

## Court Ruling Taxing Appellate Costs is Subject to an Immediate Appeal

5-13-2011 by David J. McMahon

In [Krikorian Premiere Theatres LLC v. Westminster Central LLC](#), 2011 DJDAR 4363 (2011), the [California Fourth District Court of Appeal](#) reversed a \$22 million judgment against Westminster Central LLC and in favor of Krikorian Premiere Theaters LLC.

The appellate court found that under the parties' lease agreement, and the “**sole remedy**” clause contained in that agreement, plaintiff's recovery was limited to the reimbursement of its architectural fees, a tiny fraction of the gross sum of the judgment. The court also awarded Westminster costs on appeal.

On remand, Westminster claimed costs on appeal totaling almost \$2.6 million. The trial court awarded the bulk of the claimed costs to Westminster but granted a motion to tax costs filed by the plaintiff as to several of significant items claimed.

Thereafter, the defendant appealed, challenging the ruling on the motion taxing costs, **before** the new judgment was entered on remand. The court of appeal affirmed the ruling of the trial court. The court of appeal stated that to be appealable as an order after judgment under [Code of Civil Procedure Section 904.1\(a\)\(2\)](#), a postjudgment order must be one that is “**not preliminary.**”

The appellate court noted that when making an award of costs on appeal, the relevant final judgment was the judgment of the court of appeal. Thus, the court of appeal viewed any subsequent proceedings at the lower court level as essentially postjudgment proceedings.

Moreover, because the award of costs was immediately enforceable, it cannot be affected by further action at the trial court level. The court therefore held that the order denying a motion to tax costs on appeal is immediately appealable.