

Superior Court of the Commonwealth of Massachusetts
County of Middlesex

Walter Tuvell
836 Main St.
Reading, MA 01867

Plaintiff

v.

Jack Marshall
2707 Westminster Place
Alexandria, VA 22305

Defendant

Case № 1781CV02701

**MEMORANDUM
IN OPPOSITION TO
DEFENDANT'S MOTION
FOR COSTS**

**MEMORANDUM (IN OPPOSITION TO
DEFENDANT'S MOTION FOR COSTS)**

Plaintiff hereby files this Memorandum in Opposition to Defendant's Motion (and Memorandum) for Costs.

Our opposition takes two forms (addressed separately *infra*), both of which apply to Defendant's motion on the table:

- **General Opposition** — Opposition to discussion of any monetary awards prior to final resolution of litigation.
- **Specific Opposition** — Opposition to Defendant's motion dated June 1 2018.

GENERAL OPPOSITION
All Motions for Monetary Awards Should be Postponed to the Final Resolution of Litigation, and Should be Fully Briefed

As a general matter, we oppose all discussions/motions concerning awards of monies before the final resolution of proceedings. This includes all costs, fees, expenses, charges, etc., however denominated. Any discussion of monetary awards before that time is premature, as it lacks the overall/contextual basis upon which *all* court decisions (not just award of monies) must be predicated.

Furthermore, whenever any such discussions/motions shall arise, they should be fully briefed. That is, the discussion should include, not only the monetary amounts, but also citation to the legal (statutory, case law) basis for award, and proof of reasonableness (as to necessity, means and amount), with receipts, etc., as to each and all of them.

The Defendant's motion on the table should be denied for both these reasons.

SPECIFIC OPPOSITION
The June 1 Motion Does Not Satisfy the Requirements for Award

As his leading argument for reimbursement, Defendant claims unilaterally self-serving unproven statements (paraphrased here): "no legitimate basis," "vindictive," "explicit purpose of causing inconvenience, annoyance, expense, waste of time," "frivolous," "vexatious." Defendant's

Motion's claimed "summarization" paragraphs (such as his critique of Plaintiff's claim for damages) are singularly out-of-place here (this is simply not the place to argue these matters, and only serve to obfuscate; for, they are matters for the jury at trial, not the judge at a motion hearing). Plaintiff solidly avers that all of Defendant's claims are false, and has solidly refuted them in previously filed papers (Complaint, and Opposition to Motion to Dismiss).

To the extent his "claims" (they do not rise to the level of "arguments") justify award of monies to Defendant, they are insufficient, because untested/unverified. The proper place to test/verify them is via the mainline proceedings of litigation, in their proper/full context, not via one-off motions like this (compare the General Opposition section, *supra*).

As an example of Defendant's fallacious "reasoning" in his June 1 Motion for Costs, he speaks of "mitigating expenses." That is false. For, there is no requirement for personal/physical presence at the June 7 hearing on Defendant's Motion to Dismiss. Virtual/electronic/telephonic presence is available (by motion), and acceptable/sufficient for this type of hearing. Therefore, *even if* monies were to be awarded per this Motion (which we argue herein they *should not be*), the amount would be *de minimus*, not the hundreds of dollars Defendant seeks.

CONCLUSION

For all the reasons presented herein, Defendant's Motion for Costs should be **DENIED**.

SIGNATURE; VERIFICATION

Respectfully submitted, and signed, under the pains and penalties of perjury:



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June 7 2018

CERTIFICATION OF SERVICE

Pursuant (optionally) to MRCP 5(d)(1) (Reporter's Note 1973), Plaintiff hereby certifies that on this date he has served (two copies of, per MSCR 9A(b)(2)) this document on Defendant, by U.S. Mail to his captioned address, first class, postage prepaid.

Signed under the pains and penalties of perjury:



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June 7 2018