

[Plaintiffs Fail To Satisfy the "Prevailing Party" Standard](#)

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Where a Settlement Offset Exceeds the Amount Awarded at Trial

In [Goodman v. Lozano](#), 2010 DJMAR 1925, (2010), the [California Supreme Court](#) decided an important case under [CCP § 1032](#), the prevailing party statute.

Background

The plaintiffs entered into a contract to purchase a house from the Lozano defendants. AMPM Construction built the house. Shortly thereafter the plaintiffs sued the Lozanos, Albert Mobicri, a principal with AMPM, AMPM, the architect, and the real estate brokers for construction defects. After protracted litigation, the builder and its principal settled with the plaintiffs for \$200,000. Other defendants, except for the Lozanos, settled with the plaintiffs for approximately \$30,000. The plaintiffs rejected the Lozanos' \$35,000 settlement offer under Code of Civil Procedure Section 998. The case went to trial and the court awarded the plaintiffs \$146,000 against the Lozanos. However, the prior settlements totaled \$230,000.

The trial court concluded that the Lozanos should receive credit for the prior settlement and that the plaintiffs should receive nothing. Because the Lozanos paid nothing towards any judgment, the court found that they were prevailing parties. The court awarded the Lozanos \$132,000 in attorney fees and \$12,000 in costs. The [appeals court affirmed that result](#).

The California Supreme Court affirmed the appellate court's decision. The Court noted that where a plaintiff settles with defendants for an amount that is greater than a subsequent damage award against a nonsettling defendant, the damage award is essentially nullified and results in a zero judgment.

The Court stated that prevailing party is entitled to recover costs in any action and is defined as "the party with a net monetary recovery." The Court held that a plaintiff who obtains a verdict against a defendant, which is offset to zero due to prior settlements, has not gained a "net monetary recovery." Accordingly, the Court held that the plaintiffs were not the prevailing parties. The Lozanos prevailed because they avoided payment to the plaintiffs by proving damages in an amount less than the settlement proceeds.

For these reasons the Court concluded that the Lozanos were entitled to their reasonable attorney fees and costs awarded at trial.