

When the Loser Is The Winner: Guarantor Defendant Which Succeeded In Setting Aside Default Judgment And Tendering The Amount Owed Is Ruled to Be Prevailing Party, Entitled to Significant Attorney's Fees

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

Attorney's fees under contract will be recoverable in California if permitted under contract and there is a prevailing party clause. One question that has arisen is whether a party that has a default judgment set aside and tenders the amount owed into the court prior to filing an Answer can be the prevailing party.

One Court has now answered the question in the affirmative. In the case of United Grand Corporation v. Marcy Stolof (2022) Westlaw 167773 ("United Grand case"), United Grand Corporation, a lessor, filed a lawsuit in August 2014 alleging that Malibu Hillbillies, a tenant, had breached a lease agreement by failing to make rent payments in the amount of \$46,395.86. United Grand Corporation also sued Marcie Stolof based on breach of a guarantee agreement. Both agreements included attorney's fees clauses. United Grand Corporation obtained default judgments against Malibu Hillbillies and Stolof. Thereafter, judgment in the amount of \$67,850.55 was entered against Malibu Hillbillies and Stolof. This amount included attorney's fees and costs. Stolof lived in Maryland and was represented by counsel there. United Grand Corporation elected to pursue Stolof in Maryland for payment of the judgment. Thereafter, the Maryland Court entered a judgment in the same amount of \$67,852.55 against Stolof.

Stolof attempted to settle by paying the full amount, but was rebuffed. Stolof then began the process of depositing \$68,418.35 with the Maryland Court, to satisfy the judgment against her, which the Court approved. With the Maryland Court's permission, that amount was deposited. However, United Grand Corporation decided not to accept that money. On December 24, 2015, the Trial Court in California set aside the default as to Stolof. Now free of the default judgment entered against her, Stolof again attempted to end the case by either releasing \$56,615.59 of the money deposited with the Maryland Court, or transferring the full amount deposited in the Maryland Court, plus an additional \$12,000 to the Los Angeles County Superior Court. United Grand Corporation again refused.

In 2016, Stolof again attempted to end the case by having her attorney tender a check for \$56,705.00 to United Grand Corporation. United Grand Corporation did not deposit the check. After these attempts failed, Stolof filed a First Amended Answer to the Complaint on July 19, 2016 in which she alleged the defense of tender. In August 2016, Stolof filed a Motion in Los Angeles County with the Superior Court to deposit

\$56,705.00, which Motion was granted. United Grand Corporation finally withdrew the amount in November 2016.

Noting that United Grand Corporation had been paid the full amount of the damages alleged in the Complaint, the Trial Court issued an Order to Show Cause why United Grand Corporation's Complaint should not be stricken as to Stolof. Thereafter, United Grand Corporation sought close to \$2 million in attorney's fees as the prevailing party against Stolof. In response, the Trial Court issued an Order striking United Grand Corporation's prayer for attorney's fees, due to "pervasive misconduct" by its counsel. The Trial Court incorporated its ruling into a Judgment, and specifically found that United Grand Corporation's attorney had committed misconduct. United Grand Corporation filed a Notice of Appeal. The Court of Appeal affirmed the Trial Court's Judgment.

Following remand, the Court issued another Order, awarding \$165,870.00 to Stolof for reasonable attorney's fees, even though Stolof had been a default judgment defendant, and had paid significant money to United Grand Corporation. United Grand Corporation then appealed, arguing that it had been the prevailing party. Analyzing applicable case law, the Court of Appeal ruled that, even though Civil Code § 1717 (an exception to the prevailing attorney fee statute) requires tender to be made before the defendant Answers, because the first tender was made while the Default Judgment was still in place, the statute was satisfied. The Court of Appeal also affirmed the award of attorney's fees.

The United Grand case, while involving an extreme set of facts, is important in that, in an abusive prevailing attorney fee circumstance, even a defaulted defendant, who pays the amount of the judgment while in default (and prior to filing an Answer), can be the prevailing party.

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 .

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.