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Re: Tanyous v. Happy Child World, Inc.
C.A. No. 2947-VCN
Date Submitted: August 27, 2008

Dear Counsel:

This action involves the management and control of Happy Child World, Inc. ("Happy Child"), a Delaware corporation. Following trial, the Court entered an order finding in favor of Plaintiff Boraam Tanyous ("Tanyous") and against Defendant Medhat Banoub ("Banoub").[1] Costs were awarded pursuant to Court of Chancery Rule 54(d).[2] Tanyous has submitted his bill of costs. Banoub has objected.[3]

[1] *Tanyous v. Happy Child World, Inc.*, 2008 WL 2780357 (Del. Ch. July 17, 2008).
[2] *See also* 10 *Del. C.* § 5106.
[3] This action was brought by Tanyous to inspect Happy Child's books and records under 8 *Del. C.* § 220. In light of Banoub's contention that Tanyous was not a stockholder and, thus, not entitled to any rights under § 220, the dispute evolved into one over ownership of the entity. By trial, there

The term "costs" as employed by Court of Chancery Rule 54(d) is not synonymous with "expenses" incurred by a party in successfully pursuing his claims. Only those expenses "necessarily incurred in the assertion of his rights in court" are recoverable as costs.[4] The allowance of costs ultimately is a matter committed to the Court's discretion.[5]

* * *

The costs which Tanyous seeks may be broken into four categories. The Court will consider each in turn.

1. Court costs in the amount of $1,583. Court costs are properly taxable under Court of Chancery Rule 54(d) and Banoub does not argue otherwise. Accordingly, costs in this amount will be awarded.

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was little disagreement over the proper scope of inspection; instead, the remaining issue was whether Tanyous was a shareholder and, because that dispute was with Banoub, it is proper to tax costs against Banoub.

Tanyous also suggests that costs should be awarded because of what he characterizes as Banoub's bad faith and disingenuous conduct. Although the Court declined to accept some of Banoub's testimony, his conduct does not reach the level that would independently justify shifting the usual burden of costs associated with trial. *See Kauns v. Cole Nat. Corp.*, 884 A.2d 500, 506 (Del. 2005). Thus, the current application is governed by Court of Chancery Rule 54(d).

[4] *Donovan v. Del. Water and Air Res. Comm'n*, 358 A.2d 717, 723 (Del. 1976) (quoting *Peyton v. William C. Peyton Corp.*, 8 A.2d 89, 91 (Del. 1939)). *See also* DONALD J. WOLFE, JR. & MICHAEL A. PITTENGER, CORPORATE AND COMMERCIAL PRACTICE IN THE DELAWARE COURT OF CHANCERY §13.03[b], at 13-3 (2008) [hereinafter "WOLFE & PITTENGER"].

[5] *See, e.g.*, *Bodley v. Jones*, 65 A.2d 484 (Del. Ch. 1948).

2. The cost of copying trial exhibits in the amount of $163.20 and of courier fees in the amount of $19.46 are sought. These costs are not generally allowable,[6] and will not be awarded.

3. Tanyous seeks expenses incurred in taking three depositions and obtaining the trial transcripts in the total amount of $7,945.70.[7] These include a deposition taken in Cairo, Egypt which resulted in United States Consular fees of $1,370, depositions in New York City and Cherry Hills, California, and the cost of trial transcript in the amount of $1,094.[8] Court of Chancery Rule 54(d) expressly precludes the assessment of "any charge for the Court's copy of the transcript of the testimony or any depositions." This principle has been expanded to deny the cost of depositions and trial transcripts generally.[9] Thus, neither the expense of the taking of the depositions nor the cost of trial transcript will be taxed as costs. In addition, translators were required for two of the depositions and the translation costs for the depositions amounted to $3,830.[10] Translation for non-English-speaking witnesses is

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[6] WOLFE & PITTENGER §13.02[b], at 13-5.
[7] Pl.'s Mot. for Costs at 2.
[8] *Id.*
[9] *See, e.g.*, *Hutchinson v. Fish Eng'g Corp.*, 204 A.2d 752, 753 (Del. Ch. 1964); *Gaffin v. Teledine, Inc.*, 1993 WL 271443, at *2 (Del. Ch. July 13, 1993).
[10] Pl.'s Mot. for Costs at 2.

but another cost of taking a deposition. Because the cost of taking a deposition is not properly taxable, translation services associated with the depositions also will not be taxed.

