

## **Trial Court Must Make Findings Establishing A Reasonable Basis For Fee Award**

Posted on October 30, 2009 by [David J. McMahon](#)

In [Gorman v. Tassajara Development Corp.](#), 2009 DJDAR 14522 (October 6, 2009) the [Sixth Appellate District](#) overturned an award of attorneys' fees rendered by the trial court. The court concluded that based on an analysis of the entire record, the lower court did not articulate a reasonable explanation for the fees awarded and reversed on that basis.

The court affirmed the decision of the trial court, however on the issue of an attorney's right to recover attorneys' fees while litigating in propria persona. The appellate court affirmed the holding of *Trope v. Katz*, 11 Cal. 4th 274 (1995). In *Trope* the California Supreme Court held that a lawyer who chooses to represent himself in a contract dispute can not recover attorneys' fees.

Tassajara Development Corp. (Defendant) entered into a written contract to serve as general contractor for the construction of a home for John Gorman and Jennifer Cheng, (Plaintiffs). The contract contained provisions stating that the prevailing party in any litigation would be entitled to attorney fees.

In 2003, Plaintiffs sued Tassajara for alleged defective construction. At the time of the litigation, Plaintiff Gorman was an attorney with the Law Firm of Gorman & Miller PC. Plaintiff Gorman initiated the lawsuit by filing a complaint on behalf of Plaintiffs against numerous Defendants including Tassajara due to construction defects. Three years later, the parties entered into a settlement agreement whereby the Plaintiffs were deemed to be the prevailing parties. The Plaintiffs sought \$1,350,538 in attorney fees and over \$266,561 in costs. In a terse order, the trial court awarded the Plaintiffs \$416,581.37 in attorney fees and costs of \$142,432.46 after a contested hearing on the motion. The trial court denied the Plaintiffs' request for a statement of decision and reconsideration of the order and the Plaintiffs appealed.

The Court of Appeal reversed the decision and remanded it for further findings by the lower court. The court stated that a trial court is not required to issue a statement of decision in relation to an award of attorney fees. Nonetheless, to be affirmed on appeal, an attorney fee award must be supported by a rational explanation. If there is no rational basis contained in the record, then the award itself may constitute evidence that it resulted from an arbitrary determination.

The Court of Appeal stated that it was unable to deduce any logical explanation for the trial court's award of \$416,581.37. The award could not be justified by the Plaintiffs' request, supporting bills, or Tassajara's opposition. Because the court could not ascertain a reasonable basis for the trial court's reduction of the award from that which the Plaintiffs requested, the Court of Appeal reversed the trial court's ruling.