No. ___________________________

IN THE

SUPREME COURT OF THE UNITED STATES

____

BONNIE SHIPLEY,

Petitioner

v.

STUBBLEFIELD PROPERTIES,
a California General Partnership,

Respondent

On Petition for a Writ of Certiorari to the
Appellate Division of San Bernardino Superior Court

After 4/2 DCA and California Supreme Court Denied Timely Petitions to Review the Division's Opinion Affirming Trial Court's Denial of Mandatory Attorney Fees

PETITION FOR A WRIT OF CERTIORARI

Respectfully submitted: 2/21/18

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QUESTION PRESENTED

Did the court violate the due process and equal protection clauses of the Fifth and Fourteenth amendments to the United States Constitution, and Article I, §7(a) of California Constitution, by denying an attorney fee award to a *prevailing* tenant under MRL's Civil §798.85, under reciprocal contract provisions in Civil §1717, and as private attorney general under Civil §1021.5 for enforcing consumer protection statutes not being enforced by state or local agencies?

LIST OF PARTIES

(not identified as petitioner or respondent on cover page)

California Supreme Court (denied review 1/10/18)
350 McAllister Street, Room 1295
San Francisco, CA 94102-4797 415-865-7000

Fourth District Court of Appeal–Div.2 (denied review 11/14/17)
3389 Twelfth Street
Riverside, CA 92501 951-782-2500

Appellate Division (affirmed trial court's denial of fees 9/25/17)
San Bernardino Superior Court
8303 Haven Ave, First Floor
Rancho Cucamonga, CA 91730 909-521-3566

San Bernardino Superior Court (denied statutory fees 10/4/16)
Justice Center, S-29
247 Third Street
San Bernardino, CA 92415-0210 909-708-8678

RESPONDENT's CONTACT INFORMATION:
c/o Robert Williamson
Hart King Law Firm
4 Hutton Center Drive, Suite 900
Santa Ana, CA 92707 714-432-8700

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PETITION FOR WRIT OF CERTIORARI

Bonnie Shipley respectfully petitions for a writ of certiorari to review:

OPINIONS BELOW

San Bernardino Appellate Division affirming opinion appears at It is not reported or published. ACIAS1600035 (9/25/17)	Appendix A
San Bernardino Trial Court opinion denying fees appears at It is not reported or published. UDFS1406978 (10/4/16)	Appendix B

DENIAL OF DISCRETIONARY REVIEW

Fourth District Court of Appeal-Div.2 Denial of Review appears at It is not reported or published. E069254 (11/14/17)	Appendix C
California Supreme Court Denial of Review appears at It is not reported or published. S245524 (01/10/18)	Appendix D

JUDICIAL NOTICE OF STATISTICAL REPORTS

Petitioner respectfully requests Judicial Notice under Rule 201(b)(2) of:

Table C-13 *Pro Se* District Filings ending 9/30/13 [Rule 14 1.(i)(vi)]	Appendix E

JURISDICTION

The San Bernardino Superior Court's Appellate Division affirmed the trial court's post-judgment order denying prevailing parties' attorney fees on 9/25/17. The Fourth District Court of Appeal (Div. 2) denied discretionary review on 11/14/17. The California Supreme Court denied a discretionary petition to review on 1/10/18. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment to United States Constitution

No person shall … be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation…

Fourteenth Amendment to United States Constitution, Section 1

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States ... nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws…

California Constitution Article 1, Section 7

Due process; Equal protection; Privileges and immunities

(a) A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws…

California Civil Code §798.55

(a) The Legislature finds and declares that, because of the high cost of moving mobilehomes, the potential for damage resulting therefrom, the requirements relating to the installation of mobilehomes, and the cost of landscaping or lot preparation, it is necessary that the owners of mobilehomes occupied within mobilehome parks be provided with the unique protection from actual or constructive eviction afforded by the provisions of this chapter.

(b) (1) The management may not terminate or refuse to renew a tenancy, except for a reason specified in this article and upon the giving of written notice to the homeowner, in the manner prescribed by Section 1162 of the Code of Civil Procedure, to sell or remove, at the homeowner's election, the mobilehome from the park within a period of not less than 60 days, which period shall be specified in the notice…

California Civil Code §798.85

In any action arising out of the provisions of this chapter the prevailing party shall be entitled to reasonable attorney's fees and costs. A party shall be deemed a prevailing party for the purposes of this section if the judgment is rendered in his or her favor or where the litigation is dismissed in his or her favor prior to or during the trial, unless the parties otherwise agree in the settlement or compromise.

