

IN DETERMINING ATTORNEYS' FEES AFTER APPEAL OF ARBITRATION AWARD, COURT COMPARES AWARD TO JUDGEMENT BEFORE ANY RULE 68 DEDUCTION

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Bradshaw v. Jasso-Barajas
Ct. Appeals, Div. One, January 8, 2013

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This case arose from a car accident. Defendant served plaintiff with a \$9,501 offer of judgment, which included taxable costs. Plaintiff rejected the offer. The case proceeded to compulsory arbitration where plaintiff was awarded \$12,000 plus \$374.10 in taxable costs. Defendant appealed the arbitration award and a jury awarded plaintiff damages totaling \$8,604. The court added taxable costs of \$946.10.

Rule 77(f) states that the trial court must compare the arbitration award to the judgment entered on appeal and, if the difference between the two is 23% or less, sanctions may be awarded, including attorneys' fees necessitated by the appeal. Rule 68(g) states that when a party rejects an offer of judgment, and then fails to obtain a more favorable result at trial, that party must be sanctioned to cover the offering party's expert witness fees and double taxable costs occurring after making the offer.

To determine who owed what to whom, the trial court first compared the arbitration award to the jury verdict (plus taxable costs) pursuant to Rule 77(f). The difference was less than 23% (it was 22.9%), and so ordered defendant to pay plaintiff \$8,784 in attorneys' fees as a sanction. The court then addressed the offer of judgment and awarded defendant \$572 in Rule 68(g) sanctions because the jury verdict plus costs was less than the offer.

Defendant challenged the attorneys' fees sanction, arguing that the trial court erred in addressing Rule 77 prior to Rule 68 because the offer of judgment was made prior to both the arbitration award and the verdict on appeal. Under defendant's proposed formulation, the difference between the verdict and the arbitration award would have been more than 23% and defendant would not have been ordered to pay attorneys' fees.

The Court of Appeals rejected defendant's argument and upheld the trial court's formulation and decision. The trial court's formulation comported with Rule 68(g) itself, which provides for consideration of Rule 77 before Rule 68(g).