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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

JUANA PEREZ et al.,

Plaintiffs and Appellants,

v.

DOLE FOOD COMPANY, INC.,

Defendant and Respondent.

B277659

(Los Angeles County
Super. Ct. No. BC412620)

APPEAL from judgment and order of the Superior Court of Los Angeles County, Ann I. Jones, Judge. Affirmed as modified.

International Rights Advocates, Terrence Collingsworth and David Seth Grunwald, for Plaintiffs and Appellants.

Gibson, Dunn & Crutcher, Andrea E. Neuman and William E. Thomson, for Defendant and Respondent.

After seven years of litigation, 64 plaintiffs, comprised of the heirs of deceased Colombian nationals, voluntarily dismissed this wrongful death action with prejudice. Defendant and respondent Dole Food Company, Inc. (Dole) filed a memorandum of costs. Plaintiffs moved to strike Dole's costs. The trial court struck portions of Dole's costs and entered judgment. Plaintiffs appeal from the judgment and order denying its motion to strike costs.

Plaintiffs contend the trial court abused its discretion by (1) awarding costs for an expert witness who was not appointed by the trial court; (2) awarding unreasonable amounts for courier fees, translation costs, and deposition costs; and (3) failing to reduce or deny costs on the basis of plaintiffs' indigence. We agree that the amount awarded for expert witness fees was not authorized by the cost statutes. As to all other challenges, plaintiffs fail to demonstrate an abuse of discretion in the award of costs. We reduce the amount of the cost award by deducting expert witness fees, modify the judgment accordingly, and otherwise affirm.

FACTUAL AND PROCEDURAL BACKGROUND¹

Complaint, Discovery, and Voluntary Dismissal

In April 2009, plaintiffs filed a complaint against Dole for wrongful death and other causes of action. Plaintiffs alleged that Dole and its wholly-owned subsidiary negligently hired members of a paramilitary organization to provide security and protection services. According to the complaint, the paramilitary members murdered Colombian nationals, including plaintiffs' decedents, on or near banana plantations owned or operated by Dole between 1994 and 2007.

In 2010, Dole filed a motion for a cost bond under Code of Civil Procedure section 1030.² Plaintiffs sought relief from the cost bond requirement on the ground they were

¹ This is the sixth iteration of appellate litigation between the parties. (See *Perez v. Dole Food Co., Inc.* (Mar. 1, 2016, B270162) [nonpub. order]; *Gomez et al. v. Superior Court* (Aug. 24, 2015, B266126) [nonpub. order]; *Gomez et al. v. Superior Court* (July 24, 2015, B265166) [nonpub. order]; *Gomez et al. v. Dole Food Co., Inc.* (June 24, 2013, B242400) [nonpub. opn.]; *Gomez et al. v. Dole Food Co., Inc.* (Oct. 27, 2011, B228876) [nonpub. opn.].) We need not recite the entire history of the litigation in resolving the current appeal.

² Statutory references are to the Code of Civil Procedure unless otherwise indicated.

indigent and therefore exempt. To demonstrate indigence, plaintiffs submitted declarations establishing the income of 63 plaintiffs as of 2011. The trial court denied plaintiffs' motion without reviewing the declarations. We reversed the trial court's order, concluding that the court abused its discretion by ruling on the motion without reviewing all of the relevant factors, including plaintiffs' evidence of indigence. Our judgment did not address the sufficiency of the showing made by plaintiffs. (*Gomez et al. v. Dole Food Co., Inc.* (June 24, 2013, B242400), [nonpub. opn.]) Dole did not renew the cost bond motion after remand.

Dole incurred costs during discovery to depose the paramilitary members in Colombia, including costs for a videographer, court reporter, security detail, and interpreter. During the course of discovery, Dole accused plaintiffs' counsel of spoliation of evidence and filed a motion to conduct a forensic search of plaintiffs' counsel's electronic devices. The court granted the motion, stating that it would appoint a neutral and objective expert, or the parties would each retain a computer expert. The parties each retained experts. Dole's expert recovered more than 50,000 emails.

Dole had a substantial number of foreign documents translated, including hundreds of days of prior witness testimony, primarily from Colombia's Justice and Peace process, to prove to the court that plaintiffs' counsel engaged in a pattern of witness tampering. None of the translated testimony mentioned involvement by Dole with any decedents' death.