4. Tanyous seeks an award of $2,015.35 for translation services incurred with respect to the trial. Some of these charges can be attributed to the time that Tanyous was testifying.[11] The balance is attributable to translation services during the trial that allowed Tanyous to follow the progress of his litigation. He argues that this entire translation expense was "necessarily incurred in the assertion of his rights in court."[12]

[11] The cost of translation of Tanyous's testimony at trial would amount to approximately $425 based on the translator's billed hourly rate and the duration of his testimony. *See* Tr. at 13, 109; PX C.

[12] Reference to the practices of other jurisdictions is not especially helpful because some have statutes addressing interpreter's costs (*e.g.*, 28 U.S.C. § 1920(6)) while others also look to "the course and practice of the court." *Rider v. Twp. of Freehold*, 2008 WL 2699805, at *18 (N. J. Super. App. Div. July 14, 2008) (citing N.J. STAT. ANN. § 22A:2-8 (West 2008)). *See DeHaven v. Hall*, 753 N.W.2d 429, 445 (S.D. 2008); *Estate of Burkes v. St. Peter Villa, Inc.*, 2007 WL 2634851 (Tenn. Ct. App. Sept. 12, 2007); *Del Rosario v. Wang*, 804 A.2d 292, 297 (D.C. 2002). *Compare Vicencio v. Lincoln-Way Builders, Inc.*, 775 N.E.2d 587, 591 (Ill. App. 2002) (abuse of discretion to tax costs of in-court language translation), *aff'd in pertinent part*, 789 N.E.2d 290, 293 (Ill. 2003), and *Aragon v. Quintanilla*, 1987 WL 27996 (Tex. App. Dec. 17, 1987) (holding that cost of interpreter for presentation of case to jury was incidental, non-taxable expense), *with* CARMODY-WAIT CYCLOPEDIA OF NEW YORK PRACTICE 24C § 148:159 (2008) (translation of documents and interpreter fees taxable) and *Santiago v. Johnson*, 305 N.Y.S.2d 717 (N.Y. Civ. Ct. 1969) (interpreter expenses for questioning witness/deponent held necessary expense and taxable).

Tanyous has been unable to point to any statute or rule that would support his request for reimbursement of the in-court translation expenses that he has incurred. In addition, he has not identified any practice of this Court to make such an award.[13] Of the translation costs sought by Tanyous, those incurred as the result of his in-court testimony come the closest to having been "necessarily incurred in the assertion of his rights in court." In the absence of a statute, rule, or practice, however, the Court is unwilling to find a right to reimbursement of such in-court translation expenses. There is no apparent reason why Banoub, in these circumstances, should be charged with this potential element of court costs. Broad policy considerations, such as the award of translation costs as a matter of course, are better left to resolution by the adoption of rules or the enactment of legislation.

Moreover, additional translation services regarding trial preparation and keeping Tanyous abreast of developments in the courtroom during the trial, while

[13] The expense of translating testimony in-court has been taxed as costs under Superior Court Civil Rule 54(d). *Zakrzewski v. Dailey*, 2000 WL 33324528, at *3 (Del. Super. Nov. 6, 2000). In *Zakrzewski*, however, the Superior Court relied upon the fact that the losing party had first requested the translation services in support of its determination to shift the burden away from the prevailing party. Recitation of, and reliance upon, that fact would not have been necessary if Superior Court Civil Rule 54(d) conferred a right to recover in-court translation expenses. Thus, the better reading of *Zakrzewski* is that its outcome depended upon a distinct factual circumstance and that it did not in any definitive way resolve the question of whether in-court translation costs are taxable as a matter of course.

desirable and beneficial, constitute a burden not properly imposed on Banoub. Those services are incidental to the trial.[14] Tanyous also seeks reimbursement for the cost of translating documents. Even though some of these documents were used at trial, the expense is in the nature of trial preparation and, thus, is not properly taxed.

In sum, the translation costs sought by Tanyous do not constitute costs within the meaning of Court of Chancery Rule 54(d).

* * *

In conclusion, court costs in the amount of $1,583 are taxed against Banoub. Otherwise, Tanyous's motion for an award of costs is denied.

IT IS SO ORDERED.

Very truly yours,

/s/ John W. Noble

JWN/cap
cc: Register in Chancery-K

[14] Tanyous has not shown (or argued) that formal translating services (as opposed to informal guidance from one of his colleagues who speaks both languages) were necessary for these purposes.