

Cost award for jury fee allowed despite no jury trial taking place. Cost award for documents obtained pursuant to a business records subpoena allowed as “deposition” costs.

FACTS AND PROCEDURAL POSTURE

Plaintiff Zahra Naser slipped and fell in the locker room of the Lakeridge Athletic Club, of which she was a member. She sued the club for her injuries, alleging negligence. Lakeridge moved for summary judgment on the grounds that Naser had signed a liability waiver in her membership agreement with the club. The court granted summary judgment for Lakeridge.

Lakeridge filed a memorandum of costs totaling \$9,647. It sought filing and motion fees, a jury fee, and \$8,602 in deposition costs. Naser moved to tax costs. She argued that the jury fee was unnecessary because there was no jury trial. Naser did not object to \$1,604 of deposition costs that were the direct costs of taking three depositions, but she objected to the remaining \$6,998 (the cost of copying her medical records) as impermissible photocopying costs.

The trial court denied the motion to tax costs and awarded Lakeridge the full requested amount. Naser appealed both the judgment and the cost award. The published portion of this opinion focuses solely on the cost award.

DISCUSSION

First, the court noted that the prevailing party is generally entitled to costs as a matter of right. The Code of Civil Procedure provides specific categories of allowable costs and categories of costs that are not allowable. Any allowable costs must be “reasonably necessary to the conduct of the litigation.” Anything not mentioned in the Code of Civil Procedure may be allowed or denied in the court’s discretion. The question of whether a cost item is reasonably necessary is a question of fact, reviewed for abuse of discretion. The question of whether a cost item is statutorily authorized is a question of law, reviewed de novo.

The court affirmed the allowance of the jury fee. Although no jury trial took place, Lakeridge was required to pay the fee in order to preserve its right to a jury trial. Furthermore, Lakeridge was required to pay the fee a year and a half before summary judgment was granted. Lakeridge could not have known at that time that a jury trial would be unnecessary.

As to the costs of copies of Naser’s medical records, Naser argued that these costs were unallowable photocopying costs under CCP section 1033.5(b)(3). The records were obtained pursuant to a deposition subpoena for the production of business records, without an in-person appearance of the custodian of records. The court noted that at least two other courts have concluded that the Civil Discovery Act contemplates discovery conducted by way of a business records subpoena to be a “deposition.” Accordingly, these records were allowable costs under CCP section 1033.5(a)(3), allowing deposition costs.

The court affirmed the cost award.