A retainer agreement contained in the translated documents provided in pertinent part:

“5. The Client hereby contracts [with] The Attorneys, under the following terms of contingency:

a. The Attorneys will assume the responsibility for all the expenses and costs related to the lawsuit and the processing of the claims;

b. The Client will not be charged directly for any cost or fee of The Attorneys.

c. In the event The Attorneys obtain any monetary compensation for the Client, all the expenses and costs born [*sic*] by The Attorneys in this court action and the processing of the claims will be reimbursed to The Attorneys before any disbursement is made to the Client. After the reimbursement of all the expenses and costs,”

On March 2, 2016, plaintiffs filed a request to dismiss the entire action with prejudice.

Dole’s Memorandum of Costs

Dole filed a memorandum of costs seeking a total of \$493,809.55. The costs included \$13,748.96 for filing and motion fees; \$165,535.91 for deposition costs; \$1,797 for

service of process costs; \$160,559.34 for expert witness fees; \$9,272.32 for models, blowups, and photocopies of exhibits; \$5,988.67 for court reporter fees; and \$136,907.35 for translation and interpretation fees.

Plaintiffs' Motion to Strike or Tax Costs

Plaintiffs filed a motion to strike costs based upon their indigence. Plaintiffs did not submit current declarations, relying instead on the evidence presented in opposition to the cost bond motion in 2012.³ Plaintiffs argued that Dole's failure to renew its cost bond motion after reversal on appeal conceded their indigent status. Plaintiffs asserted that any award of costs would be unreasonable because they were indisputably indigent, and therefore, an award of costs was prohibited.

Plaintiffs alternatively argued that certain costs were non-recoverable or should be substantially reduced. Because the testimony from the Justice and Peace process and deposition transcripts of paramilitary members proved that

³ In support of the motion to strike, plaintiffs submitted their motion for relief from the cost bond order filed on April 2, 2012. The attorney declaration accompanying the April 2012 motion states that 63 declarations from the plaintiffs are attached as Exhibit 1, but there is no Exhibit 1 included in the record on appeal. The appellate record does not contain a declaration from any of the individual plaintiffs.

plaintiffs' counsel did not engage in witness tampering, the translation costs were prohibited investigation expenses. The computer forensics utilized by Dole was not "court-ordered" within the meaning of the cost statute because the expert was not appointed by the court and was hired directly by Dole. Filing and motion fees are generally recoverable, but reporters transcripts of \$1,138.45 were non-recoverable because they were not ordered by the court and were of unrelated proceedings. Messenger fees, models, blowups and photocopies were unnecessarily incurred and were not shown to be reasonable or necessary.

Trial Court's Ruling

At the hearing on plaintiffs' motion to strike, the court questioned whether plaintiffs had shown they were indigent. Plaintiffs' counsel argued that "Dole made no efforts to argue that they were not indigent. They are." Counsel for Dole responded, "What they did was reference the showing they made six years ago on the cost bond motion [¶] On appeal, the Court of Appeal did not address the adequacy of that showing, did not say your Honor was incorrect in that regard [¶] . . . [¶] Even if it had been found adequate at the time, at six years old we don't know what the status of these plaintiffs are today. They could have gotten jobs. They could have won lotteries. You just don't know what happens in people's lives. So they haven't made a showing that they're indigent."

After reviewing the pleadings and evidence set forth by the parties, the trial court granted plaintiffs' motion to strike costs in part. The court struck \$5,119 in unreasonable travel costs in connection with the Colombia depositions, and \$9,272.32 for models, blowups, and photocopies that were not reasonably necessary.

In all other respects, the court awarded Dole its costs. "Plaintiffs are [] incorrect that indigence alone exempts them from paying 'any' costs," particularly when plaintiffs' counsel contractually agreed "to indemnify them for costs." The court highlighted the difference in policy between posting a cost bond and obtaining prevailing party costs: "[T]he waiver of the cost bond is based upon the public policy favoring the indigent plaintiff's fundamental right of access to the courts over the defendant's convenience in securing its costs. [Citation] Dole's interest at this post-dismissal stage is not convenience in securing its costs, but in obtaining its costs as a matter of right." "Plaintiffs' indigence is irrelevant given Plaintiffs' counsel's contractual agreement to indemnify them for costs."

