

[Limitations on Attorney Fees Under Probate Code Section 17211](#)

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In *Soria v. Soria*, 2010 DJDAR 8945 (2010), the [Fourth Appellate District](#) decided a case which demonstrates the limitations of [Probate Code Section 17211\(b\)](#). Probate Code Section 17211(b) permits a probate court to award attorney fees to the beneficiary of a trust who contests the trustees' accounting, if the trustee opposes the contest without reasonable cause and in bad faith. In 1993, Richard Soria Sr. (Father) and Irene Sarinana (Mother) entered into a contract with Father's parents, Richard and Lynda Soria (Grandparents). The contract required the Grandparents to convey a deed to a parcel of real property to Richard and Irene Soria. However, the agreement contained a provision that if Richard and Irene Soria were to ever divorce; the property would immediately revert to Father and the couple's children (Grandchildren).

The Grandparents allegedly did not comply with the terms of the agreement. In 2005, the Grandchildren filed suit against Grandparents in an effort to compel conveyance of the deed. The lawsuit alleged that the conditional contract to convey the deed to the property, constituted a trust agreement. The suit further alleged that the Grandparents were the trustees, and Mother, Father and Grandchildren were the beneficiaries of the contract. The proceedings at the trial level were complex. After vigorous motion practices a judgment was entered against the Grandparents finding that the agreement was an express trust, with Grandparents in breach of its terms for failing to turn over the property deed.

The judgment required the Grandparents to convey the property to the Grandchildren on certain payment terms. Subsequently, the trial court granted Grandchildren's motion for attorney fees pursuant to Probate Code Section 17211(b), and Grandparents appealed that ruling.

The court of appeal reversed the judgment below.

The court stated that Section 17211(b) provides that if a beneficiary contests an accounting performed by the trustee, and the court determines that the trustee's opposition to the proceeding was without reasonable cause and in bad faith, the court has authority to award costs, including reasonable attorney fees.

The court ruled that Section 17211(b) deals with the situation where a beneficiary's contests a trustee's accounting. Where that happens, the claim is governed by the probate court. Here, the Grandchildren did not contest a trustee's accounting in probate court. The Grandchildren filed a civil complaint requesting injunctive relief and declaration that the agreement was in fact a trust. Therefore, the court concluded, Grandchildren were not entitled to attorney fees under Section 17211(b).