

Counsel's Mistaken Decision Constituted Good Cause to Extend the Deadline for Filing of a Fee Petition

February 28, 2012 by [David J. McMahon](#)

In [Lewow v. Surfside III Condominium Owners' Assn. Inc.](#), 2012 DJDAR 1445 (2012), the [California Court of Appeal for the Second Appellate District](#) decided a novel case dealing with the interplay between a fee award entered under [California's "common interest development"](#) statute and the [Federal Bankruptcy Code](#).

On February 3, 2010, judgment was entered in favor of a condominium owners' association ("Association") on a complaint filed by one of the condominium owners. He alleged that the Association failed to perform critical duties.

On February 10, notice of entry of judgment was mailed to the defendant, and the defendant filed for relief under Chapter 13 of the U.S. Bankruptcy Code. On July 23, the bankruptcy proceedings were dismissed. Thereafter, notice of the dismissal was served two days later on the Association.

Later, approximately 32 days after the mailing of the notice of dismissal, the Association filed a motion for attorney fees pursuant to [Civil Code Section 1354\(c\)](#). This statute is commonly referred to as the "common interest development" statute. The defendant objected to the fee petition, arguing that it was untimely. The Association argued that the motion for attorney fees must be filed no later than 60 days after notice of entry of judgment.

Implicit in the Association's argument was that the time to file the motion was suspended during the bankruptcy proceedings. The trial court agreed with the Association's argument. The court awarded the Association its reasonable attorney fees. The defendant pursued an appeal and the court of appeal affirmed the judgment of the lower court.

The court of appeal ruled that [11 U.S.C. Section 108\(c\)\(2\)](#) did extend the time frame for filing the attorney fee motion and that the time frame to bring a claim for attorney fees was extended until 30 days after notice of the dismissal of bankruptcy proceedings.

Although the deadline was extended, the lawyer for the defendant missed the deadline by two days. The court ruled that good cause existed to relieve the missed deadline.

Under [California Rules of Court Rule 3.1702\(b\)](#), the court may extend the time for filing a motion for attorney fees for good cause. Good cause includes a mistaken but objectively reasoned decision by the lawyer.

Because Association's counsel made a mistaken but reasonable determination that the 60-day period was tolled by the bankruptcy stay, the court allowed the late filing of the motion for attorney fees.