

# FIORE RACOBS & POWERS

THE LEGAL PERSPECTIVE® COMMUNITY ASSOCIATION NEWSLETTER

## The Effect of a Litigant's Financial Status on an Award of Reasonable Attorney's Fees

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### CACM Expo July 30th & 31st



*Fiore Racobs & Powers was an exhibitor at the CACM Expo held at the Disneyland Hotel. We were honored to be voted the #1 booth by the managers and attendees. Erin A. Maloney, Esq. & Margaret G. Wangler, Esq. from the Fiore Racobs & Powers Inland Empire and Coachella Valley offices, respectively, were both Vision Award nominees. Congratulations to all the Vision Award nominees and winners!*

A California Court of Appeal recently held that a trial court may consider, as one of many factors, a losing party's financial condition when determining a reasonable award of attorney's fees to the prevailing party under the Davis-Stirling Common Interest Development Act (Davis-Stirling) fee provision, Civil Code § 1354 (c).

In *Garcia v. Santana*, the plaintiff lived in a housing cooperative for low-income tenants. In February 2005, several tenants filed a lawsuit against the association and its managers alleging violations of the Corporations Code and the bylaws. Plaintiff was indigent and

became self-represented during this litigation. After plaintiff's counsel withdrew, the association asked the court for an order granting summary judgment in its favor to end the suit. Plaintiff did not respond. The



trial court granted the unopposed request for summary judgment in favor of the association. As the prevailing party, the association asked the court to grant \$48,328 in attorney's fees under

the Davis-Stirling fee provision. The trial court, however, awarded no attorney fees solely because of plaintiff's financial condition. The association appealed the court's decision.

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All three members of the appellate court panel concurred that the matter should be returned to the trial court because the appellate court could not determine on the trial record whether the trial court considered all of the well-established factors required under California law. The appellate panel split, however, on whether those factors include the losing party's indigence.

Under California law, in awarding attorney fees a trial court must consider multiple factors concerning the case, its difficulty, the attorney's performance, the importance of the case, etc. No previous case had ever directly held that a losing party's indigence is a factor to consider. The majority decision, however, held that in appropriate circumstances, the financial condition of the losing party may be considered. Additionally, despite the mandatory language in Davis-Stirling that the court "shall" award fees to the prevailing party, the appellate court held that there was nothing in Davis-Stirling to indicate a legislative intent to punish parties for bringing unsuccessful

claims based on the threat of possible attorney's fees should they not prevail. To the contrary, the majority held that access to the courts is a fundamental right guaranteed to all persons by the federal and state constitutions and that a litigant's financial disabilities should not bar access to the courts nor should it discourage them from seeking remedies within the judicial process.

The dissent agreed in the result, but not in the reasoning. The dissent believed that Davis-Stirling mandates an award and that no existing case law allows an indigent's financial condition to be considered in awarding fees.

Because the appellate court was unable to determine whether the court exercised its discretion by balancing all of the relevant factors against each other, or whether the determination of an award of no fees was the result of such balance, it sent the matter back to the trial court holding that the trial court's failure to exercise discretion is itself considered "an abuse of discretion." In exercising its discretion, the appellate court held that the trial court may determine that a reasonable award of attorney's fees is zero based on all factors, not just the losing party's financial condition. The court did not hold that an award of zero fees was the appropriate result in the *Garcia*.

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