

Attorney's Fees

Explanation of Reasonable Basis for Award

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This is a case where the plaintiffs argued that the trial court needed to explain its award of attorney's fees to show that there was a reasonable basis for them. The plaintiffs also argued that the trial court did not award them enough attorney's fees and costs against their former general contractor.

Tassajara Development Corporation (the contractor) entered into a written contract to become the general contractor for a residential construction for the plaintiffs Gorman & Cheng (husband and wife).

The contract included some language that stated that, "In the event of litigation between the parties, or if a party becomes involved in litigation because of wrongful acts of the other party, the prevailing party will be entitled to recover reasonable attorneys' fees." This is not an unusual provision.

One of the plaintiffs (Gorman) is an attorney. He is the chief executive, chief financial officer, president, and secretary of the Law Firm of Gorman & Miller. Gorman filed the lawsuit by filing a complaint on behalf of

the plaintiffs against many defendants including the contractor alleging the defective construction of the residence.

A few years later, the plaintiffs entered into an exhaustive settlement with a number of defendants including the contractor. Part of the settlement stated that, "it is agreed that Plaintiffs shall be deemed to be the 'prevailing parties' in the Action solely for the purpose of invoking plaintiffs' rights to recover attorneys' fees and costs pursuant to the terms of the Construction Contract and that plaintiffs are entitled to recover costs as authorized by law as if they were prevailing parties in the Action."

Ultimately, the plaintiff's requested attorney's fees in the amount of approximately \$1,300,000.00 and costs in excess of approximately \$266,000.00. Around half of these fees were billed by Gorman personally.

The trial court in a lengthy hearing, awarded the plaintiff "reasonable attorneys' fees" of approximately \$400,000.00 and reasonable costs of approximately \$142,000.00. However, despite the close study of the record on appeal, including the motion and opposition, the appellate court stated that it was unable to surmise a reasonable explanation for either of the amounts awarded. Given the apparent arbitrariness of the awards, they reversed the judgment and remanded it for further proceedings. That is to say even though a court is not required to explain an award for attorneys' fees, there still needs to be a reasonable basis for the award.

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