UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

THE SHERWIN-WILLIAMS COMPANY,

Plaintiff,

vs.

JB COLLISION SERVICES, INC. et al.,

Defendants.

CASE NO. 13cv1946-LAB (WVG)

ORDER RE: COSTS AND SUPERSEDEAS BOND

Last November, a jury returned a verdict of about $375,000 for Sherwin-Williams and $3.25 million for JB Collision on various claims resulting from supply-and-buy contracts for auto paint. After trial, the Court granted, in part, Sherwin-Williams' motion to reduce JB Collision's damages to about $260,000 net. (Dkt. 311.) The Clerk calculated Sherwin-Williams' costs at $36,000 and put JB Collision's costs at $41,000. (Dkt. 326, 327.) JB Collision agreed with the Clerk's $41,000 figure, but argues that Sherwin-Williams isn't entitled to any costs because JB Collision is the prevailing party. (Dkt. 328.)

A. Each party will bear its' own costs.

Typically, costs "should be allowed to the prevailing party." Fed. R. Civ. P. 54. "If each side recovers in part, ordinarily the party recovering the larger sum will be considered the prevailing party." Civ. Local R. 54.1. Here, Sherwin-Williams has to pay JB Collision about $260,000. Under the plain language of the rule, JB Collision is the prevailing party and should be allowed costs.

But the Local Rule contemplates what's ordinarily, but not always, the case. And Rule 54 provides an exception to the presumption where "a court order provides otherwise." "Notwithstanding this presumption, the word 'should' makes clear that the decision whether to award costs ultimately lies within the sound discretion of the district court." *Marx v. Gen. Revenue Corp.*, 133 S. Ct. 1166, 1172 (2013). When exercising this discretion, the Court must "specify reasons for its refusal" to follow the normal presumption. *Ass'n of Mexican-Am. Educators v. State of California*, 231 F.3d 572, 591 (9th Cir. 2000). There's no "exhaustive list of 'good reasons' for declining to award costs"; rather, the Court needs to provide a sound justification for departing from the ordinary case. *Id.* at 593. Here, the Court specifies two good reasons the parties should cover their own costs.

First, although JB Collision secured a net monetary win, that doesn't makes them the prevailing party in this case. That's because Sherwin-Williams brought claims for breach of contract and won all of those claims for $375,000. In mixed judgment cases like this, "it is within the discretion of a district court to require each party to bear its own costs." *Amarel v. Connell*, 102 F.3d 1494, 1523 (9th Cir. 1996), as amended (Jan. 15, 1997); *see Cornwell Quality Tools Co. v. C. T. S. Co.*, 446 F.2d 825, 833 (9th Cir. 1971).

Second, many courts have recognized that where a party recovers "substantially less in damages that it had sought," that's a sufficient reason for a court to "support a discretionary decision to deny costs." *Champion Produce, Inc. v. Ruby Robinson Co.*, 342 F.3d 1016, 1023 (9th Cir. 2003).[1] JB Collision asked for $32 million and ultimately received only $635,000—2% of the damages sought.

In close cases like this one, it's helpful to look to the logic underlying the rule. Rule 54(d) deters plaintiff's from filing frivolous suits and recognizes that winning litigant's should be made whole. Where a party wins the suit they filed, but the defendant scores a higher sum on a counter claim (and for substantially less than they sought), awarding costs to one

[1] *Champion* limited its' holding to contract actions, but JB Collision won damages for fraud and misrepresentation. The Court, however, finds the *Champion* logic applies, not only because the heart of this action is a contract dispute, but because the damages are "readily calculable" as in *Champion*.

party wouldn't further the purpose of the rule. And since the rule contemplates a single prevailing party, the Court finds that neither Sherwin-Williams or JB Collision prevailed, and orders that each bear its' own costs. *Shum v. Intel Corp.*, 629 F.3d 1360, 1367 (Fed. Cir. 2010).

B. The supersedeas bond is set at $325,000.

Both parties have appealed. (Dkt. 331, 335.) Sherwin-Williams moved under Rule 62 for a supersedeas bond to stay the judgment during appeal. "The purpose of a supersedeas bond is to secure the appellees from a loss resulting from the stay of execution," and the determination of the bond rests in the courts' "inherent discretionary authority." *Rachel v. Banana Republic*, Inc., 831 F.2d 1503, 1505 n.1 (9th Cir. 1987). The Ninth Circuit has approved bond amounts that cover the judgment and the costs of appeal. *See Am. Ass'n of Naturopathic Physicians v. Hayhurst*, 227 F.3d 1104, 1109 (9th Cir. 2000).

Sherwin-Williams' suggested a reasonable bond of $325,000 that covers the $260,000 judgment with plenty of room for interest and other costs.[2] The Court agrees with Sherwin-Williams that the supersedeas bond is based on the $260,000 net judgment—not the previous jury award of $3.25 million. *See Exxon Valdez v. Exxon Mobil*, 568 F.3d 1077, 1085 (9th Cir. 2009) (noting that the "supersedeas bond was amended each time the amount of the judgment changed").

The Court orders a temporary stay of enforcement until the bond is filed in compliance with Local Rule 65.1.2 and approved by this Court. *Hawaii Housing Auth. v. Midkiff*, 463 U.S. 1323, 1324, 104 S.Ct. 7, 77 L.Ed.2d 1426 (1983) (explaining, it's "well-settled that a court retains the power to grant injunctive relief to a party to preserve the status quo during

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[2] The Southern District does not require a certain amount for a bond. Other districts require that the bond be 125 percent of the judgment—borrowing that rule here, the amount would be exactly $325,000. Eastern District Local Rule 151(d).

the pendency of an appeal"). Once the Court approves the bond, an automatic stay will enter under Rule 62(d).

IT IS SO ORDERED.

DATED: November 17, 2016

HONORABLE LARRY ALAN BURNS
United States District Judge