The court then analyzed the reasonableness and necessity of each of Dole's requested costs. Filing and motion fees for filing documents with the Court of Appeal were reasonable in light of "the volume, bulk, and complexity of the filings, as well as the Court's standing requirement that a courtesy copy be hand delivered to the chambers."

Dole showed “the necessity and reasonableness of their security costs” because the case “presented security issues for Dole’s counsel.” Reporter and videographer costs were recoverable because plaintiffs did not arrange for videotaping, which “is critical to evaluate the deponents’ testimony.” Interpreter fees were also reasonable because there was “no dispute that the Colombian deponents spoke Spanish.”

Expert witness fees were “expressly ordered by the Court to investigate years of missing e-mails . . . that were potentially relevant to this case.” The protocol for the forensic examination “contemplated two possibilities: either “the Court appoints a neutral and objective expert of its choosing,” or “the parties shall each retain a computer expert” Dole’s retention of [its expert] comports with this protocol.”

Finally, court reporter and transcription costs were reasonable “given the contentious nature of this case.” Translation costs reflected in Dole’s invoices were reasonable and recoverable in light of *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1218, fn. 27 (*Amaral*). The court entered judgment on July 27, 2016, awarding Dole a total of \$479,418.23. Plaintiffs filed a timely notice of appeal.

DISCUSSION

Statutory Scheme and Standard of Review

“[A] prevailing party is entitled as a matter of right to recover costs in any action or proceeding.” (§ 1032, subd. (b).) A “prevailing party” includes defendants who are dismissed from the action (§ 1032, subd. (a)(4)), whether or not the dismissal is voluntary. (See *Santisas v. Goodin* (1998) 17 Cal.4th 599, 606.) Plaintiffs do not dispute that Dole satisfies the statutory definition of a prevailing party.

“[U]pon dismissal of an action in a defendant’s favor, that party is entitled to an award of costs under the clear authority and mandate of these statutory provisions. “No qualifications or conditions are imposed. He [or she] is entitled to . . . costs as a matter of right” [Citation.]” (*Brown v. Desert Christian Center* (2011) 193 Cal.App.4th 733, 738; accord *Nelson v. Anderson* (1999) 72 Cal.App.4th 111, 129 (*Nelson*) [“the prevailing party is entitled to all of his costs unless another statute provides otherwise. [Citation.] Absent such statutory authority, the court has no discretion to deny costs to the prevailing party”].)

Certain costs are expressly recoverable under section 1033.5, including fees for filings and service of process. (§ 1033.5, subd. (a).) Items set forth in section 1033.5, subdivision (b) are not allowed as costs except when expressly authorized by statute. Costs not mentioned in

section 1033.5 may nevertheless be recoverable in the court's discretion. (§ 1033.5, subd. (c)(4).) Recoverable costs that have been incurred are restricted to those that are both "reasonable in amount" and reasonably necessary to the conduct of the litigation. (§ 1033.5, subds. (c)(2) & (c)(3).)

"To the extent the statute grants the court discretion in allowing or denying costs or in determining amounts, we reverse only if there has been a "clear abuse of discretion" and a "miscarriage of justice." [Citation.]" (*Chaaban v. Wet Seal, Inc.* (2012) 203 Cal.App.4th 49, 52.) "[T]rial courts have a duty to determine whether a cost is reasonable in need and amount. However, absent an explicit statement by the trial court to the contrary, it is presumed the court properly exercised its legal duty." (*Thon v. Thompson* (1994) 29 Cal.App.4th 1546, 1548–1549.) "When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court." [Citation.]" (*Heller v. Pillsbury Madison & Sutro* (1996) 50 Cal.App.4th 1367, 1395.) We will reverse an order denying a motion to strike or tax costs only when the trial court's action is arbitrary, capricious, or exceeds the bounds of all reason under the circumstances. (*Maughan v. Google Technology, Inc.* (2006) 143 Cal.App.4th 1242, 1249–1250.)

Expert Witness Fees

Plaintiffs contend Dole was not entitled to recover \$160,559.34 for expert witness fees because the trial court ordered the forensic examination but did not appoint Dole's expert. We agree.

