.00.

B. Exhibit Fees

The Defendants also request costs for the exhibits printed with the deposition transcripts. Tak seeks \$111.60 for the exhibits to Marc Langs's deposition and \$141.25 for the exhibits to Van Den Heuvel's deposition. R. 94-2 at 6-7. Spirit seeks \$134.40 for exhibits to the Tak deposition, \$46.50 for exhibits to the Langs deposition, and \$141.25 for exhibits to the Van Den Heuvel deposition. R. 98-2 at 2, 4, 6. RNS objects because "exhibits" are not an explicit category under the Northern District of Illinois' "Transcript Rates." R. 104 at 5 (citing www.ilnd.uscourts.gov/Pages.aspx?rsp2kxYIAI6Z3skP0PESA+q3bXKkfRyo).

It is true that a court reporter does not draft or write the exhibits themselves; the exhibits are simply attached to the transcript. So there is no basis to shift per-page transcript costs or even some reduced per-page cost—other than photocopying costs, which is the alternative approach proposed by Spirit. R. 109 at 4-5. Fees are permitted for copies that are necessarily obtained, and it makes sense to obtain a copy of the *exact* exhibits introduced into the record at the deposition. *See* 28 U.S.C. § 1920(4); *Fait v. Hummel*, No. 01 C 2771, 2002 WL 31433424 (N.D. Ill. Oct. 30, 2002). So photocopying costs of the exhibits are allowed. On the rate, in this District, courts have found \$0.20 to be a reasonable rate. *See, e.g., id.* at *5 (“The price per page of \$0.20 is reasonable.”); *Davis v. Teamsters Local Union No. 705*, 2002 WL 1359401, at *4 (N.D. Ill. 2002) (copying cost of \$0.20 per page reasonable); *Figueroa v. City of Chicago*, 2000 WL 1036019, at *2 (N.D. Ill. 2000) (approving \$0.20 per page). The Court adopts that rate and thus awards: (1) to Tak, \$37.20 for the 186 pages of Langs exhibits and \$113.00 for 565 pages of Van Den Heuvel exhibits; and (2) to Spirit, \$76.80 for the 384 pages of Tak exhibits, \$37.20 for the 186 pages of Langs exhibits, and \$113.00 for the 565 pages of Van Den Heuvel exhibits.

C. Appearance Fees

Spirit seeks costs for the attendance fees that they paid to the court reporter for the depositions of Van Den Heuvel and Marc Langs. For the Langs deposition, the “professional attendance” fees totaled \$337.50, R. 98-2 at 4, and for the Van Den Heuvel deposition, there was both an attendance fee of \$337.50 for 4.5 hours as well as a “surcharge” for extended hours that cost \$56.25. *Id.* at 6. RNS argues that these costs

are too high because, under the Local Rules, the court reporter attendance fee “shall not exceed \$110 for one half day (4 hours or less) and \$220 for a full day of attendance fee.” R. 104 at 4 (citing Local Rule 54.1). To add a bit of complexity to the situation, both depositions were taken on the same day by the same court reporter. R. 66-2 at 1 (excerpts of Van Den Heuvel’s deposition); R. 66-4 at 1 (excerpts of Langs deposition). Van Den Heuvel’s deposition, which came first, began at 8:30 a.m. and ran for 4½ hours; then Langs’s deposition came next at 1:30 p.m. and ran until after 6:00 p.m. R. 110, at ¶ 3.

Had the depositions been on different days, the recoverable costs would simply be \$220 for each 4½-hour deposition. Here, it is plausible to argue that the court reporter should be limited to just one full-day fee. What cuts against that, however, is that the court reporter stayed beyond a regular 8-hour business day; the Langs deposition went past 6 p.m. So both appearance fees are recoverable: \$220 for Langs and \$220 for Van Den Heuvel. But the surcharge is disallowed, because the two appearance fees already combine to cover the amount of time expended for the two depositions.

D. Delivery Fees

Sharad Tak asks for \$47.78 in delivery fees for the Marc Langs and Steven Van Den Heuvel transcripts. Similarly (but not exactly), Spirit asks for \$40.81 for delivery of the Langs transcript and \$35.00 for delivery of the Tak transcript. R. 94-2 at 6, 7; R. 98-2 at 2, 4, 6. In response, RNS argues that shipping and handling costs are not an explicit category on the Northern District of Illinois’s “Transcript Rates” table, so

they should be denied. R. 104 at 5 (citing www.ilnd.uscourts.gov/Pages.aspx?rsp2kxYIAI6Z3skP0PESA+q3bXKkfRyo).