California Code of Civil Procedure §1021.5

Upon motion, a court may award attorney's fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any…

California Code of Civil Procedure §1164
No person other than the tenant of the premises and subtenant, if there be one, in the actual occupation of the premises when the complaint is filed, need be made parties defendant in the proceeding…

California Civil Code §1717
(a) In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs…Reasonable attorney's fees shall be fixed by the court, and shall be an element of the costs of suit…Attorney's fees provided for by this section shall not be subject to waiver by the parties to any contract which is entered into after the effective date of this section. Any provision in any such contract which provides for a waiver of attorney's fees is void.
Except as provided in paragraph (2), the party prevailing on the contract shall be the party who recovered a greater relief in the action on the contract…

California Civil Code §1032
(a) As used in this section, unless the context clearly requires otherwise:
(1) "Complaint" includes a cross-complaint.
(2) "Defendant" includes a cross-defendant or a person against whom a complaint is filed.
(3) "Plaintiff" includes a cross-complainant or a party who files a complaint in intervention.
(4) "Prevailing party" includes the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant. When any party recovers other than monetary relief and in situations other than as specified, the "prevailing party" shall be as determined by the court, and under those circumstances, the court, in its discretion, may allow costs or not and, if allowed may apportion costs between the parties on the same or adverse sides pursuant to rules adopted under Section 1034.

(b) Except as otherwise expressly provided by statute, a prevailing party is entitled as a matter of right to recover costs in any action or proceeding.

(c) Nothing in this section shall prohibit parties from stipulating to alternative procedures for awarding costs in the litigation pursuant to rules adopted under Section 1034…

Code of Civil Procedure §1858
In the construction of a statute or instrument, the office of the Judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all.

STATEMENT OF THE CASE

A. Legal Background and National Public Policy Issues

In *Yee v. Escondido* this court protected mobilehome owners from predatory landlords by finding rent control ordinances constitutional. 503 U.S. 519 (1992). *Hart/King* (HK) markets itself as "the premier law firm" representing over 300 park owners in US Western Region for 30 years. https://www.hartkinglaw.com/. HK's Robert Coldren lost a second *takings* challenge 18 years later as this court denied certiorari in *Guggenheim v. City of Goleta* 638 F.3d 1111 (9th Cir. 2010).

HK circumvented it by revising his clients' park rules to constructively evict owners by rejecting purchasers or subtenants to compel them to abandon homes. Heartless tactics enabled park owners to filch homes to lease out to non-owners. [1] Many elderly, disabled owners lost homes as *pro bono* attorneys were unavailable. Legal Services Corporation (LSC) was created by Congress in 1974 with a mission to expand access to civil justice systems for low-income Americans. [2] A 2009 LSC court report found increased numbers of unrepresented litigants. (see footnote 2)

Over 29% of civil filings (ending 9/30/16) were *Pro Se*. (App. E). [3] Nearly 4,800 CA mobile home lots closed from 1995-2014 according to HCD. [4] In 2017 86% of issues reported by low-income Americans received inadequate or no help as *pro bono* groups lack funds (see footnote[2]). This case chilled *pro bono* help by denying fees to a prevailing tenant. No public policy is served by judges who nurture illegal evictions.

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1 https://www.scribd.com/document/301534510/Kamala-Harris-Request-to-Investigate-HART-KING-3-1-16-Compressed

2 https://www.lsc.gov/media-center/publications/2017-justice-gap-report

3 http://www.uscourts.gov/statistics/table/c-13/judicial-business/2016/09/30

4 https://www.citylab.com/equity/2015/09/the-other-affordable-housing-crisis/406405/

Poor, elderly and disabled owners regularly lose homes where no rent control precludes price-gouging increases to force homeowners to abandon their homes. [5] On 10/31/17, a day after Sonoma County officials contained fires devouring 110,000 acres and 7000 homes, HK partner Robert Williamson sent elderly, poor residents of *Petuluma* Mobile Home Park a notice that monthly rents would increase 44.4%. [6] A *Sonoma* County District Attorney had to threaten prosecution of the crime of post-disaster price-gouging to force Robert Williamson to revoke a 44.4% increase.

