

FILED
U.S. DISTRICT COURT

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

APR 22 P 4:14

DISTRICT OF UTAH

BY:

DEPUTY CLERK

THE SCO GROUP, INC,

Plaintiff,

vs.

NOVELL, INC,

Defendant.

TAXATION OF COSTS

Case No. 2:04 CV 139 DAK

Judgment was entered in favor of the defendant on November 20, 2008. Defendant filed a bill of costs and supporting documents on December 10, 2008. Plaintiff filed a motion to stay the taxation of costs on December 24, 2008 which was opposed by the defendant on December 31, 2008. The court denied the motion to stay on March 13, 2009. Plaintiff filed objections to the bill of cost on March 27, 2009 and defendant filed a reply on April 3, 2009.

The plaintiff has made four specific objections to items in the bill of costs. The first objection is to the taxation of the costs of room rental related to depositions taken. The plaintiff notes that the clerk is limited to awarding costs under 28 U.S.C. § 1920. The defendant responded to the objection by withdrawing some of the hotel room rental fees but leaving the request for depositions which took place in cities in which the defendant's law firms did not have facilities in which to conduct the depositions. The statutory authorization is to tax "fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the

case. " The cost of hotel room rentals is not mentioned and the requested costs for those charges will be disallowed in their entirety.

The second objection of the plaintiff is to the taxation of costs associated with syncing the recorded video to the written transcripts. The defendant replied to the objection noting that the plaintiff had not objected to the cost of taking the video depositions themselves and that the costs were within the discretion of the court to award. The clerk, however, taxes costs as a ministerial duty and the discretion to tax exceptional costs lies with the court. These fees for the technical service of syncing video depositions with the written transcripts are disallowed. There is no provision in 28 U.S.C. § 1920 for the taxation of such technical fees by the clerk.

The third objection is to the taxation of miscellaneous costs related to depositions such as rough copies or expedited transcripts. The plaintiff maintains that these are costs incurred only for the convenience of counsel and that the defendant had not established the fact that these costs were necessarily incurred for use in the case. The defendant, in its reply brief, noted that this complex high stakes litigation took place on an accelerated schedule and with multiple depositions occurring within a few weeks and that these fees of the court reporters were necessary to meet the demands of this litigation. The clerk finds that the costs were necessarily obtained in light of the complexity and demands of this litigation and will tax these additional court reporter fees.

The fourth and last objection of the plaintiff is to the costs occurred in obtaining copies of transcripts from related litigation. The plaintiff contends that depositions noticed in a different case could not be taxed in this case. The defendant responds that the deposition copies were relied upon by both parties in this litigation. The clerk is persuaded that these costs are taxable

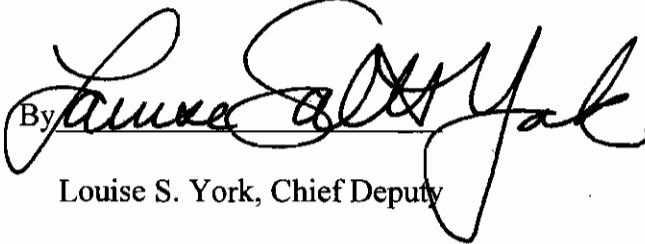
under 28 U.S.C. § 1920 (4) and will allow the costs requested.

There were no further objections to the costs requested. The clerk has reviewed them and will allow the non challenged costs requested.

Total costs allowed are \$99,639.09 and are included in the judgment.

DATED this 22nd day of April, 2009.

D. MARK JONES, CLERK

By 
 Louise S. York, Chief Deputy