

Appellate Law

February 1, 2012

The Cost of an Appeal: Interest Not Included

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On Monday, January 23, the Supreme Court of California resolved a question regarding which costs an appellant may recover after prevailing on appeal. According to the California Rules of Court, a prevailing appellant may recover “the cost to procure a surety bond, including the premium, and *the cost to obtain a letter of credit* as collateral.” (Cal. Rules of Court, rule 8.278(d)(1)(F), emphasis added.) The question posed in *Rossa v. D.L. Falk Construction, Inc.* (No. S183523) was whether this recoverable “*cost to obtain a letter of credit*” could include any interest expenses incurred while borrowing funds to provide security for the letter of credit. The court answered that question with a resounding “no.”

In 2006, plaintiffs Steve and Connie Rossa won damages from D.L. Falk Construction for breach of contract. D.L. Falk appealed, filing a surety bond in the amount of \$955,000 (150% of the judgment) to stay enforcement of the judgment. To obtain this bond, the surety required D.L. Falk to provide a standby letter of credit guaranteeing payment. To obtain this letter of credit from its bank, D.L. Falk had to pay bank fees of \$950, and borrow and deposit \$954,070 with the bank. By the time the appeal was decided—in D.L. Falk’s favor—D.L. Falk had incurred net interest charges of nearly \$100,000 on the borrowed funds. These interest charges, D.L. Falk argued, should be considered part of the cost of obtaining the letter of credit from the bank, and should therefore be recoverable. The Supreme Court disagreed.

The court explained that there is a well-established historic principle that provisions allowing for the recovery of costs are strictly construed. “[I]nterpreting the rule to reach indirect costs that are not clearly specified in the rule,” it reasoned, “would invite litigation concerning the myriad ways in which the burden of providing security on appeal constitutes a ‘cost’ to the appellant.” Furthermore, the rule’s history, commentary by the rule’s drafters, and principles of statutory interpretation all support the conclusion that the rule was not intended to include interest expenses as a recoverable cost on appeal.

The bottom line of *Rossa* is that appellants can no longer hope to recover any interest or fees associated with borrowing funds to secure a letter of credit. While the rule’s language may have seemed ambiguous before, with this decision, California’s Supreme Court has made it clear that the recoverable “*cost to obtain a letter of credit*” may consist of bank and courier fees, but nothing more.

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