Non-Taxable Costs May Be Awarded Under the Fair Credit Reporting Act

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In *Grove v. Wells Fargo Financial California Inc*., 2010 DJDAR 7351 (2010), the Ninth Circuit Court of Appeals decided an interesting case involving the types of costs which are recoverable under the provisions of the Fair Credit Reporting Act ("FCRA") 15 U.S.C. § 1681 et seq. Under FCRA § 16810(a)(2), the statute permits a prevailing plaintiff to recover the "**costs of the action together with reasonable attorney's fees as determined by the court**."

The facts of the case are summarized as follows. Wells Fargo Financial California Inc. ("Wells Fargo") notified several credit agencies that the plaintiff was delinquent on an automobile loan. The plaintiff disputed the information and requested that Wells Fargo correct the record. Wells Fargo refused to do so. Plaintiff then sued Wells Fargo under the FCRA.

In the complaint, plaintiff alleged that Wells Fargo provided false information to the credit reporting agencies. The parties subsequently reached a settlement, and the district court approved the parties' stipulated judgment. The agreement provided that Wells Fargo would pay plaintiff $20,000 plus costs and reasonable attorney fees. In plaintiff's motion to recover on the judgment, plaintiff also requested $6,770.60 in non-taxable costs, in addition to other expenses. The district court denied plaintiff's request for costs that were not listed as "taxable" under 28 U.S.C. section 1929, concluding it did not have any authority to award non-taxable costs. Plaintiff appealed that decision of the lower court to the Ninth Circuit.

The Ninth Circuit reversed in part, noting that 28 USC section 1920 outlines the federal court's power to shift litigation costs. The court noted, however, that Section 1920 does not speak to the authority of the district court to award taxable costs. For that reason, the Ninth Circuit considered whether the FCRA's expense shifting provision authorized the award of non-taxable costs. The court concluded that the statute does contemplate such an award.

The Court noted that the FCRA allows a prevailing plaintiff to recover the costs of the action together with reasonable attorney fees. The court determined that since the FCRA provides for the recovery of "reasonable attorney's fees," district courts have discretion to award non-taxable costs to prevailing parties under the FCRA. The Ninth Circuit concluded that the district court erred in ruling that it had no authority to do so.