

Court of Appeal Rules That Prevailing Party In Dispute Over Term of A Settlement  
Agreement Is Entitled to Prevailing Party Attorney's Fees

By: Edward F. Morrison, Jr., Esq.  
Larry A. Schwartz, Esq.

A common provision in settlement agreements in California is that, in the event there is a dispute as to a term of the settlement agreement, the prevailing party is entitled to prevailing attorney's fees. In a case with a convoluted set of facts, the Court of Appeal affirmed a \$68,000 attorney fee award for a dispute over a provision in a settlement agreement. That occurred in Roberta V. Barbanell v. Raymond E. Lodge (2026) Lexis 890 ("Barbanell case"). In the Barbanell case, the Barbanell and Lodge parties entered into an agreement that settled a century-old water rights dispute that arose between their parcels' prior owners. The settlement agreement detailed how the parties would resolve future disputes arising out of the settlement agreement, and provided that if the parties failed to resolve any such dispute between themselves, they would submit that dispute to mediation. If mediation failed, then either party were entitled to submit the matter to a binding arbitration before a retired judge or justice in San Diego County with water law experience. The settlement agreement expressed that the exclusive remedy for resolving any dispute arising out of or relating to the agreement was the informal resolution, mediation, and/or arbitration measures set forth in the agreement.

In 2016, a dispute arose over groundwater resources between the parties. Arbitration proceeded for several years. One party, Barbanell, then moved for summary judgment. Before the arbitrator could rule on the Motion for Summary Judgment, Lodge filed two Demands for Disqualification of the Arbitrator, and the arbitrator withdrew from the arbitration. While Barbanell searched for a replacement arbitrator, Lodge filed a lawsuit in the San Diego Superior Court asserting the same claims which were being litigated in the arbitration. Barbanell then filed a separate, discrete action, being a Petition to Appoint a New Arbitrator in the San Diego Superior Court. The Superior Court later entered judgment on the Petition in favor of Barbanell, and then adjudged Barbanell as the prevailing party and awarded \$68,000 in attorney's fees. Lodge appealed on the basis that Barbanell was not entitled to attorney's fees under these facts. Lodge asserted that the requisite legal basis for an award of attorney's fees under *Civil Code* § 1717 could not have existed when the Superior Court made the award because the Superior Court's grant of the underlying Petition did not resolve all actions relating to the same contract.

The Court of Appeal affirmed the ruling of the Trial Court. The Court of Appeal recognized a "slew of cases" that might suggest that attorney's fees could not be awarded, but ruled that, here, because there was a singular issue before the trial court, i.e., the naming of a new arbitrator, there was a prevailing party as to a dispute in the settlement agreement for which attorney's fees could be awarded.

The Barbanell case will certainly be helpful with respect to disputes over settlement agreements on a going forward basis.

About the Authors: Edward F. Morrison, Jr. is the founding partner and Larry A. Schwartz is Of Counsel to The Morrison Law Group, a professional corporation. Their biographies can be viewed at [morrisonlawgroup.com](http://morrisonlawgroup.com).

Publication Note: The Morrison Law Group wishes to disseminate this publication to all clients and colleagues of the Firm who wish to receive it. Should any recipient desire to be removed from the distribution list, or wishes to have a colleague added, please contact Jim Van Dusen at The Morrison Law Group at 213 356-5504.

Disclaimer Note: The legal article presented above is intended to provide general information which may be of interest or use to clients and colleagues of The Morrison Law Group and should not be construed as legal advice on any matter.