

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

RNS SERVICING, LLC, and Illinois Limited  
Liability Company,

Plaintiff,

v.

SPIRIT CONSTRUCTION SERVICES, INC.,  
a Delaware Corporation, STEVEN VAN DEN  
HEUVEL, a citizen of the State of Wisconsin,  
and SHARAD TAK, a Citizen of the State of  
Florida,

Defendants.

Case No. 17-cv-108

Judge Edmond E. Chang

**PLAINTIFF RNS SERVICING’S BRIEF IN OPPOSITION TO DEFENDANTS SHARAD  
TAK’S SPIRIT/STEVE VAN DEN HEUVEL’S AND BILLS OF COSTS**

Plaintiff RNS SERVICING, LLC (“RNS Servicing”), by and through its undersigned counsel, hereby submits the following brief in opposition to defendant Sharad Tak (“Tak”)’s Bill of Costs [Dkt. No. 94] and Defendants Spirit Construction Services, Inc. (“Spirit”) and Steven Van Den Heuvel (“Steve VDH”) (collectively, “Steve/SVDH”)’s Bill of Costs [Dkt. No. 98].

**INTRODUCTION**

This Court should deny all of Tak’s and Spirit/Steve VDH’s itemized costs because, as set forth below, both Tak and Spirit/Steve failed to support their requested costs with adequate documentation for RNS and the Court to evaluate the reasonableness and necessity of the costs for which Tak and Spirit/Steve request reimbursement. Alternatively, to the extent any taxable costs requested by Tak or Spirit/Steve were reasonably necessary, this Court should reduce any such

taxable costs awarded to Tak or Spirit/Steve to the statutory maximum for each category of costs requested.

A party seeking an award of costs carries the burden of showing that the requested costs were necessarily incurred and reasonable. The inquiry has two parts: (1) whether the cost imposed on the losing party is recoverable; and (2) if so, whether the amount assessed for that item was reasonable. *Telular Corp. v. Mentor Graphics Corp.*, No. 01 C 431, 2006 U.S. Dist. LEXIS 44848, at 3 (N.D. Ill. June 16, 2006). A court must review a proposed petition for costs “in scrupulous detail.” *Young v. City of Chicago*, No. 00 C 4478, 2002 U.S. Dist. LEXIS 17962, at \*2 (N.D. Ill. Sept. 24, 2002). If a defendant does not adequately provide an itemization and documentation for its requested costs, such costs may be denied. *Montanez v. Simon*, 755 F.3d 547, 559 (7th Cir. 2014); *see also Telular*, 2006 U.S. Dist. LEXIS 44848 (denying costs where defendant failed to provide sufficient documentation to establish recoverability of requested cost); *Fait v. Hummel*, No. 01 C 2771, 2002 U.S. Dist. LEXIS 21012 (same); *Shah v. Vill. of Hoffman Estates*, No. 00 C 4404, 2003 U.S. Dist. LEXIS 14135 (N.D. Ill. Aug. 12, 2003) (same).

Recoverable costs include: (1) fees of the clerk and marshal; (2) fees for transcripts necessarily obtained for use in the case; (3) fees for printing and witnesses; (4) fees for copies of papers necessarily obtained for use in the case; (5) docket fees; and (6) compensation for court appointed experts and interpreters. 28 U.S.C. § 1920; *Fait*, 2002 U.S. Dist. LEXIS 21012 at \*2. The categories of Tak’s and Spirit/Steve’s requests are addressed in turn.

## **ARGUMENT**

### **I. THIS COURT SHOULD DENY ALL REQUESTED COSTS BECAUSE NEITHER TAK NOR SPIRIT/SDVH PROVIDED ANY DOCUMENTATION ESTABLISHING AN EXPLANATION OF THE REASONABLENESS OR NECESSITY OF THESE COSTS**

Neither Tak nor Steve/Spirit provide any explanation for the reasonableness and/or necessity of the (1) subpoena costs, (2) witness fees, (3) costs for the transcripts of the depositions of Tak on 9/21/17, Steve VDH on 12/8/18, and Marc Langs on 12/8/18, and/or (4) copy costs for which Tak and/or Steve/Spirit seek reimbursement. Although it is these Defendants' burden to establish recoverability, they have not identified a single instance where they relied upon these subpoenas, witness, transcripts, and/or copies to justify their necessity. Absent any documentation establishing an explanation of the necessity of the transcript or the recoverability of these costs, it is impossible for RNS Servicing or the Court to determine whether any of these specific costs are reasonable and necessary. Therefore, this Court should not award these Costs to Tak and/or Steve/Spirit.

