

## [Award of Attorney's Fees is Proper for Successful Anti-Slapp Motion in Addition to Fee Claims Related to Malicious Prosecution Action](#)

Posted on November 16, 2009 by [David J. McMahon](#)

In [Jackson v. Yarbray](#) 2009 DJDAR 16000 (2009) the [Second Appellate District](#) affirmed in part, reversed in part and remanded the case for further proceedings. The opinion was ordered published only in part.

In the published portion of the opinion, the court held that an award of attorney's fees for the successful prosecution of an [anti-SLAPP motion](#) did not preclude the moving party from being awarded additional litigation fees, unrelated to the SLAPP suit fee award, in a subsequent malicious prosecution action. More importantly, the court ruled that the Defendant in the malicious prosecution action had the burden of proving that the fees requested, were covered by those awarded in the SLAPP suit motion.

ComputerXPress.com, Inc. ("Computer") sued Lee and Barbara Jackson ("Jackson") and others for fraud, and for numerous business torts. The complaint arose out of a merger that was not successful.

Jackson filed a partially successful special motion to strike pursuant to [Code Civ. Proc. § 425.16](#). After protracted proceedings the causes of action for trade libel, interference with contractual relations, interference with prospective economic advantage, abuse of process, conspiracy and injunctive relief were dismissed. Jackson requested more than \$300,000 in attorney's fees but was awarded only \$77,000 on the successful SLAPP motion. Computer then dismissed the remaining causes of action. Thereafter, Jackson sued Computer and its attorneys for malicious prosecution.

In the malicious prosecution action, Jackson prevailed against Computer and some, but not all, of the attorneys. Jackson was awarded \$700,000 in emotional distress and \$2.41 million dollars in punitive damages. Upon motion, the trial court declined to award reasonable attorney's fees incurred in pursuing the successful malicious prosecution action. The Jackson's appealed and the court of appeal affirmed in part and reversed in part. The court noted that the trial court erred in refusing to award the attorney's fees incurred by the Jackson parties in the malicious prosecution action.

The court found that the Jackson parties, having established the liability of Computer and others, were entitled to recover the costs of defending the underlying action, including their reasonable attorney fees. The court stated that the lower court erroneously denied such an award based the erroneous conclusion that the fees previously awarded to Jackson in connection with their special motion to strike were the same as the fees previously awarded. The court held that the Defendant in the malicious prosecution had the burden of proof in showing that the fees were duplicative and not recoverable.

The court agreed with the trial court that, under the doctrine of collateral estoppel, a fee award following a successful special motion to strike may preclude further litigation concerning the

reasonableness of the fees. However, this does not preclude an award of fees for services unrelated to that motion. For these reasons, and because the trial court improperly put the burden of proof on the Jackson's, the court ruled that a retrial was required on special damages.