Price-gouging to force abandonment to convert homes into *cash cow* rental units has attracted many predatory investors. Wall Street brokers caught the scent. [7] A former Goldman Sachs associate and a Harvard graduate started buying parks with pooled investor funds backed by Fannie Mae and Freddie Mac. (new "REITs"). In 2013, private-equity giant Carlyle Group "made a play." Billionaire Sam Zell openly declared, "We like the oligopoly nature of our business." [see footnote 7].

Billionaires Rolfe and Reynolds have become major park landlords nationwide. The pair runs *Mobile Home University*, which promises future park owner moguls generous returns on park investments, according to a newspaper Texas Observer, [8] calling them "architects of a ruthless business model" of buying mobilehome parks and then squeezing tenants with rent and utility hikes until they abandon homes. Rolfe said the difficulty in moving mobilehomes is why the business is so lucrative saying, "**We're like a Waffle House where everyone is chained to the booths**." Rolfe charges $2,000 for "get-rich-quick" seminars on how to buy mobilehome parks.

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[5] https://www.gsmol.org/news-around-the-state/californias-affordable-mobile-home-parks-vanishing/

[6] https://www.gsmol.org/news-around-the-state/petaluma-mobile-home-park-under-scrutiny/

[7] http://time.com/4710619/the-home-of-the-future/

[8] https://www.citylab.com/equity/2015/09/the-other-affordable-housing-crisis/406405/

After two failed attempts to eliminate rent control in 18 years, Robert Coldren expanded his enterprise from filching homes to filching entire mobilehome parks, converting them into bed & breakfast suites near beaches and convention centers. [9] Coldren created *Pacific Current Partners,* recruiting his son Spencer Engler-Coldren and Wall St. Banker Brad Hill to get Fannie Mae & Freddie Mac "acquisition loans"; if mortgagee defaults taxpayers pay investors through a Fannie/Freddie "bail out." [same toxic loans Wall St. peddled which caused the 2008 crash and financial crisis]

An example is *Palm Beach Park* in San Clemente, California *acquired* 12/30/15. [10] In 1997 126 former homeowners paid $15,000 each for 126 ground leases on the 15-acre oceanfront parcel with right of first refusal to match any land purchase offer. In 2007 126 owners exercised first refusal rights to buy the land for $24.75 million. HOA president and real estate broker Diana Mantelli (whose lawyer worked for HK's Robert Coldren) negotiated a private sale to Coldren's PCP investors for a giveaway price of $35 million [$2.33 million per acre of oceanfront land] <u>without</u> homeowners' consent, evicting them without compensation. Allegations include a conspiracy with Orange County Judge Robert J. Moss, who had been disqualified under CCP §170.6.

On 12/21/15 while on vacation Judge Moss called a clerk to enter a Minute Order to "reassign" him back on the case and continue a TRO petition to restrain the illegal sale to Coldren (scheduled to be heard in Judge Adler's court on 12/22/15) to <u>12/28/15</u>. 4 hours later on 12/22/15 escrow closed on the illegal sale to Coldren for $35 million. A conspiring appellate panel affirmed Judge Moss' illegal "reassignment" and sale. The case is on appeal with an anticipated petition to this court for Writ of Certiorari.

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[9] http://www.pcpequity.com/ ; http://palmbeachpark.com/#relaxed-beach-lifestyle

[10] http://www.pcpequity.com/press-releases (click on 1/29/16 Palm Beach Park "acquisition")

As a result hundreds of residents were rendered homeless and PCP converted the park into a cluster of bed and breakfast suites on the ocean in San Clemente. [11] Judge Moss then restrained San Clemente's issuance of new building permits until operating permits for homeless shelters were approved. [12] Many homeless citizens were former *Palm Beach Park* residents evicted upon the illegal sale to Coldren. [13]

Constructive eviction of poor, elderly and disabled mobilehome owners by price-gouging results in devastating homelessness. MPHOA documents this racketeering enterprise with eviction databases from parks owned by just one HK/Coldren client.[14] 464 evictions in 7 years (mostly by HK attorneys) is just the tip of the iceberg as HK markets itself as *the premier firm* representing 300+ mobilehome park owners. [15]

Because this court affirmed rent control twice ruthless attorneys for park owners in rent-controlled districts crafted clever devices to force owners to abandon homes. The only way poor, elderly and disabled homeowners can ever maintain affordable housing is to locate a *pro bono* attorney who is willing to fight the *David v. Goliath* battle against charlatans like HK & Coldren and their predatory park-owner clients.