## **II. TRANSCRIPTS NECESSARILY OBTAINED**

Tak seeks a total of \$2,118.66 for costs incurred for electronic transcripts of the depositions of Tak on 9/21/17 (\$337.25); Steve VDH on 12/8/18 (\$841.03), and Marc Langs on 12/8/18 (\$940.38), which he claims were necessarily obtained for use in the case. [Dkt. Nos. 94, 94-1, and 94-2]. Steve/SVDH seeks a total of \$3,241.12 for costs incurred for electronic transcripts of the depositions of Tak on 9/21/17 (\$666.75), Steve VDH on 12/8/18 (\$1,181.81), and Marc Langs (\$1,392.56), which he claims were necessarily obtained for use in the case. [Dkt. Nos. 98, 98-2, and 94-4].

### **A. This Court Should Deny All Requested Costs with Respect to Electronically Recorded Transcripts for the 12/8/2018 Depositions of Steve VDH and/or Marc Langs Because Both Tak and Spirit/SVDH Fail to Specifically Identify the Number of Pages in Each These Requested Transcripts**

“Where a party seeking costs fails to specifically identify the number of pages in a requested transcript, no costs will be awarded. Indeed, without this information, it is impossible for the Court to determine whether specific costs are reasonable and necessary.” *Shah*, 2003 U.S.

Dist. LEXIS 14135 at \*3. While both Tak and Steve/Spirit provide documentation that the electronic transcript for Tak's deposition on 9/21/17 was 93 pages [Dkt. No. 94-2 at ECF p. 3 of 8; Dkt. No. 798-2 at ECF p. 2 of 7], neither Tak nor Spirit/SVDH provides any documentation supporting its request for costs with respect to the Electronically Recorded Transcripts of Steve VDH and/or Marc Langs. *See generally* Dkt. Nos. 94; 94-1 – 94-3; 98; 98-1 – 98-4]. As such, this Court should deny in their entirety (1) Tak's request for costs incurred for electronic transcripts of the depositions of Steve VDH on 12/8/18 (\$841.03) and Marc Langs on 12/8/18 (\$940.38) and (2) Steve/SVDH request for costs incurred for electronic transcripts of the depositions of Steve VDH on 12/8/18 (\$1,181.81) and Marc Langs on 12/8/18 (\$1,392.56). *See Shah*, 2003 U.S. Dist. LEXIS 14135 at \*3.

**B. Alternatively, this Court Should Reduce All Requested Costs with Respect to Electronically Recorded Transcripts for the 9/21/17 Deposition of Sharad Tak and the 12/8/2018 Depositions of Steve VDH and/or Marc Langs to Recoverable Costs at the Statutory Maximum**

The Northern District of Illinois allows a maximum of \$3.65 per transcript page for reimbursement of the cost of deposition transcripts as taxable costs under 28 U.S.C. 1920 and FRCP 54. *See* Transcript rates published at <https://www.ilnd.uscourts.gov/Pages.aspx?rsp2kxYIAI6Z3skP0PESA+q3bXKkfRyo> (last visited May 4, 2020). Further, “[p]ursuant to Local Rule 54.1(b), the Clerk of the Court is to publish the court reporter attendance fee that may be awarded in addition to the per page limit. Unless another rate was previously provided by order of the Court, the court reporter attendance fee shall not exceed \$110 for one half day (4 hours or less), and \$220 for a full day attendance fee.

