

Party Who Pursues Litigation to Enforce CC&Rs Needs to "Get Ducks in a Row" Prior to Suing

January 18, 2012 by [David J. McMahon](#)

In [Salehi v. Surfside III Condominium Owners' Association](#), 2011 DJDAR 16552 (2011), the [California Court of Appeal for the Second Appellate District](#) decided a case illustrating the pitfalls of a plaintiff pursuing litigation without a strategic game plan. The end result was a fee award against the plaintiff for more than \$252,767 in attorney fees.

The plaintiff purchased a condominium. The condominium community was governed by a set of covenants, conditions, and restrictions ("**CC&Rs**"). The CC&Rs were enforced by a condominium owners association ("**the Association**").

In May 2008, the plaintiff filed suit against the Association, alleging numerous causes of actions for violation of the CC&Rs. Approximately one week before trial, the plaintiff informed the Association's counsel that she was dismissing all but two of the causes of action.

The Association subsequently moved to recover \$252,767 in attorney fees incurred in defending against the voluntarily dismissed causes of action pursuant to [Civil Code Section 1354](#). The plaintiff responded to the motion for fees by contending that she only requested dismissal of the causes of action that required testimony from an expert. The expert allegedly was unavailable to testify at trial due to illness. The trial court denied the motion for attorney fees. The court found that under Civil Code Section 1354, the defendants were not a "**prevailing party**" within the meaning of the statute.

The court of appeal reversed the decision of the lower court.

The court noted that pursuant to Civil Code Section 1354, in an action to enforce the governing documents of a common interest development, the "**prevailing party**" shall be awarded reasonable attorney fees and costs. The court of appeal specifically noted that the underlying record demonstrated that plaintiff's case against the Association was tenuous. The court also stated that the record failed to establish that the plaintiff was prepared to prove the case substantively. The court of appeal concluded the trial court incorrectly denied the Association attorney fees and remanded the case for further proceedings.