

[Trial Court Errs In Refusing to Award Litigation Costs but Not Fees to Adverse Party](#)

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In [Vons Companies Inc. v. Lyle Parks Jr. Inc.](#), 2009 DJDAR 13828, the [California Court of Appeal, 2nd District](#), decided a complex case involving both the “prevailing party” doctrine ([CCP§ 1032](#)) and [CC § 1717](#), the reciprocal remedy statute.

[Vons Companies Inc.](#) (Vons) hired Lyle Parks Jr. Inc. (Parks) to construct a shopping center in 2002. The construction contract contained a prevailing party attorney fee clause. When the work was completed, Parks issued a warranty for the work for a one year time period. There was no attorney fee clause in the warranty agreement.

In 2004, Vons sold the shopping center to a third party, Mock Ranch Inc. (Mock). In 2006, Mock sued Parks for breach of warranty and negligence, claiming that Parks engaged in poor workmanship. Mock also sued Vons for failing to disclose material information about the suitability of the purchase.

Prior to trial, Mock and Vons settled their case. As part of the settlement, Mock assigned its claims for negligence and breach of warranty against Parks to Vons. Thus, Vons sought damages from Parks and the jury found in favor of Vons on the claims for breach of express warranty and negligence. Vons sought costs, asserting that it was entitled to recover Mock’s costs as its assignee. Parks moved to strike or tax costs, pointing out that Vons was the prevailing party only as to Mock’s two claims against Parks.

The trial court granted Parks’ motion to strike and tax costs, finding no factual support for the claim that Vons was Mock’s assignee and that due to the cursory cost memorandum submitted, that Vons had not met its burden of proof on the issue. In addition to the cost memorandum, Vons also submitted a request for more than \$1 million in attorneys’ fees based on the provisions in the construction contract. The trial court denied that motion for fees, observing that Vons did not assign the construction contract to Mock, only the warranty agreement.

The Court of Appeal disagreed with the trial court, in part.

The court noted that a prevailing party is entitled to recover costs. Courts do not have the discretion to deny costs to a prevailing party absent contrary statutory authority. The court noted that Vons was the prevailing party on the negligence and breach of warranty claims that Mock assigned to it. The Court noted, however, that in the cost memorandum, Vons sought all of its own pretrial litigation costs without regard to whether those costs were necessary to the claims on which it prevailed. Thus, the court stated that the trial court should have determined a proper cost award based on arguments presented in relation to Lyle’s motion to tax costs. Further, the entire trial was based on the assignment of Mock’s claims to Vons. Thus, Vons was entitled to costs as the prevailing party on the claims that Mock assigned to it.

As to the fee claim, the Court of Appeal affirmed the trial court’s decision, noting that there was no fee clause in the warranty agreement.