The documentation submitted by both Tak and Spirit/VDH to support requests for costs incurred for each of deposition transcripts listed above (except Tak's documentation for the transcript of Tak's 9/21/17 deposition) does nothing more than demonstrate that Tak and

Spirit/VDH paid for transcript pages, appearance fees, and other non-recoverable court reporting services in a particular lump sum amount and all of the documentation includes numerous other errors.

**Steve/SVDH request for costs incurred for electronic transcript of the deposition of Sharad Tak on of Tak on 9/21/17 (\$666.75) [Dkt. Nos. 98, 98-2, and 94-4].** Spirit/SVDH request \$367.35 for 93 transcript pages, but they are limited to a statutory maximum \$339.45 for 93 pages. They also request reimbursement for 394 pages of exhibits and “LEF File,” “Processing Fee,” and “Shipping and Handling,” but these costs are not recoverable as taxable costs according the Northern District of Illinois guidance available at <https://www.ilnd.uscourts.gov/Pages.aspx?rsp2kxYIAI6Z3skP0PESA+q3bXKkfRyo> which states maximum rates for transcript pages and appearance fees, not for these categories.

**Tak’s request for costs incurred for electronic transcripts of the depositions of Steve VDH on 12/8/18 (\$841.03) and Marc Langs on 12/8/18 (\$940.38), [Dkt. Nos. 94, 94-1, and 94-2]; and (2) Steve/SVDH request for costs incurred for electronic transcripts of the depositions of Steve VDH on 12/8/18 (\$1,181.81) and Marc Langs (\$1,392.56), [Dkt. Nos. 98, 98-2, and 94-4].** None of the documentation submitted by either Tak or Spirit/VDH for these four transcripts includes the number of transcript pages purchased and “Transcript Services,” “Exhibit Management,” and “Delivery and Handling” costs are not recoverable as taxable costs according to the Northern District of Illinois guidance available at <https://www.ilnd.uscourts.gov/Pages.aspx?rsp2kxYIAI6Z3skP0PESA+q3bXKkfRyo> which states maximum rates for transcript pages and appearance fees, not for these categories.

Spirit/SVDH also request \$731.25 in appearance fees for one full day of court reporting for Steve VDH and Langs Depositions taken on 12/8/18. However, according to the Northern

District of Illinois guidance available at <https://www.ilnd.uscourts.gov/Pages.aspx?rsp2kxYIAI6Z3skP0PESA+q3bXKkfRyo> appearance fees for one day in excess of 4.5 hours are limited to \$220.

### **III. STEVE/SPIRIT'S SERVICE OF SUBPOENA TO TAK**

Spirit/SVDH seeks a total of \$292.40 for costs incurred with respect to (1) one unsuccessful attempt by a private process server to serve a deposition subpoena to co-defendant Sharad Tak on July 28, 2017 and (2) a second unsuccessful service attempt by the same private process server of the same subpoena on September 1, 2017. [Dkt. Nos. 98, 98-1, 98-3]. With respect to the first unsuccessful attempt on July 28, 2017, the private process server charged Steve/SVDH \$209.90 for “national service.” [Dkt. No. 98-1]. With respect to the second unsuccessful attempt on September 1, 2017, the private process server charged Steve/SVDH \$82.50 for “regular local service.” [Dkt. No. 98-1].

First, these attempted subpoena service costs cannot have been necessary because the documentation provided by Steve/SVDH does not indicate why/if service was attempted personally instead of by mail or email and if so, why personal service was reasonably necessary or why “national service” versus “regular local service” was reasonably necessary. More, importantly, the private process server never successfully served Tak with a deposition subpoena and neither did anyone else on behalf of Steve/SVDH. Instead, Tak voluntarily agreed to sit for a deposition upon telephonic and email requests by counsel for Steve/Spirit and Plaintiff, which necessarily demonstrates that personal service by private process server was not reasonably necessary if it had been successful (which it was not). This is not surprising since Tak’s counsel also seems to routinely represent Spirit in other litigation as demonstrated by the client for this matter listed on the disbursement voucher for Tak’s counsel: “ST Paper [Tak’s company/**Spirit**

**Construction.”** *See* [Dkt. No. 94-2 at ECF pp. 2 and 5 of 8]. The Court should deny these costs for these reasons alone.

