UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES DIVISION

In re: CRYSTAL CATHEDRAL MINISTRIES, Debtor.	Case No. 2:12-bk-15665-RK Chapter 11 MEMORANDUM DECISION ON COSTS RE: OBJECTIONS TO CLAIMS OF DR. ROBERT H. SCHULLER, ROBERT HAROLD, INC., ARVELLA SCHULLER, TIMOTHY MILNER, AND CAROL S. MILNER

The above-captioned bankruptcy case came for hearing on November 30, 2012 before the undersigned United States Bankruptcy Judge on the objections of Claimants Dr. Robert H. Schuller, Arvella Schuller, Robert Harold, Inc., Timothy Milner and Carol S. Milner ("Claimants") to the form of proposed orders submitted pursuant to the court's memorandum decision filed on November 26, 2012 granting the motion of Karen S. Naylor, Plan Agent, and Crystal Cathedral Ministries, Reorganized Debtor, for judgment on partial findings pursuant to Rule 52(c) of the Federal Rules of Civil Procedure ("Civil Rules," "Fed. R. Civ. P." or "FRCP") as incorporated by reference in Rules 7052 and 9014 of Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules," "Fed. R. Bankr. P."

or "FRBP") with respect to the contested matters of the objections of Plan Agent and Reorganized Debtor to the claims of the Claimants. Todd C. Ringstad and Nanette D. Sanders, of the law firm of Ringstad & Sanders LLP, appeared for Plan Agent. Marc J. Winthrop, of the law firm of Winthrop Couchot Professional Corporation, appeared for Reorganized Debtor. Carl L. Grumer and Matthew S. Urbach, of the law firm of Manatt, Phelps & Phillips, LLP, appeared for Claimants.

Claimants object to the language in the proposed orders which provide that Plan Agent and Reorganized Debtor are the "prevailing parties" in the litigation for the purpose of the allowance of costs pursuant to Civil Rule 54(d)(1) as incorporated by reference in Bankruptcy Rules 7054 and 9014. Claimants contend that they are the "prevailing parties" in this litigation and their costs should therefore be allowed to them. After hearing argument from the parties on November 30, 2012, the court requested supplemental briefing, which the parties filed on December 3, 2012. The court vacates the further hearing set for December 4, 2012 and takes the matter under submission.

"Unless a federal statute, the FRCP or a court order otherwise provides, costs—other than attorney fees—'should be allowed to the prevailing party.'" 3 Jones and Rosen, *Rutter Group Practice Guide: Federal Civil Trials and Evidence*, ¶ 19:1 at 19-1 (2012), *citing,* Fed. R. Civ. P. 54(d)(1). "The 'prevailing party' for costs awards purposes is the party who prevails on a *substantial part* of the litigation.'" *Id.*, ¶ 19:5 at 19-3, *citing,* Fed. R. Civ. P. 54(d) and *Testa v. Village of Mundelein, Ill.*, 89 F.3d 443, 447 (7th Cir. 1996); *see also, Tibble v. Edison International,* 2011 WL 3759927 at *2 (C.D. Cal. Aug, 22, 2011), *citing inter alia, O.K. Sand & Gravel v. Martin Marietta Technologies,* 36 F.3d 565, 572 (7th Cir. 1994) and *K-2 Ski Co. v. Head Ski Co.,* 506 F.2d 471, 477 (9th Cir. 1974); *Exxon Valdez v. Exxon Mobil Corp*., 568 F.3d 1077, 1087-1088 (9th Cir. 2009) (Kleinfeld, J., concurring in part and dissenting in part).

"A 'prevailing party' is one 'in whose favor a judgment is rendered, regardless of the amount of damages awarded.'" 3 Jones and Rosen, *Rutter Group Practice Guide: Federal Civil Trials and Evidence*, ¶ 19:6 at 19-5, *citing, Firefighters' Institute for Racial*

Equality ex rel. Anderson v. City of St. Louis, 220 F.3d 898, 905 (8th Cir. 2000) and *Barber v. T.D. Williamson, Inc.*, 254 F.3d 1223, 1233-1234 (10th Cir. 2001) (Title VII plaintiff awarded $1 nominal damages was prevailing party). "Thus, a party need not prevail on every issue, or even on the 'central issue' in the case to be considered a 'prevailing party.'" 3 Jones and Rosen, *Rutter Group Practice Guide: Federal Civil Trials and Evidence*, ¶ 19:6 at 19-5, *citing inter alia, Hashimoto v. Dalton,* 118 F.3d 671, 677 (9th Cir. 1997). When, as here, the result is "mixed," i.e., each side wins something and loses something, the United States Court of Appeals for the Ninth Circuit has required each side to bear its own costs. *See Exxon Valdez v. Exxon Mobil Corp*., 568 F.3d 1077, 1081 (9th Cir. 2009). Thus, the court could allow costs to a single party who prevails on all issues, or where more than one party prevails on at least one claim, the court has discretion to award costs to the party who prevailed on the majority of issues, or where neither party can be properly termed a prevailing party, the court can require each party to bear his or her own costs. 3 Jones and Rosen, *Rutter Group Practice Guide: Federal Civil Trials and Evidence*, ¶¶ 19:6.5 – 19:7.1 at 19-5 – 19-6, *citing inter alia, Manildra Milling Corp. v. Ogilvie Mills, Inc.*, 76 F.3d 1178, 1182 (Fed. Cir. 2006); *Roberts v. Madigan*, 921 F.2d 1047, 1058 (10th Cir. 1990); and *Ruiz v. A.B. Chance Co.,* 234 F.3d 654, 670 (Fed. Cir. 2000).

