



*Octane Fitness, LLC v. ICON Health & Fitness, Inc.*,<sup>1</sup> the Supreme Court squarely addressed the issue of what constitutes an exceptional case under 35 U.S.C. § 285. The Court found that the Federal Circuit’s formulation of an exceptional case as defined in *Brooks Furniture Mfg., Inc. v. Dutilier Int’l, Inc.*<sup>2</sup> was overly rigid and inconsistent with the statutory text of § 285.<sup>3</sup> The Court abrogated *Brooks* and held that “an ‘exceptional’ case is simply one that stands out from the others with respect to the substantive strength of a party’s litigating position (considering both the governing law and the facts of the case) or the unreasonable manner in which the case was litigated.”<sup>4</sup> Further, the Court instructed district courts to “determine whether a case is ‘exceptional’ in the case-by-case exercise of their discretion, considering the totality of the circumstances.”<sup>5</sup>

In this case, there is nothing that would lead the Court to conclude that this case is exceptional. Plaintiff filed its Complaint, Defendant filed a motion to dismiss based on Rules 12(b)(2), 12(b)(3), and 12(b)(6), and Plaintiff voluntarily dismissed its claim. There is very little in the record and nothing in the record indicates that this case “stands out from the others.” Therefore, the Court cannot find that this is an exceptional case and will deny Defendant’s Motion.

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<sup>1</sup> 134 S.Ct. 1749 (2014).

<sup>2</sup> 393 F.3d 1378 (2005).

<sup>3</sup> *Octane*, 134 S.Ct. at 1755.

<sup>4</sup> *Id.* at 1756.

<sup>5</sup> *Id.*

It is therefore

ORDERED that Defendant David P. Summers's Motion for Costs and Attorney's Fees  
(Docket No. 14) is DENIED.

DATED this 30th day of September, 2014.

BY THE COURT:

  
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Ted Stewart  
United States District Judge