

**SUPERIOR COURT OF CALIFORNIA,**

COUNTY OF SAN DIEGO

CENTRAL COURTHOUSE

TENTATIVE RULINGS - August 01, 2019

EVENT DATE: 08/02/2019

EVENT TIME: 10:45:00 AM

DEPT.: 904

JUDICIAL OFFICER: Kevin A. Enright

CASE NO.: 37-2015-00034545-CU-BT-CTL

CASE TITLE: JOHNSON VS. HUFFMAN [IMAGED]

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Business Tort

EVENT TYPE: Motion Hearing (Civil)

CAUSAL DOCUMENT/DATE FILED: Notice - Other, 07/18/2019

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Anthony Johnson's ("Johnson") Motion to Strike or Tax Storix's and Defendants' Memorandums of Costs (ROA 809, 893) is DENIED.

The court finds that Storix, Inc. and the individual defendants/cross-defendants David Huffman, Richard Turner, Manuel Altamirano, David Kinney, and David Smiljkovich (hereinafter "individual defendants") are prevailing parties. (Code of Civ. Proc., § 1032(a)(4).) Johnson's argument that Storix and the individual defendants are not separate and distinct parties is not persuasive.

Under Code of Civil Procedure section 1032, the prevailing party is entitled as a matter of right to recover costs in any action or proceeding. Per said statute, a prevailing party includes:

[T]he party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant. If any party recovers other than monetary relief and in situations other than as specified, the "prevailing party" shall be as determined by the court, and under those circumstances, the court, in its discretion, may allow costs or not and, if allowed, may apportion costs between the parties on the same or adverse sides pursuant to rules adopted under Section 1034.

(Code of Civ. Proc., § 1032(a)(4).)

So long as the party obtains a "net monetary recovery," a prevailing party can be the party who receives only partial recovery by succeeding on only one of several causes of action. (*Michell v. Olick* (1996) 49 Cal.App.4th 1194, 1199.)

With regard to Storix, it obtained a net monetary recovery on its action against Johnson for breach of fiduciary duty, which makes it a prevailing party. (Code of Civ. Proc., § 1032(a)(4).) The court rejects Johnson's arguments that Storix is not the prevailing party because the lawsuit was not lawfully approved. Nor is the court convinced by Johnson's arguments that he was never a party in the derivative suit and the other arguments he asserts regarding the derivative suit. Further, the court finds no merit in Johnson's argument that Storix is prohibited from recovering court costs under Code of Civil Procedure section 1032(b) because of the \$50,000 bond posted.

In its discretion, the court also finds that even though Storix's net recovery was within the \$25,000 jurisdictional limit for a limited civil action, Storix is still entitled to costs. The court finds that Storix reasonably and in good faith brought an unlimited civil action against Johnson believing that the ultimate

recovery would exceed the limited jurisdictional limit. (*Carter v. Cohen* (2010) 188 Cal.App.4th 1038, 1052.) The court also finds Johnson has not shown that Storix's claims should have been brought in a limited civil case. (See Code of Civ. Proc., §§ 86, 580(b)(2).)

The prevailing party's right to recover costs is limited to "allowable" cost items, "reasonably necessary" to the conduct of the litigation, and "reasonable" in amount. (Code of Civ. Proc., §§ 1033.5(a), (c)(2), & (c)(3).) If the items on their face appear to be proper charges, the verified memorandum of costs is prima facie evidence of their propriety, and the burden is on the party seeking to tax costs to show they were not reasonable or necessary. (See *Ladas v. California State Auto. Ass'n* (1993) 19 Cal.App.4th 761-774-776; *Bender v. County of Los Angeles* (2013) 217 Cal.App.4th 968, 989.) "A party's 'mere statements in the points and authorities accompanying its notice of motion to strike cost bill and the declaration of its counsel are insufficient to rebut the prima facie showing [that the costs were necessarily incurred].'" (*Jones v. Dumrichob* (1998) 63 Cal.App.4th 1258, 1266.)

Johnson fails to meet his burden of establishing that the costs sought by Storix should be stricken in their entirety or taxed. The court is not persuaded by Johnson's arguments that Storix did not incur any costs in this litigation. Johnson does not specifically challenge any particular item in Storix's memorandum of costs, even though Storix has itemized its costs and has provided documentation supporting the costs. Instead, Johnson seeks to strike and/or tax Storix's entire memorandum of costs, which he has failed to show was unnecessary to the conduct of litigation or unreasonable in amount. Johnson's motion to tax costs as to Storix is therefore denied. **Storix shall recover costs against Johnson in the amount of \$24,493.53 as stated in the Second Amended Memorandum of Costs (ROA 894).**

As to the individual defendants, the court finds that they are the prevailing party under Code of Civil Procedure section 1032(a)(4). The individual defendants prevailed on Johnson's Cross-Complaint against them. The individual defendants also prevailed against Johnson on the derivative suit because Johnson was dismissed from the action. The court is not persuaded by Johnson's arguments that he was never a plaintiff in the derivative suit and that the individual defendants did not prevail in the litigation.

Johnson does not challenge any specific itemized costs. Instead, he argues that the individual defendants are not entitled to costs because they did not incur any costs. He contends the costs were passed through to Storix. Johnson fails to support this argument that the individual defendants did not incur costs. Like Storix, the individual defendants provided an itemized breakdown of their costs and supported the request for costs with documentation. Johnson has failed to show that the costs incurred by the individual defendants were not permitted, unnecessary to the conduct of litigation, and/or were unreasonable in amount. Johnson's motion to tax is denied as to the individual defendants. **The individual defendants shall recover costs against Johnson in the amount of \$55,712.76 as stated in the Memorandum of Costs (ROA 802).**