The court has carefully examined the arguments of the parties. Both sides, Plan Agent and Reorganized Debtor on one side, and the Claimants on the other, have colorable claims to being determined to be the "prevailing parties" in this litigation, and the court acknowledges that to their credit, the parties make good arguments in support of their respective positions.

In its memorandum decision filed on November 26, 2012, the court granted the motion of the Plan Agent and Reorganized Debtor for judgment on partial findings pursuant to Civil Rule 54(c). Pursuant to this ruling, the court will be issuing final orders on the objections of Plan Agent and Reorganized Debtor to the Claimants' claims, sustaining the objections in part, and overruling the objections in part, and further

allowing the claims in part and disallowing the claims in part. In this court's view, neither side sufficiently prevailed to be considered the "prevailing party." While the objections to claims have resulted in substantial reduction of the amounts of the claims, the claims were not eliminated in total, which was the original position of the objectors. The objectors, Plan Agent and Reorganized Debtor, have proven that portions of the claims are not allowable, but have acquiesced in, and conceded, the allowance of other portions of the claims. On the other hand, the Claimants were not able to meet their burden of proof regarding some portions of their claims, but some portions of their claims were allowable due to the acquiescence and concession of the objectors.

Claimants Dr. Robert H. Schuller and Robert Harold, Inc., a corporation jointly owned by Dr. Schuller and Claimant Arvella Schuller, did not entirely prove the validity of their claims of over $5 million, plus unspecified damages for alleged copyright infringement, but due to the acquiescence of the objectors, in light of the evidence at trial, their claims were upheld totaling $615,624.68. Claimant Arvella Schuller did not prove the validity of her claims of unspecified damages for alleged copyright infringement, but as a co-owner of Robert Harold, Inc., her claims were upheld in part due to the allowance of claims in favor of her husband, Dr. Schuller, and their corporation, Robert Harold, Inc. Although technically, the claims of Arvella Schuller and Robert Harold, Inc., were not allowed, the evidence at trial indicated a close working partnership between Dr. Schuller and Mrs. Schuller in their work for Debtor, both individually and through Robert Harold, Inc., which was compensated by the employment agreement for Dr. Schuller referred to as the Transition Agreement upon which the contract breach and rejection claims were based and partially allowed. Thus, it does not appear to be appropriate in these circumstances for this court to tax costs to Mrs. Schuller as the only claimant whose claims were totally disallowed.

Claimant Timothy Milner did not entirely prove the validity of his claims of $178,313, plus unspecified damages for alleged copyright infringement, but due to the acquiescence and concession of the objectors, and in light of the evidence at trial, his

claims were upheld totaling $67,000. Shortly before trial, Claimant Timothy Milner abandoned his copyright infringement claims, or withdrew them due to insufficient evidence.

Claimant Carol Milner did not entirely prove the validity of her claims of $94,223.92, plus unspecified damages for alleged copyright infringement, but due to the acquiescence of the objectors, and in light of the evidence at trial, her claims were upheld totaling $10,615. Shortly before trial, Claimant Carol Milner abandoned her copyright infringement claims, or withdrew them due to insufficient evidence.

Accordingly, the court concludes that neither side sufficiently prevailed to be considered "prevailing parties" for purposes of allowing costs pursuant to Bankruptcy Rule 7054 and that each party shall bear his or her own costs. *Exxon Valdez v. Exxon Mobil Corp*., 568 F.3d at 1081 ("Our decision is in accord with our usual practice when each side wins something and loses something [i.e., requiring each party to bear its own costs]"). Thus, the court determines that neither Plan Agent and Reorganized Debtor nor Claimants are prevailing parties, that each side should bear its own costs, and that each party should bear his or her, or its, own costs.

IT IS SO ORDERED.

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DATED: December 4, 2012

United States Bankruptcy Judge

NOTICE OF ENTERED ORDER AND SERVICE LIST

Notice is given by the court that a judgment or order entitled (*specify*) MEMORANDUM DECISION ON COSTS RE: OBJECTIONS TO CLAIMS OF ROBERT H. SCHULLER, ROBERT HAROLD, INC., ARVELLA SCHULLER, TIMOTHY MILNER, AND CAROL MILNER was entered on the date indicated as "Entered" on the first page of this judgment or order and will be served in the manner indicated below:

I. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s), the foregoing document was served on the following person(s) by the court via NEF and hyperlink to the judgment or order. As of **December 4, 2012**, the following person(s) are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email address(es) indicated below:

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II. SERVED BY THE COURT VIA U.S. MAIL: A copy of this notice and a true copy of this judgment or order was sent by U.S. Mail, first class, postage prepaid, to the following person(s) and/or entity(ies) at the address(es) indicated below:

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