Denying prevailing attorney fees under Civil §798.85 resulted in the *pro bono* attorney having to work for 3 years without compensation in a vexatious litigation, with 800 docket entries, 60 hearings, a 4-week jury trial & post-judgment appeals. The court basically seized David's stone--the only weapon he had against GOLIATH. No public policy is served when judges reward egregious abuse of *pro bono* attorneys.

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[11] http://palmbeachpark.com/#relaxed-beach-lifestyle

[12] https://www.ocregister.com/2017/02/17/judge-halts-san-clementes-power-to-issue-building-permits-over-homeless-shelter-law/

[13] Attorney representing evictees of the illegal park sale to Coldren intends to petition for certiorari

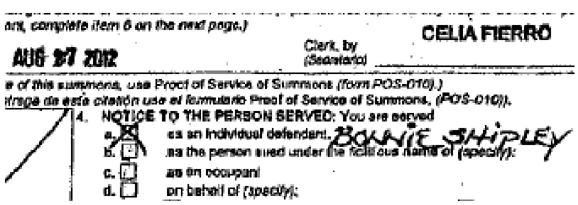
[14] https://mhphoa.com/ks/udl (click on 464 evictions in 7 years – mostly by Hart/King Law Firm)

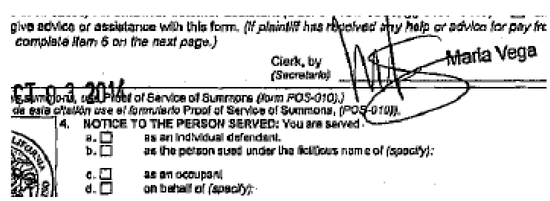
[15] https://www.hartkinglaw.com/ (helping park owners evict to convert homes to *cash cow* rentals)

B. Factual Background and Proceedings Below

Stubblefield previously tried to evict Ms. Shipley as a subtenant of her attorney. Plaintiff named only Shipley & served 1 summons reciting *her name* as defendant.*
This proves on 8/27/12 Stubblefield knew Shipley was not an "*unknown* occupant." Division reversed denial of Shipley's Motion for summary judgment by mandamus, ordering judgment for Shipley after finding plaintiff should have sued *his* tenant. Division had found Shipley was a *lawful* occupant (subtenant) in the mobilehome. Attorney fees as prevailing party were awarded under Civil §798.85. [see codes @ p.2]

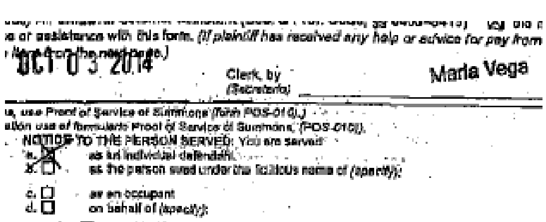
On 10/3/14 Stubblefield filed a *second* eviction action naming only *his* tenant. Caption recited DOES 1-10 and alleged DOES were subtenants. Ms. Shipley was identified as a subtenant in the body of his complaint although she was not named. Stubblefield submitted a summons without checking any boxes at the bottom to identify each defendant's capacity. ** (individual, corporation, partnership, etc.). Comparing a 8/7/12 summons to a 10/3/14 summons reveals a contrived scheme.***


complete item 6 on the next page.)
AUG 27 2012
Clerk, by (Secretario) CELIA FIERRO
of this summons, use Proof of Service of Summons (form POS-010).)
entrega de esta citatión use el formulario Proof of Service of Summons, (POS-010)).
4. NOTICE TO THE PERSON SERVED: You are served
a. [X] as an individual defendant. BONNIE SHIPLEY
b. [ ] as the person sued under the fictitious name of (specify):
c. [ ] as an occupant
d. [ ] on behalf of (specify):


give advice or assistance with this form. (If plaintiff has received any help or advice for pay fr complete item 6 on the next page.)
OCT 03 2014
Clerk, by (Secretario) Maria Vega
of this summons, use Proof of Service of Summons (form POS-010).)
de esta citatión use el formulario Proof of Service of Summons, (POS-010)).
4. NOTICE TO THE PERSON SERVED: You are served
a. [ ] as an individual defendant.
b. [ ] as the person sued under the fictitious name of (specify):
c. [ ] as an occupant
d. [ ] on behalf of (specify):

