

NORTH CAROLINA
COUNTY OF CRAVEN

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
09 CVS 2600

DONALD J. DUNN,

Plaintiff,

v.

HENRY T. DART and
ROBERT E. ZAYTOUN,

Defendants.

ORDER

THIS MATTER is now before the court on Defendants' Motion for Attorneys' Fees, Costs and Rule 11 Sanctions, filed October 31, 2012 ("Motion"). By its November 14, 2012 Order, the court denied the Motion insofar as it sought attorneys' fees or Rule 11 sanctions, but left open the question of costs pending Plaintiff's response. Plaintiff responded on November 28, 2012 and the Motion is ripe for final determination.

Although N.C. Gen. Stat. § 6-20 appears to provide the court discretion in determining whether to award costs, the court reads *Khomyak v. Meek*, ___N.C. App. ___, 715 S.E.2d 218 (2011), *review denied*, 720 S.E.2d 392 (N.C. 2012), to eliminate that discretion and to compel awarding the prevailing moving party those costs delineated by N.C. Gen. Stat. § 7A-305(d). If the court did have discretion to do so, it would exercise its discretion here to deny all costs.

Accordingly, the court awards Defendants costs in the amount of \$4,923.08, which are those documented costs authorized by Section 7A-305(d).

IT IS SO ORDERED this 30th day of November, 2012.

/s/ James L. Gale
James L. Gale
Special Superior Court Judge
for Complex Business Cases