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**NOT FOR PUBLICATION**  
**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF ARIZONA**

The Conlon Group of Arizona,  
Plaintiff,  
vs.  
CNL Biltmore Real Estate, et al,  
Defendants.

No. CV-08-965-PHX-FJM

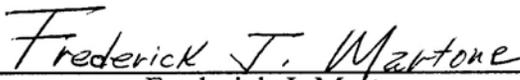
**ORDER**

The court has before it defendants’ motion for review of the clerk’s award of costs to Conlon (doc. 229). Defendants argue that based on our Order dated February 24, 2010 (doc. 227), Conlon is not the prevailing party and therefore is not entitled to costs under Rule 54(d)(1), Fed. R. Civ. P. Conlon did not respond to the motion.

Rule 54(d)(1) provides that “costs—other than attorney’s fees—should be allowed to the prevailing party.” Our local rule states that “[g]enerally, a party in whose favor judgment is rendered is the prevailing party.” LRCiv 54.1(d). Notwithstanding that judgment was entered in favor of Conlon, we held that Conlon is not the prevailing party for purposes of an award of attorney’s fees given that it succeeded on only one of four claims and was awarded only a fraction of the damages it sought. Order at 2. We ultimately concluded, based on the totality of the litigation, that neither party is the prevailing party in this litigation.

1 For the reasons stated in that Order, we also conclude that neither party is the  
2 prevailing party for purposes of Rule 54(d)(1). Therefore, **IT IS ORDERED GRANTING**  
3 defendants' motion for review of the clerk's award of costs (doc. 229) and **FURTHER**  
4 **ORDERING** that each party shall bear its own costs. That part of the "Taxation of Costs  
5 Order" (doc. 228) awarding costs of \$5,360.33 for plaintiffs is vacated.

6 DATED this 14<sup>th</sup> day of April, 2010.

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10 Frederick J. Martone  
11 United States District Judge  
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