"A trial court has no discretion to award costs not statutorily authorized." (*Sanchez v. Bay Shores Medical Group* (1999) 75 Cal.App.4th 946, 948 (*Sanchez*)). "The Legislature has reserved to itself the power to determine selectively the types of actions and circumstances in which expert witness fees should be recoverable as costs and such fees may not otherwise be recoverable in a cost award." (*Ripley v. Pappadopoulos* (1994) 23 Cal.App.4th 1616, 1625.) The fees of expert witnesses ordered by the court may be awarded to a prevailing party. (§ 1033.5, subd. (a)(8); Evid. Code, § 731, subd. (c).) However, a court may not award costs for fees of experts not ordered by the court unless expressly authorized by law. (*Gorman v. Tassajara Development Corp.* (2009) 178 Cal.App.4th 44, 74; *Davis v. KGO-T.V., Inc.* (1998) 17 Cal.4th 436, 446, disapproved on another ground in *Williams v. Chino Valley Independent Fire Dist.* (2015) 61 Cal.4th 97, 105–107.)

Section 1033.5, subdivision (a)(8), "does not define 'expert witnesses ordered by the court.' However, the purpose of the statute was to codify existing case law. 'As explained in an analysis prepared by the Assembly Judiciary Committee, Code of Civil Procedure section 1033.5 was intended not to alter existing law but, instead, to eliminate confusion by specifying for general purposes "which costs are

and which costs are not allowable.” [Citation.] The lists of allowable and nonallowable costs included in the statute, it explains, “are essentially restatements of existing law, and to a large extent are codifications of case law.” [Citation.]” (*Sanchez, supra*, 75 Cal.App.4th at p. 949.)

“When Code of Civil Procedure section 1033.5 was enacted in 1986, existing case law provided that the fee of an expert witness appointed by the court under Evidence Code sections 730 and 731 was allowable as a cost, while the fee of an expert not so appointed was not allowable. (Evid. Code[,] § 733; *Metropolitan Water Dist. v. Adams* (1944) 23 Cal.2d 770, 773–774; *ABC Egg Ranch v. Abdelnour* (1963) 223 Cal.App.2d 12, 18–19; *Kennedy v. Byrum* (1962) 201 Cal.App.2d 474, 482–483 [all interpreting Code of Civil Procedure former [section] 1871, the predecessor statute of Evid[ence] Code, [sections] 730–733].) Accordingly, an expert witness ordered by the court is one who has been appointed by the court pursuant to Evidence Code section 730^[4] or other statutory authority. In the absence of an order of the trial court appointing an expert witness, the fees

⁴ Evidence Code section 730 provides in pertinent part: “When it appears to the court, at any time before or during the trial of an action, that expert evidence is or may be required by the court or by any party to the action, the court on its own motion or on motion of any party may appoint one or more experts to investigate, to render a report as may be ordered by the court, and to testify as an expert at the trial of the action relative to the fact or matter as to which the expert evidence is or may be required.”

of an expert witness are not recoverable as costs under Code of Civil Procedure section 1032. [Citation.] The reason for the distinction is related to the partiality of the expert witness.” (*Sanchez, supra*, 75 Cal.App.4th at pp. 949–950, fns. omitted; accord, *Dodge v. San Diego E.R. Co.* (1949) 92 Cal.App.2d 759, 769 [“the medical experts were thus named and appointed by the court by written order”]; *Baker-Hoey v. Lockheed Martin Corp.* (2003) 111 Cal.App.4th 592, 599–600 (*Baker-Hoey*) [no cost award for fees associated with deposing plaintiffs’ treating physicians because they were not court appointed]; *Stearman v. Centex Homes* (2000) 78 Cal.App.4th 611, 624 [“The court here did not order plaintiffs’ experts to testify, thus expert fees were not recoverable by plaintiffs as costs unless expressly authorized by law elsewhere”].)

We adhere to our prior decision in *Sanchez* and find that the court did not have discretion to award Dole costs for its expert witness. The cost award for expert fees was based upon Dole’s successful motion for a forensic examination. The trial court’s order clearly states that in the event the court did not appoint an objective expert, the parties were to hire their own experts. We cannot say the court appointed Dole’s expert under its order because the parties hired their own respective experts. Each party bore its own costs in providing the court with conflicting theories on spoliation. Although the experts were necessary to present each party’s case, they were not disinterested experts who provided the court with an impartial report. The order awarding costs

must be reduced by \$160,559.34 for a new total cost award of \$318,858.89.

