

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

SUSAN CHANG, AS NEXT FRIEND OF	§	
ALISON CHANG, A MINOR, AND	§	
JUSTIN HO-WEE WONG,	§	
	§	
Plaintiffs,	§	
	§	CA No. 3:07-cv-1767
V.	§	
	§	
VIRGIN MOBILE PTY LTD.,	§	
	§	
Defendant.	§	

**DEFENDANT VIRGIN MOBILE (AUSTRALIA) PTY LTD.'S OPPOSITION TO PLAINTIFFS' MOTION OBJECTING TO DEFENDANT'S BILL OF COSTS**

Defendant Virgin Mobile (Australia) Pty Ltd. (“Virgin Australia”) files this Opposition to Plaintiffs Susan Chang, as next of friend of A.C. and Justin Ho-Wee Wong’s (collectively “Plaintiffs”) Motion objecting to Defendant’s Bill of Costs. The Court should deny Plaintiffs’ Motion for the following reasons:

**I. PROCEDURAL ISSUES.**

The Court disposed of this lawsuit via a dismissal on January 16, 2009, and awarded costs to Defendant. Within the 14 days proscribed by Local Rule 54.1, Defendant timely filed its Bill of Costs.<sup>1</sup> On January 29, 2009, Plaintiffs filed their Motion objecting to Defendant’s Bill of Costs. In the Motion, Plaintiffs included a certificate of conference advising the Court that Plaintiffs’ counsel had conferred with Defendant’s counsel about the Motion. **No** conference by the parties’ counsel regarding Plaintiffs’ Motion ever took place, and certainly not on the date that Plaintiffs represented - which predates Defendant’s filing by almost a year.<sup>2</sup>

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<sup>1</sup> As the Court’s docket shows, Defendant did not file its Bill of Costs on January 28, 2008, as Plaintiffs represented.

<sup>2</sup> February 1, 2008.

## **II. DEFENDANT’S TAXABLE COSTS ARE FEW AND JUSTIFIED.**

The sum total of Defendant’s taxable costs is \$5,006.94. This total is comprised of two oral/video depositions (\$3,276.24), and the cost of the U.S. – Australia video link during the deposition (\$1,730.70). *See* copies of the invoices documenting these costs (APP 3-4). Defendant bore those costs as a direct result of Plaintiffs’ oral deposition notice, which demanded both stenographic and video recording. *See* Plaintiffs’ oral deposition notice (APP 5-7).

The video link was required for Defendant’s corporate depositions because Plaintiffs’ counsel declined to travel to Australia to depose multiple witnesses, or propose telephonic depositions of these witnesses to which Defendant would have agreed. Moreover, while Plaintiffs offered to pay for the Defendant’s two witnesses to travel to the United States<sup>3</sup> for depositions (at a cost well in excess of \$4,000 for two airplane tickets, hotel room, meals and cab fare), neither witness lived in Texas and/or regularly conducted business in Texas.<sup>4</sup> Therefore, to accommodate **Plaintiffs’** request, a video link was established at Defendant’s counsel’s Houston and Sydney offices at a fraction of the cost of the witnesses’ air travel, room and board (\$1,730.70 v. greater than \$4,000.00). Plaintiffs, however, now expect Defendant only to bear that expense.

## **III. ARGUMENT AND AUTHORITIES.**

In *Migis v. Pearle Vision, Inc.*, the Fifth Circuit confirmed that the district court has broad discretion in taxing costs, that will not be reversed other than for an abuse of discretion. 135 F. 3d 1041, 1049 (5th Cir. 1998). In this case, Plaintiffs saved thousands of dollars by not

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<sup>3</sup> *See* Plaintiffs’ counsel’s letter acknowledging their offer to pay for transportation, and demand to have “at least 2, if not 3” cameras present during the depositions (APP 8-9).

<sup>4</sup> Plaintiffs’ attorney’s county of residence (Harris County) would also never have served as a correct deposition venue. Again, however, Defendant’s counsel facilitated the video deposition, and obtained a discount for the video link for the benefit of Plaintiffs.

having to pay for the Defendant's witnesses' travel expenses to the United States. Further, the gratuitously discounted video link of \$1,730.70 was less than one-third of the travel costs that Plaintiffs were already willing to pay for the Defendant's witnesses' depositions. Finally, out of the \$3,276.24 cost for the two depositions, the DVD copies were \$595.00, which the Court may or may not tax as it sees fit.

#### **IV. CONCLUSION.**

Virgin Australia requests the award of taxable costs in the amount of \$5,006.94, or whatever amount the Court deems just, and for other and further equitable and/or legal relief that the Court deems appropriate.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANT  
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### **CERTIFICATE OF SERVICE**

I hereby certify that, on the 30th day of January 2009, I electronically filed the foregoing "Defendant Virgin Mobile (Australia) Pty, Ltd.'s Opposition to Plaintiff's Motion Objecting to Defendant's Bill of Costs" with the Clerk of Court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the Court. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means:

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