* The 8/27/12 summons naming Shipley   ** The 10/3/14 summons not naming anyone

*****Stubblefield served 2 eviction packs on Shipley w/different summons.**


or assistance with this form. (If plaintiff has received any help or advice for pay from item 6 on the next page.)
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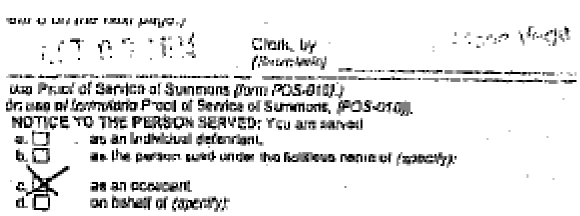
a. [X] as an individual defendant.
b. [ ] as the person sued under the fictitious name of (specify):
c. [ ] as an occupant
d. [ ] on behalf of (specify):


Clerk, by (Secretario)
use Proof of Service of Summons (form POS-010).)
use el formulario Proof of Service of Summons, (POS-010)).
NOTICE TO THE PERSON SERVED: You are served
a. [ ] as an individual defendant.
b. [ ] as the person sued under the fictitious name of (specify):
c. [X] as an occupant
d. [ ] on behalf of (specify):

*** Eviction Pack1:**"as individual defendant"**   *** Eviction Pack 2: **"as an occupant"**

The first 2 summons above show Stubblefield knew Shipley's name as of 8/7/12. On 10/3/14 he had a summons issued without any name; then hired a process server to deliver **two** summons & **two** eviction packs to Shipley on 10/3/14 ("as defendant" and "as an occupant"). They were identical except **Eviction Pack2** included a form, "*Prejudgment Claim of Right to Possession*"[PCRP] with only a Case Caption on top.

NOTICE: If you fail to file this claim, you will be evicted without further hearing.

— NOTICE TO OCCUPANTS —

YOU MUST ACT AT ONCE if all the following are true:

1. **You are NOT named in the accompanying Summons and Complaint.**
2. **You occupied the premises on or before the date the unlawful detainer (eviction) complaint was filed.** *(The date is the court filing date on the accompanying Summons and Complaint.)*
3. **You still occupy the premises.**

(Where to file this form) You can complete and SUBMIT THIS CLAIM FORM WITHIN 10 DAYS from the date of service (on the reverse of this form) at the court where the unlawful detainer (eviction) complaint was filed.

(What will happen if you do not file this form) If you do not complete and submit this form and pay a filing fee or file the form for proceeding in forma pauperis if you cannot pay the fee), YOU WILL BE EVICTED.

After this form is properly filed, you will be added as a defendant in the unlawful detainer (eviction) action and your right to occupy the premises will be decided by the court. *If you do not file this claim, you will be evicted without a hearing.*

Last line recited, "*If you do not file this claim you will be evicted without a hearing*." No competent attorney would ignore a process server's valid tenant eviction notice.

Shipley filed a PCRP within 10 days to avoid eviction. HK attorney filed **two** separate Proofs of Service and had a clerk enter default against *unknown* occupants. Civil §1164 requires landlords to name every subtenant and serve all occupants. Stubblefield and the trial court treated Shipley as a defendant at all times. He took her videotaped deposition; the court granted his requests for sanctions against her; Stubblefield served Shipley with a defendant's *Notice to Bring Documents to Trial*; Shipley was identified as a defendant to the jury and treated as a hostile witness. Judgment recited jurors found park Rules 2, 5 and 17 unreasonable & found Shipley was a prevailing defendant by unanimous jury verdict. It awarded costs. [App.B:3]

