

Recent Case on Right to Recover Attorney Fees *Honchariw v. PMF CA, REIT, LLC*

By Hon. Allan Goodman (Ret.)



Hon. Allan J. Goodman (Ret.), has 24 years of judicial service, including 20 years as Judge of the Los Angeles Superior Court and 4 years as an Associate Justice Pro Tem on the Second District Court of Appeal, from 1995 through 2019. Earlier, he served as a Deputy Attorney General of California, where among other cases, he represented California in three matters before the United States Supreme Court. Immediately prior to his judicial service, he represented development stage businesses and venture capital investors, frequently advising in valuation of businesses and of stock options. He is a member of the California and New York Bars.

May an attorney recover fees incurred when representing both the attorney and spouse in a matter concerning their community property? *Trope v. Katz* extended.

In *Honchariw v. PMF CA, REIT, LLC* (Dec. 31, 2025) 117 Cal.App.5th 827 [*PMF*] the Second District Court of Appeal set aside a trial court's \$251,000 award of attorney fees based on two attorney fee provisions in the contract underlying the dispute.

Readers will recall the holding of *Trope v. Katz* (1995) 11 Cal.4th 274 [*Trope*], that a prevailing self-represented attorney may not recover attorney fees which otherwise are authorized by Civil Code section 1717.

In *PMF*, the plaintiff attorney, who was representing both himself and his spouse in a mortgage default matter, sought to recover attorney fees by arguing that the holding in *Trope* was limited to cases in which attorney fees were sought pursuant to Civil Code section 1717. The referee, to whom the parties had stipulated, awarded just over \$250,000 in attorney fees to the plaintiffs, as well as

costs and interest. This note discusses the award of those fees.

Appellants advanced two principal arguments to support their fee award: (1) *Trope* limits only fee applications made under Civil Code section 1717; it does not bar fee applications made under Code of Civil Procedure section 1021 or under the terms of two paragraphs of the underlying contract at issue in *PMF*; and (2) the non-attorney plaintiff-spouse was entitled to recover fees for the work of the attorney spouse because the non-attorney spouse was not self-represented. (Other arguments included that the 1.5 multiplier to the fee award was excessive.)

The *PMF* court began by discussing the decision in *Trope*. As noted, in that decision our Supreme Court held that an attorney who chooses to litigate in propria persona cannot recover attorney fees. (*Trope*, at 280.) Cases following *Trope*, discussed in *PMF*, reinforced that principle.

Following the logic of *Trope*, the *PMF* court specifically rejected the argument that Code of Civil Procedure section

1021 establishes an independent basis for an attorney fee award, agreeing with the analysis in *Trope* that the “usual and ordinary meaning of the words “attorney’s fees,’ ... is the consideration that a litigant actually pays or *becomes liable to pay* in exchange for legal representation” (*Trope, supra* at p. 280, italics in original; cited in *PMF*, slip at 6]) and there was not a justifiable basis upon which to place a different meaning on the same phrase in the statutes—they both use the term “attorney’s fees.” Emphasizing this point, the *PMF* court wrote: “... we can think of no reason ... why the same analysis would not apply equally to Code of Civil Procedure sections 1021 and 1033.5 [and to Civil Code section 1787].” (*Ibid.*)

Following reversal of the fee award to the self-represented plaintiff attorney-spouse, the *PMF* court next addressed the fee award to the non-attorney plaintiff-spouse. It began by noting that “Courts of Appeal have reached somewhat inconsistent results in deciding whether nonattorneys represented by attorney spouses in joint litigation are “self-represented” within the meaning of *Trope*. (*PMF* at 7.) After analyzing those cases, the *PMF* court “assum[ed] that in most cases in which attorneys represent themselves and their spouses, that representation is a “true” one in the sense that the non-attorney spouse has authorized the attorney-spouse to act on his or her behalf and intends to be bound by the attorney-spouse’s actions. The relevant question under *Trope*, however, as that court reasoned, is not the scope of an attorney’s authorization to act, but whether the party is self-represented. (*Trope*, at p. 277.)

The *PMF* court then explained: “We believe that whether a litigant represented by an attorney-spouse is ‘self-represented’ within the meaning of *Trope* depends on whether the litigation concerns a commonly held interest or asset.” (*PMF* at 9.) The *PMF* court made clear that its holding applies when attorneys represent themselves and their spouses in litigation concerning a community property asset: “A community property asset is not owned by the spouses individually, but by the marital community. Likewise, ‘the fruits of the community’s expenditures of time, talent, and labor are community property.”” (*PMF* at 9, citing *In re Marriage of Dekker* (1993) 17 Cal.App.4th 842, 850.)

The *PMF* court supported its resolution of this issue with the observation that, notwithstanding that the non-attorney spouse had asserted that she had retained her attorney-spouse to represent her, neither spouse had asserted that he or she had a separate interest in the property at issue. (*PMF* at 9.) The *PMF* court also noted that the non-attorney spouse had not claimed any non-community interest in the property; the property was held as community property; the non-attorney spouse did not owe and had not paid any fees for legal representation; and there was no indication that assets other than community property assets had been used to make payment on the loan that had been in default, or that the attorney-spouse’s billings had been used for any interest other than those of the community. The *PMF* court also declined to address what appeared to be the remote risk that the non-attorney spouse’s separate property assets might have been needed to pay off the note if it

needed to be sold to satisfy the PMF mortgage.

PMF alerts us to a previously unresolved issue in attorney fee award applications, one with particular application to fee awards when community property assets are the subject of the litigation.