



## **The Importance of “Prevailing Party” Attorneys’ Fees Provisions - Gubernatorial Candidate Loses Race, Then Case**

James A. Gober

For three years, AGG represented a landlord in litigation with its major tenant that ended recently. The principal of the tenant happened to be the Libertarian Party candidate for Georgia governor, Andrew Hunt. The tenant asserted that it had suffered literally millions of dollars in damages due to the landlord’s breach of the lease with regard to maintenance of the roof of the building occupied by the tenant under the lease. The landlord counterclaimed for damages on several grounds, including the “prevailing party” attorneys’ fees provision in the parties’ lease.

The lease in issue provided that: “If a legal proceeding is brought to enforce or interpret the provisions of the lease, the prevailing party in such action shall be entitled to recover its reasonable attorneys’ fees incurred in such action.” Following a dispute during the discovery phase of the case, the court granted a motion by the landlord for sanctions. Imposing the ultimate sanction, the court dismissed all of the tenant’s claims so that only the landlord’s counterclaims remained for trial. Prior to a trial, the landlord brought a motion to have the court declare that the landlord was the “prevailing party” so that it could recover its fees. That motion was granted.

The impact of that ruling and the “prevailing party” attorneys’ fees provision was that the tenant now faced an awful dilemma. The court had found that the tenant must pay the landlord for the substantial fees related to the defense of the action incurred by the landlord up to that point. If the tenant proceeded to trial, it would incur more fees payable to its own attorney and run a substantial risk that it would be paying AGG as the landlord’s attorney as well. Consequently, the tenant sought to negotiate a settlement involving the payment of some, but not all, of the landlord’s fees.

Because its legal position was so strong, the landlord insisted upon payment of an amount that would cover the fees entirely plus something more to go towards the landlord’s claims. On the eve of trial, the tenant agreed to pay 100% of the amount demanded by the landlord in settlement. This outcome illustrates how much difference a prevailing party attorneys’ fees provision can make. The party that prevails – landlord or tenant – recovers its fees while the opposite party must pay its own attorney and its adversary’s attorney. It also indicates how important it is to have an attorney assess the likely outcome of litigation that you bring or defend, especially if a prevailing party attorneys’ fees provision is involved.

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