Courier Fees

Plaintiffs contend the amount awarded for courier fees was not reasonable. We find no abuse of discretion.

Costs for courier or messenger fees are not specifically enumerated as allowable costs, and neither are they prohibited. These fees may be recoverable in the trial court's discretion if reasonably necessary to the conduct of the litigation. (*Foothill-De Anza Community College Dist. v. Emerich* (2007) 158 Cal.App.4th 11, 30.) Costs "merely convenient or beneficial to its preparation" are prohibited. (§ 1033.5, subd. (c)(2); *El Dorado Meat Co. v. Yosemite Meat & Locker Service, Inc.* (2007) 150 Cal.App.4th 612, 617.)

In awarding Dole \$11,169 in courier costs, the trial court found the costs to be for filings with this court in plaintiffs' prior appeals. It agreed the costs were "necessitated by the volume, bulk, and complexity of the filings, as well as the Court's standing requirement that a courtesy copy be hand delivered to the chambers." This constitutes substantial evidence. The denial of plaintiffs' motion in this respect was not an abuse of discretion. (*Ladas v. California State Auto. Assn.* (1993) 19 Cal.App.4th 761, 776.)

Translation Fees

Plaintiffs contend the trial court abused its discretion in awarding \$135,694 in fees for translation of the Justice and Peace proceedings because the costs were incurred during Dole's investigation of the case. Plaintiffs fall short of establishing an abuse of discretion.

Investigation expenses in preparing for trial are non-recoverable unless expressly authorized by statute. (§ 1033.5, subd. (b)(2).) Translation fees, however, are not expressly allowable or prohibited under section 1033.5. They are therefore recoverable in the court's discretion. (§ 1033.5, subd. (c)(4).)

Dole did not incur costs for translating documents to investigate the case. Rather, both parties used the translations to present evidence on the issue of witness tampering. The trial court reviewed the translated testimony and documents during the course of litigation. In complex litigation such as this, the trial court was in the best position to determine whether the translation fees were reasonably necessary to the conduct of the litigation. (*Baker-Hoey, supra*, 111 Cal.App.4th at p. 605.) No abuse its discretion appears.

Deposition Costs

Costs incurred for transcripts and video recordings of necessary depositions, fees of certified or registered interpreters for the depositions of parties or witnesses who do not proficiently understand or speak the English

language, and travel expenses to attend depositions are expressly allowable costs. (§ 1033.5, subd. (a)(3).) Substantial evidence supports the trial court's award of court reporter and videographer fees because Dole required experienced individuals to manage the challenges of foreign depositions. The court reviewed evidence that the Colombian depositions presented a lack of reliable power sources, damaged equipment, and other logistical issues to which plaintiffs did not assist because they did not arrange for videotaping. (See *Seever v. Copley Press, Inc.* (2006) 141 Cal.App.4th 1550, 1557 [videotaping depositions to review witness demeanor in advance of trial found reasonable].)

We also reject plaintiffs' overly narrow interpretation of section 1033.5, subdivisions (a)(3)(A) and (a)(3)(B), to prohibit travel expenses for court reporters, videographers, and interpreters, who by geographical necessity were required to travel internationally for each deposition. The travel expenses for these professionals were incurred in conjunction with the "[t]aking, video recording, and transcribing necessary depositions . . . [¶] for the deposition of a party or witness who does not proficiently speak or understand the English language." (§ 1033.5, subd. (a)(3).)

Substantial evidence also supports the award of security costs associated with the foreign depositions. The deponents were members of organized crime; some were mass-murderers. The depositions confirmed the need for security. The deponents wore body armor, were escorted by armed guards, and were confronted about their past violent

conduct. Given the circumstances, we cannot say the court abused its discretion in awarding Dole its deposition costs.

Indigence

Plaintiffs acknowledge that indigent parties are not automatically exempt from a judgment for costs under California law. However, they contend that the amount of costs awarded was not reasonable because the trial court failed to deny or substantially reduce costs based upon their indigence. Again, plaintiffs have failed to carry their burden of demonstrating an abuse of discretion.

