

## [Plaintiff Denied Attorney Fees Even Where He Prevailed on Appeal](#)

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In *Wood v. Santa Monica Escrow Co.*, 2009 DJDAR 12082 (Aug. 13, 2009), the [Second Appellate District](#) decided a novel prevailing party attorney fee case. The plaintiff, Craig Wood, was the personal representative of the Estate of Merle A. Peterson. Plaintiff brought an action against Patrick McComb and Santa Monica Escrow Co. alleging causes of action for alleged elder abuse. The complaint asserted that the defendants improperly induced an elderly individual to obtain a loan secured by her residence, and to distribute the proceeds to Patrick McComb. Merle Peterson obtained the loan with Santa Monica Escrow acting as escrow agent.

Two years after filing the complaint, the Plaintiff voluntarily dismissed the action. After dismissal, Santa Monica Escrow moved for attorney fees based on the contractual provisions in the escrow agreement which stated that a prevailing party would receive attorney fees in an action between the escrow holder and parties to the escrow. Santa Monica asserted that it was not required to allocate the fees between the contractual and non-contractual causes of action because all claims arose from the same transaction. The trial court denied the motion in its entirety which was affirmed on appeal. The appellate court ruled that a prevailing defendant is not entitled to receive attorney fees in elder abuse cases.

Thereafter, Wood moved for attorney fees against Santa Monica Escrow. The motion for fees was based on the attorney fee provisions in the escrow instructions. The trial court denied the motion, finding that the escrow agent was the prevailing party in the action. The ruling was appealed by the Plaintiff.

The appellate court affirmed the decision of the lower court noting that a party who prevails on appeal is not entitled to attorney fees, despite the existence of a contractual fee provision, where the appellate court does not decide who prevailed in the lawsuit. Instead, the prevailing party is defined as the party who has prevailed overall in the case. Plaintiff argued that he was the prevailing party because he won on Santa Monica Escrow's appeal of the denial of its motion for attorney fees. However, the court found that the purported success on the appeal did not decide who won the lawsuit. Instead, Santa Monica Escrow won overall because Plaintiff voluntarily dismissed the case. For this reason he was not the prevailing party entitled to attorney fees.