The Court does not agree. Courts have interpreted the federal rules as allowing for reimbursement for shipping and handling, which makes sense because it is part of the cost of obtaining the transcript. *Finchum v. Ford Motor Co.*, 57 F.3d 526, 534 (7th Cir. 1995); *Donelson v. Hardy*, 931 F.3d 565, 570 (7th Cir. 2019) (upholding award of costs for transcript delivery services). The absence of a specific reference on the District Court website does not undermine recoverability. It might be that, at some point, the simple digital delivery of transcripts will render this cost non-reimbursable. But the costs are awarded in this case.

E. Processing Fees

Both sets of Defendants request \$35 in “processing fees” related to the deposition of Sharad Tak. But there is zero explanation of what this “processing fee” is, so the Court cannot evaluate its reasonableness. The processing fees are denied.

F. LEF File

Similarly, Spirit requests \$95.00 for an “LEF file” related to the Sharad Tak deposition. But again Spirit does not explain what this is, so it is denied.

G. Photocopying Costs

Tak requests \$145.95 for in-house photocopying costs, maintaining that the copies were necessary for discovery that helped the Defendants prepare their successful motion. R. 94-1 at 1. RNS argues that Tak’s request for in-house photocopying fees should be denied as unnecessary. R. 104 at 8.

Fees are permitted for copies that are necessarily obtained, including copies for discovery and court copies of pleadings, motions, and memoranda; in contrast, mere convenience copies are not recoverable. *See* 28 U.S.C. § 1920(4); *Fait v. Hummel*, No. 01 C 2771, 2002 WL 31433424 (N.D. Ill. Oct. 30, 2002). As noted earlier, courts in this District have applied \$0.20 per page as a reasonable rate for photocopies. Here, Tak billed at a \$0.15 per page rate. R. 94-3. Several hundreds of pages of discovery copies is not unreasonable given the volume of discovery in this case. So the Court awards Tak \$145.95 in photocopying costs.

H. Service of Subpoena

Spirit initially requested \$292.40 in fees for an unsuccessful attempt to personally serve a deposition subpoena on Sharad Tak back on July 28, 2017, as well as for a second unsuccessful service attempt on September 1, 2017. R. 98; R. 98-1; R. 98-3. The fee for the first attempt was \$209.90—described as “national service”—and the fee for the second attempt was \$82.50, which was described as “regular local service.” R. 98-1. RNS pointed out that the amounts requested exceeded the U.S. Marshals Service rate of \$65 per hour—which is the statutory maximum for reimbursement—so Spirit conceded the limit of \$65 for each service attempt, or \$130 total. *Fait v. Hummel*, 2002 WL 31433424 at *3 (N.D. Ill. Oct. 30, 2002); R. 104 at 7; R. 109 at 5-6.

RNS argues, however, that Spirit did not explain why it was reasonably necessary to use personal service rather than mail or email. R. 104 at 7. Indeed, RNS contends, Tak voluntarily sat for a deposition even though he actually was never

successfully served. *Id.* In response, Spirit counters that Civil Rule 45 does not contain any provision for service of a subpoena by mail or email. R. 109 at 5; Fed. R. Civ. P. 45. Also, Spirit argues that the personal-service attempts were reasonable because Tak had previously refused to testify on behalf of Spirit's parent company on another occasion. R. 109 at 6. The multiple service attempts were also necessary because Tak was outside the United States on the first attempt. R. 109 at 5.

It is true, as Spirit argues, that there is a lack of clarity as to whether service by mail would be enough for a Rule 45 subpoena. The Seventh Circuit has interpreted Rule 45(b)(1) to authorize service by certified mail. *Ott v. City of Milwaukee*, 682 F.3d 552, 557 (7th Cir. 2012). But the Third Circuit—where Tak lives—does not appear to have addressed the issue. It turns out that a definitive decision on this issue is not needed, because the Court concludes that Spirit did not make sufficient attempts to avoid the need for the personal-service attempts. At the very least, Spirit should have tried harder to ask Tak whether he would accept informal service of the subpoena or, indeed, whether he would just voluntarily sit for the deposition without the need for a subpoena at all. Spirit's attorney avers that he emailed Tak in July 2017 about accepting service but "did not initially receive a response." R. 110, Romashko Aff. ¶ 6. That is the end of the explanation. Did Tak *eventually* respond, even if he did not "initially" respond? How long did Spirit wait before hiring the process server? And where is the email to warn Tak that Spirit would resort to personal-service efforts if he did not respond? Without an adequate rationale for the personal-service attempts, the costs for the process server are denied.

