

## **TRIAL COURT MAY CONSIDER AN APPLICATION FOR ATTORNEYS' FEES FILED AFTER A JUDGEMENT DISMISSING COMPLAINT FOR LACK OF PROSECUTION**

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*Britt v. Steffan*

Ct. Appeals, Div. One, December 26, 2008

Authored By The [JSH Appellate Team](#)

Plaintiffs sued Defendants for breach of contract and negligent misrepresentation. Defendants' answer requested dismissal of the complaint and attorneys' fees under A.R.S. § 12-341.01. The complaint was dismissed without prejudice for lack of prosecution. Defendants timely filed an Application for Attorney's fees and Motion for Rule 11 sanctions. Plaintiffs did not oppose the motions, but filed an untimely motion to strike the application, asserting the court lacked jurisdiction to consider the motions. The trial court granted defendants their attorney's fees and entered a judgment awarding fees against Plaintiffs and their attorney.

The court of appeals upheld the judgment. Though Civil Procedure Rule 54(g)(2) says that an attorneys' fees determination shall be made "after a decision on the merits," this does not preclude awarding fees on a dismissal for lack of prosecution. In this circumstance, the defendant is still considered the "successful party" for purposes of A.R.S. § 12-341.01(A) and qualifies for an award of fees.