Second, such fees cannot exceed the amounts charged by the U.S. Marshal Service. *Fait*, 2002 U.S. Dist. LEXIS 21012 at \*8 (citing *Collins v. Gorman*, 96 F.3d 1057 (7th Cir. 1996) (limiting recoverability of service costs to amount Marshal Service would have charged for the task); *Temple v. City of Chic.*, No. 14 C 4384, 2016 U.S. Dist. LEXIS 86435, at \*3-4 (N.D. Ill. July 1, 2016). Pursuant to 28 U.S. Code § 1921 and 28 C.F.R. § 0.114, United States Marshals Service shall collect the following fees for service, *inter alia*, (1) \$8 for service by mail; (2) \$65/hour for personally executed service plus “travel costs and any other out of pocket expenses,” and/or (3) \$.10 per page for copying if requested. *See* 28 C.F.R. § 0.114. However, the documentation provided by Steve/SVDH does not (1) indicate whether the unsuccessful service attempts were by mail or personal; (2) indicate how long each unsuccessful service attempt took or the mileage associated with each unsuccessful attempt; or (3) whether the amount invoiced and paid included any “travel costs and any other out of pocket expenses” or copying costs. As such, regardless of whether the attempts were reasonable necessary (they were not), the Court should not award any amounts for Steve/SVDH’s payment for two unsuccessful service attempts in the absence of any documentation establishing the maximum recoverability of these service costs, *i.e.*, the amount Marshal Service would have charged for the task. *See Fait*, 2002 U.S. Dist. LEXIS 21012 at \*8; *Temple*, 2016 U.S. Dist. LEXIS 86435, at \*3-4.

#### **IV. STEVE/SPIRIT’S WITNESS FEES PAID TO TAK**

Steve/SVDH seek \$45.89 for costs incurred for witness fees paid to Tak. [Dkt. Nos. 98 and 98-3]. Payment for a witness may not exceed \$40.00 dollars plus reasonable travel expenses and subsistence charges. 28 U.S.C. § 1821 (b), (c). Steve/Spirit does not provide any documentation

supporting its request for reimbursement of witness fees. Nor does Steve/SVDH provide any evidence of mileage to support any mileage award. Absent any documentation of expense or mileage, the Court should not make any award for witness fees. *See Temple*, 2015 U.S. Dist. LEXIS 77269 at \*9-10; *Fait*, 2002 U.S. Dist. LEXIS 21012 at \*8-9.

## **V. PHOTOCOPIES**

Tak seeks \$145.61 dollars for costs incurred for making photocopies. [Dkt Nos. 94 and 94-3]. Costs for copies “necessarily obtained for use in the case” are proper, but extra copies for the convenience of the attorneys are not necessary and are not taxed as costs. *Telular*, 2006 U.S. Dist. LEXIS 44848 at \*14-17. A party is required to provide the “best breakdown obtainable from retained records” in order to make the required showing of necessity. *Id.* at 14-15; *see also In re Brand Name Prescription Drugs Antitrust Litig.*, No. 94 C 897, 1999 U.S. Dist. LEXIS 14705 (N.D. Ill. Aug. 31, 1999) (chart identifying nature of document copied, number of service copies prepared, number of pages, copying cost per page, and total copying cost held sufficient to satisfy Seventh Circuit's requirements for reimbursement of photocopying costs). Here, Tak fails to identify the nature of documents allegedly copied. [Dkt Nos. 94 and 94-3]. As such, this Court should deny recovery of these costs as well.

## **CONCLUSION**

For the foregoing reasons, this Court should deny each of Tak's and Spirit/Steve's Requests for taxable costs. Alternatively, if this Court awards reasonable and necessary taxable costs, it should reduce its award to the statutory maximum for each category of costs requested.

Dated: May 5, 2020



Respectfully submitted,

JOHNSON & BELL, LTD.,

By: /s/ Brian C. Langs

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 5, 2020 at roughly 12:15 AM, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all attorneys of record.

/s/ Brian C. Langs