I. Witness Fees

Spirit requests \$45.89 for witness fees paid to Sharad Tak. R. 98; R. 98-3 at 1. Under federal law, the Defendants are permitted to recover a \$40 witness fee plus reasonable travel expenses. 28 U.S.C. § 1821. Here, RNS objects to the \$5.89 in travel fees on the grounds that the Defendants have not provided adequate documentation on either expenses or mileage to support it. R. 104 at 7-8. But Spirit argues that the subpoena itself contains all of the information that RNS would need to calculate the costs. R. 109 at 6. Specifically, Tak's address and the address of the deposition site both appear on the face of the subpoena (allowing RNS to calculate mileage), and the mileage rate of \$0.535 is set by federal law. *Id.* at 6-7. *See* 28 U.S.C. § 1821(b). Google Maps calculates the trip mileage between Tak's home and the deposition site to be 10.3 miles, so when multiplied by the \$0.535 per mile, mileage fees come to \$5.5105, which rounds to \$5.51. Witness fee costs are clearly recoverable and reasonable, so the Court awards \$45.51.

IV. Conclusion

The Defendants' requests for costs are awarded in part and denied in part. This chart summarizes the decisions:

Category	Requested Costs	Decision
Transcript fees (requested by Sharad Tak)	Sharad Tak Deposition Total: \$337.25 - Transcript (\$302.25) - Processing Fee (\$35.00)	Tak Total: \$302.25 Transcript: \$302.25 Process: \$0
	Marc Langs Deposition Total: \$940.38 - Transcript (\$781.00) - Exhibit Management (\$111.60) - Delivery and Handling (\$47.78)	Langs Total: \$865.98 Transcript: \$781.00 Exh.: \$37.20 Delivery: \$47.78
	Steven Van Den Heuvel Deposition Total: \$841.03 - Transcript (\$652.00)	VDH Total: 812.78 Transcript: \$652.00

	<ul style="list-style-type: none"> - Exhibit Management (\$141.25) - Delivery and Handling (\$47.78) 	Exh.: \$113.00 Delivery: \$47.78
Fees for copying materials (requested by Sharad Tak)	In-house photocopying costs: \$145.95	Total: \$145.95
Fees for service of summons and subpoena (requested by Spirit Construction Services and Steven Van Den Heuvel)	Fees for service of summons and subpoena: \$292.40 <ul style="list-style-type: none"> - 7/28/17 Due Process USA Invoice (\$209.90) - 09/01/17 Due Process USA Invoice (\$82.50) 	Total: \$0
Fees for electronically recorded transcripts (requested by Spirit Construction Services and Steven Van Den Heuvel)	Sharad Tak Deposition Total: \$666.75 <ul style="list-style-type: none"> - Transcript, 93 pg at \$3.95/pg (\$367.35) - Exhibits, 384 pg at \$0.35/pg (\$134.40) - LEF File (\$95.00) - Processing Fee (\$35.00) - Shipping (\$35.00) Marc Langs Deposition Total: \$1,392.56 <ul style="list-style-type: none"> - Transcript, 245 pg at \$3.95/pg (\$967.75) - Attendance, 4.5 hrs at \$75/hr (\$337.50) - Exhibits, 186 pg at \$0.25/pg (\$46.50) - Delivery and Handling (\$40.81) Steven Van Den Heuvel Total: \$1,181.81 <ul style="list-style-type: none"> - Transcript, 202 pg at \$3.00/pg (\$606) - Attendance, 4.5 hrs at \$75/hr (\$337.50) - Attendance Surcharge (\$56.25) - Exhibits, 565 pg at \$0.25/pg (\$141.25) 	Tak Total: \$451.25 Transcript: \$339.45 Exh.: \$76.80 LEF: \$0 Process: \$0 Shipping: \$35.00 Langs Total: \$1192.26 Transcript: \$894.25 Attend.: \$220 Exh.: \$37.20 Delivery: \$40.81 VDH Total: \$939.00 Transcript: \$606 Attend.: \$220 Surcharge: 0 Exh.: \$113.00
Fees for witnesses (requested by Spirit Construction Services and Steven Van Den Heuvel)	Fees for Witnesses: \$45.89	Total: \$45.51

ENTERED:

s/Edmond E. Chang

 Honorable Edmond E. Chang
 United States District Judge

DATE: January 1, 2021