

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

FREDERICK M. CARGIAN,

Plaintiff-Appellant,

-against-

BREITLING USA, INC.,

Defendant-Appellee.

No. 16-3592

**AFFIRMATION OF GLENN S. GRINDLINGER, ESQ.
IN OPPOSITION TO APPELLANT’S BILL OF COSTS**

GLENN S. GRINDLINGER, ESQ., pursuant to 28 U.S.C. § 1746, affirms under penalty of perjury that the following is true and correct:

1. I am an attorney admitted to practice law before the State of New York and the bar of this Court. I submit this Affirmation under penalty of perjury.

2. I am a partner in the law firm Fox Rothschild LLP, attorneys for Defendant-Appellee Breitling USA, Inc. (“Breitling”).

3. Plaintiff-Appellant Frederick M. Carigan (“Carigan”) brought an action in the United States District Court for the Southern District of New York pursuant to, *inter alia*, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, alleging, *inter alia*, that Breitling terminated his employment because of his sexual orientation.

4. Relying on this Court’s decisions in *Simonton v. Runyon*, 232 F.3d 33, 35 (2d Cir. 2000) and *Dawson v. Bumble & Bumble*, 398 F.3d 211, 217-23 (2d Cir. 2005), the District Court granted Breitling’s motion for summary judgment on the ground that Title VII does not

prohibit private employers from discriminating against their employees based on their sexual orientation.

5. In a September 10, 2018 Summary Order, this Court vacated the District Court's Order granting summary judgment to Breitling and remanded the matter for further proceedings in light of this Court's recent decision in *Zarda v. Altitude Express, Inc.*, 883 F.3d 100 (2d Cir. 2018) (en banc), which held that Title VII prohibits discrimination on the basis of sexual orientation and overruled *Simonton* and *Dawson* to the extent they held otherwise.

6. The Court's September 10, 2018 Summary Order did not tax costs against either party.

7. On September 11, 2018, Cargian submitted a Verified Itemized Bill of Costs requesting that the Court grant his Bill of Costs because he is the prevailing party on appeal.

8. However, the Court must decline Cargian's request for a Bill of Costs because, pursuant to Federal Rule of Appellate Procedure 39(a)(4), where, as here, a judgment is vacated, "costs are taxed only as the court orders" and the Court did not tax costs against Breitling.

Dated: New York, New York
September 17, 2018

/s/ Glenn S. Grindlinger

Glenn S. Grindlinger, Esq.