California does not categorically exempt an unsuccessful indigent party from liability for an opposing party's costs. (*Chaparral Greens v. City of Chula Vista* (1996) 50 Cal.App.4th 1134, 1153, fn. 21.) Assuming a trial court may consider a party's indigence in determining whether an amount of costs is reasonable, the trial court is not constrained to find that no amount is reasonable. (See *id.* at p. 1151 [prevailing party sought costs of \$50,000, but trial court found Chaparral Greens was indigent and awarded costs of \$22,717.59].)

The trial court did not abuse its discretion in this case by awarding costs reasonably incurred and allowed by statute after considering plaintiffs' evidence of indigence. Plaintiffs did not submit current declarations providing income and expense information, but instead relied on declarations from approximately five or six years prior. In the interim, plaintiffs could have found employment, received restitution, collected judgments, or received other payments which significantly changed their financial status.

Any number of plaintiffs could have garnered a separate source of revenue they did not have in 2012 when they reported their income and assets in support of their relief from Dole's cost bond motion.

It is clear from the record that the trial court considered plaintiffs' evidence of indigence. The court noted that indigence alone did not exempt plaintiffs from paying costs, which is a correct statement of the law.

Plaintiffs contend that Dole's failure to renew its motion for a cost bond operates as a concession plaintiffs are indigent. This argument does not comport with the burden of proof on a motion to strike costs. Once a court determines that costs are recoverable, "the burden is on the objecting party to show them to be unnecessary or unreasonable." (*Nelson, supra*, 72 Cal.App.4th at p. 131.) Dole's reasons for proceeding without a cost bond are pure speculation and are irrelevant when analyzing a motion to strike costs.

While unnecessary to the conclusion we reach, we also find it significant that the trial court considered plaintiffs' earlier-submitted evidence of indigence and found it was tempered by other factors. The court considered that one or more of the plaintiffs in this case may have entered into a contingency agreement with counsel that provided indemnity for costs awarded to an opposing party. The retainer agreement submitted in evidence provides that the attorneys will assume responsibility for all expenses and costs related to the lawsuit. The trial court interpreted the term "costs" in the agreement to encompass a cost award to

the prevailing party. Instead of advancing litigation costs, counsel may assume responsibility for costs, including “expenses to third persons from funds collected or to be collected for the client as a result of the representation,” or “advancing the costs of prosecuting or defending a claim or action or otherwise protecting or promoting the client’s interests.” (*Boccardo v. C.I.R.* (9th Cir. 1995) 56 F.3d 1016, 1019, citing Rules Prof. Conduct, rule 4-210(A); see *Sheller v. Superior Court* (2008) 158 Cal.App.4th 1697, 1707, fn. 15 [“the Professional Responsibility and Ethics Committee of Los Angeles County Bar Association issued a formal advisory opinion⁵ that it is permissible for an attorney to

⁵ Formal Opinion No. 517, entitled “Indemnification of Client’s Litigation Costs,” states: “State Bar Formal Opinion 1976-38 provides that Rule 4-210 does not prohibit a lawyer from advancing expenses for which the client is responsible, even when there is a substantial likelihood that the client does not have the means to pay them. [Citation.] . . . [¶] Rule 4-210(A)(3) does not expressly address indemnifications of clients for costs if the client does not prevail. However, such an indemnification is not materially different from advancing costs repayment of which is contingent on the outcome. To the extent an indemnification is not considered a form of advancing costs through an indirect, potential, or ancillary obligation, the Committee believes it is permitted either at the inception of a matter or during the course of litigation under the general exception of ‘otherwise protecting or promoting the client’s interests.’ Further, since the indemnified expenses of litigation are to be decided by the trial court as mandated under [sections] 1033 and 1034,

agree to indemnify a client for court-ordered costs in the event the client is not the prevailing party”].)

The trial court took into account the stale evidence of indigence, coupled with evidence of potential indemnity for a judgment of costs, in determining that the amount of the cost award was reasonable. The trial court’s exercise of its discretion was not arbitrary or capricious, and did not exceed the bounds of reason.

the amount determined by the court is presumptively reasonable and, therefore, permissible under Rule 4-210(A).” (Fns. omitted.)

DISPOSITION

The judgment is reduced by \$160,559.34 to reflect a new total cost award of \$318,858.89. As modified, the judgment is affirmed. The parties are to bear their own costs on appeal.

KRIEGLER, Acting P.J.

We concur:

BAKER, J.

RAPHAEL, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.