

DENIAL OF FEE AWARD APPROPRIATE WHERE BREACH OF CONTRACT PARTY FAILS TO SEEK FEES UNTIL AFTER A DECISION ON THE MERITS

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King v. Titsworth

Ct. Appeals, Div. One, June 4, 2009

Authored by the [JSH Appellate Team](#)

The Kings sued Titsworth for breach of contract. Titsworth denied all allegations in his answer, which he filed pro per. Titsworth subsequently retained counsel. At no time in any of his pleadings did Titsworth request attorneys' fees, nor did he amend his pleadings to make such a request. The trial court found for Titsworth on the breach of contract claim. Titsworth submitted an attorneys' fees application, which the Kings opposed, asserting that Rule 54(g)(1) requires a party to seek fees in the pleadings. The trial court granted Titsworth's attorneys' fees request, and the Kings timely appealed.

The court of appeals reversed. Under Rule 54(g), a party must first request attorneys' fees in a pleading, and that party must subsequently file a motion for attorneys' fees "within 20 days from the clerk's mailing of a decision on the merits." Titsworth's motion for attorneys' fees, filed after a decision on the merits, did not constitute a "pleading" for purposes of Rule 54(g). Rule 7(a) defines pleading as "a complaint, an answer, a counterclaim, a cross-claim, a third-party complaint, a third-party answer, and a reply." The court also reasoned that an early request for attorneys' fees in the pleadings is necessary to allow the parties to weigh the risks and benefits of settling versus going to trial.