

COURT OF CHANCERY
OF THE
STATE OF DELAWARE

STEPHEN P. LAMB
VICE CHANCELLOR

New Castle County Court House
500 N. King Street, Suite 11400
Wilmington, Delaware 19801

Submitted: October 2, 2006

Decided: October 11, 2006

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RE: Dewey Beach Lions Club v. Longacre, et al.
C.A. No. 162-S

Dear Counsel:

I have reviewed and considered the submissions of the parties and, for the following reasons, conclude that the plaintiff's bill of costs should be approved in its entirety.

This dispute arises from a bill of costs submitted by the plaintiff, the prevailing party in the litigation. The defendants challenge two line items therein: the \$175 paid to the sheriff to obtain service of process on the out-of-state defendants, and the \$994.90 paid to LexisNexis File & Serve for electronic filing fees.

Court of Chancery Rule 54(d) provides, with certain exceptions, that "costs shall be allowed as of course to the prevailing party unless the Court otherwise directs." The rule, however, does not define the term "costs." Case law under Rule 54 explains that costs are "allowances in the nature of incidental damages awarded by law to reimburse the prevailing party for expenses necessarily incurred

in the assertion of his rights in court.”¹ An allowance of “court costs does not amount to an attempt by the court to fully compensate a litigant for all the expenses the litigant incurred”²

The allowance of costs is more frequently litigated in the context of contracts requiring reimbursement than it is under Rule 54(d).³ After parsing out the contract cases that tend to expand the definition of costs beyond the scope of Rule 54(d), it appears that certain costs have been held to be recoverable under Rule 54(d). Courts have interpreted “costs” to include expert witness fees that are covered by statute,⁴ court filing fees, and the usual and customary costs incurred in serving of process.⁵ Courts have excluded the expense of computer legal research, transcript fees, miscellaneous expenses (such as travel and meals), and the cost of photocopying.⁶ The parties do not cite, and the court did not locate, any Delaware case considering whether LexisNexis File & Serve fees, as such, are recoverable as costs under Rule 54.⁷

The Court of Chancery requires that all cases be eFiled.⁸ Therefore, all required ordinary and reasonable fees the plaintiff incurred in the process of eFiling should generally be recoverable as costs under Rule 54(d) as “necessarily incurred in the assertion of [its] rights in court.”⁹ In reviewing the LexisNexis

¹ See *Comrie v. Enterasys Networks, Inc.*, 2004 WL 936505, at *4 (Del. Ch. Apr. 27, 2004) (holding contract term “costs” co-extensive with its meaning under Rule 54) (citing *Peyton v. William C. Peyton Corp.*, 8 A.2d 89, 91 (Del. 1939), quoted in *Donovan v. Del. Water & Air Res. Comm’n*, 358 A.2d 717, 723 (Del. 1976)).

² *Sliwinski v. Duncan*, 608 A.2d 730 (Table), 1992 WL 21132, at *3 (Del. Jan. 15, 1992).

³ See, e.g., *Cove on Herring Creek Homeowners’ Ass’n, Inc. v. Riggs*, 2005 WL 1377492 (Del. Ch. June 06, 2005); *Comrie*, 2004 WL 936505; *All Pro Maids, Inc. v. Layton*, 2004 WL 3029869 (Del. Ch. Dec. 20, 2004).

⁴ 10 Del. C. § 8906. Fees outside the statute are not recoverable. *Comrie*, 2004 WL 936505, at *5; *Gaffin v. Teledyne, Inc.*, 1993 WL 271443, at *1-2 (Del. Ch. July 13, 1993).

⁵ *Gaffin*, 1993 WL 271443, at *1-2.

⁶ *Id.*

⁷ Cf. *All Pro Maids*, 2004 WL 3029869, at *6 (holding recoverable “Courtlink efile” costs in the context of a contractual duty to reimburse costs, not under Rule 54).

⁸ Administrative Directive of the Chancellor of the Court of Chancery of the State of Delaware, Amended No. 2003-1, eFile Administrative Procedures. 1.(a) (“[E]very Civil Action in the Court of Chancery . . . shall be subject to electronic filing or eFiling.”).

⁹ *Comrie*, 2004 WL 936505, at *4 (citations omitted).

invoices submitted by the plaintiff, the fees can be broken down into two general categories: “statutory filing fees” and other costs, including “online service,” “postage and handling” and “processing fees.” The statutory filing fees are those costs charged by the Register in Chancery to file a case. Online service fees are added by LexisNexis for access to the system. Postage and handling and processing fees are incurred, for example, when a pro se party is served. A party cannot litigate a case without incurring these costs.¹⁰

While there may be some technical difference between those fees remitted to the Court of Chancery and those fees paid to LexisNexis for its services, both were necessarily incurred in prosecuting this action. Moreover, those fees are not akin to online legal research or other charges incurred at the discretion of the parties.¹¹ For these reasons, I conclude that the \$994.90 paid to LexisNexis File & Serve are recoverable as costs necessary to the prosecution of this action and are properly taxable as costs under Rule 54.

With regard to the sheriff’s fee for out-of-state service of process, costs for service of process are generally recoverable.¹² No case law supports the defendants’ argument that service of process fees are only recoverable where the party being served sought to evade service. To the contrary, fees charged by the sheriff for service of process are customarily and routinely granted as costs. Furthermore, there is no meaningful distinction between in-state and out-of-state service of process. The court therefore finds the \$175 paid to the sheriff is recoverable as a cost necessary to the prosecution of this action.

¹⁰ Certain services are optional and not recoverable as costs under Rule 54(d). For example, a Case History Report is not required or necessary to use File & Serve. The court notes that the Case History Report charge was subtracted by the plaintiff’s counsel from the Bill of Costs. See 5/12/2006 Invoice, Voucher 64080.

¹¹ *Cf. Midcap v. Sears, Roebuck and Co.*, 2004 WL 1588343, at *5 (Del. Super. May 26, 2004) (holding “that service of subpoenas on witnesses is a necessarily incurred expense in litigation,” but fees from “Legal Beagles, a third-party service provider” would be reimbursed only to “the amount the Sheriff would have charged to serve the[] subpoenas”).

¹² See, e.g., *Morabito v. Harris*, 2003 WL 22290934, at *1 (Del. Ch. Sept. 29, 2003).

Dewey Beach Lions Club v. Longacre, et al.

C.A. No. 162-S

October 11, 2006

Page 4

For the foregoing reasons, the plaintiff's bill of costs is approved, and I have today entered the order in the form proposed by Mr. Wolcott, awarding costs to the plaintiff in the amount of \$2967.90.

/s/ Stephen P. Lamb

Vice Chancellor