

## [Trial Court's Expansive Ruling on Recovery of Counsel Fees is Upheld on Appeal](#)

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In *County of Sacramento vs. Sandison*, 2009 DJDAR 7843 (2009), the [Third Appellate District](#) dealt with the interplay between [Government Code § 25845](#) and [C.C. § 1717](#) in a novel fee dispute. Under Government Code § 25845(b) the statute states:

In any action to abate a nuisance, whether by administrative proceedings, judicial proceedings, or summary abatement, the owner of the parcel upon which the nuisance is found to exist shall be liable for all costs of abatement incurred by the county, including, but not limited to, administrative costs, and any and all costs incurred in the physical abatement of the nuisance. Recovery of costs pursuant to this section shall be in addition to and shall not limit any prevailing party's right to recover costs [under] . . . any other provision of law.

Section (c) of that statute states:

A county may, by ordinance, provide for the recovery of attorneys' fees in any action, administrative proceedings, or special proceedings to abate a nuisance. If the ordinance provides for the recovery of attorney's fees, it shall provide for recovery of attorneys fees by the prevailing party, rather than limiting recovery of attorneys' fees to the county if it prevails . . . In no action, administrative proceedings or special proceedings shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the county in the action or proceeding.

California Civil Code § 1717 (a) provides:

In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs.

The county of Sacramento sued James and Julianne Sandison for maintaining a non-permitted dwelling on their property. The parties entered into a settlement agreement and stipulated to an injunction against the Sandison's. The injunction enjoined the Sandisons from maintaining a second dwelling without the required permits. The settlement agreement stated that the prevailing party in an action brought to enforce the injunction would be entitled to attorney fees. Thereafter, the county attempted to enforce the injunction, and initiated a contempt proceeding against the Sandisons. The trial court found in favor of the Sandisons, who moved for their reasonable attorney fees, based on the provisions contained in the settlement agreement. The trial court awarded the Sandisons the \$44,089 in fees requested which exceeded the limitations contained in Government Code Section 25845(c). The county appealed contending that the trial court issued a fee award which did not comply with the Government Code limitations.

On appeal the court noted that Government Code Section 25845(c) states that an award of attorney fees to a prevailing party shall not exceed the reasonable amount incurred by the county in an action. However, the court reasoned that the recovery of attorney fees authorized by contract is considered to be in addition to the prevailing party's right to recover fees under Section 25845. Although the county argued that the amount of attorney fees should have been limited to the amount incurred by the county under Section 25845, the court found that the settlement agreement authorized the award of attorney fees in addition to any reasonable fees awarded under Section 25845. The court concluded that the trial court did not err in refusing to limit the attorney fee award and the Sandisons' award was proper.

The case illustrates a rather novel interplay between two statutes which authorize an award of fees under California law.