Despite prevailing party fees in Civil §798.85 are mandatory the trial court denied Shipley's fee motion on 10/4/16 by adopting Stubblefield's concocted theory that *Trope/Gorman'*s[16] *pro per* fee bar extended to Shipley by artificial proxy as she "shared the same interest" with codefendant attorney who owned the mobilehome. The court found Shipley was not entitled to fees under Civil §1021.5 because she "did not defend the wrongful eviction for the public good." The court found Shipley was not entitled to fees under Civil §1717 because Stubblefield was not "*in privity*" of contract with Shipley. All of these holdings were against years of *stare decisis* and flew in the face of legislative intent to encourage defense of illegal evictions. [17]

Shipley had one right to direct appeal to San Bernardino Appellate Division because Stubblefield prosecuted in *limited* jurisdiction. Shipley's motion to transfer to unlimited jurisdiction was denied; all discretionary writs on denial were denied. Division affirmed fee denial on 9/25/17. A petition for discretionary review in the Fourth District Court of Appeal, Division 2 was denied on 11/14/17. A petition for discretionary review in the California Supreme Court was denied on 1/8/18. Shipley complied with Rule 13 by filing a petition for certiorari within 90 days.

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[16] *Trope v. Katz* 11 Cal.4th 274 (1995); *Gorman v. Tassajara* 178 CA.4th 44 (2009) (pro per fees)

[17] **Civil Code §798.55**:

(a) The Legislature finds and declares that, because of the high cost of moving mobilehomes, the potential for damage resulting therefrom, the requirements relating to the installation of mobilehomes, and the cost of landscaping or lot preparation, it is necessary that the owners of mobilehomes occupied within mobilehome parks be provided with the **unique protection from actual or constructive eviction afforded by the provisions of this chapter**.

Civil Code §798.85:

In any action arising out of the provisions of this chapter the prevailing party shall be entitled to reasonable attorney's fees and costs. A party shall be deemed a prevailing party for the purposes of this section if the judgment is rendered in his or her favor or where the litigation is dismissed in his or her favor prior to or during the trial, unless the parties otherwise agree in the settlement or compromise.

REASONS FOR GRANTING THE PETITION

A. Federal and State Appellate Courts are sharply divided on the Question Presented.

Federal and State Courts of Appeal are sharply divided on *pro per* attorney fees. In *Kay v. Ehrler* this court denied *pro se* fees to an attorney litigant in a successful civil rights action brought under 42 U.S.C.A. §1988. 499 U.S. 432, 437-438 (1991). California Supreme Court denied *pro se* fees in *Trope v. Katz* 11 Cal.4th 274 (1995). Many federal courts follow *Kay*. Some states follow *Kay* & *Trope*; others do not. [18]

Alaska, Colorado, Massachusetts, and Washington awarded fees to *pro se* parties. Arizona, California, Idaho, Illinois, Louisiana, Nebraska, Nevada, Ohio, South Carolina, Utah and Wisconsin denied fees to *pro se* parties. [see footnote 18]

Over the years courts have struggled with the strict rules applied in *Kay* & *Trope*, especially where *pro se* parties defend frivolous actions or where opponents violated legislative schemes enacted to protect consumers in various protected classes; such as: the elderly, disabled, minors, or low-come tenants who were wrongfully evicted. Many federal courts distinguish *Kay*. Many state courts distinguish *Trope*.

There is no bright-line rule spanning jurisdictions. Courts do analyze the cases differently where equity requires and/or where an attorney client relationship exists. Even *Trope* and *Kay* recognized that a court could award attorney fees to a *pro per* litigant "under any of the traditional equitable exceptions to the American Rule, such as the private attorney general, substantial benefit, and common fund theories." 11 C.4th at 284; *Consumers Lobby v. PUC* 25 C.3d 891, 914 (1979) (non-attorney fees)

[18] PLUS, Professional Liability Underwriting Society May 2015, Vol. XXVIII No. 4 (Kendra Basner)

FEDERAL:

NINTH CIRCUIT:

In *Ellis v. Cassidy* fees were awarded to a *pro se* attorney who defended a frivolous civil rights claim. The court held fees furthered the underlying policies. 625 F.2d 227, 230-231 (9th Cir. 1980) Yet, in *Elwood v. Drescher* fees were denied to a *pro per* litigant defending a frivolous civil rights action under 42 USC §1983 because there was no attorney client relationship. 456 F3d. 943 (9th Cir. 2006)

In *Hannon v. Security Nat'l Bank* a TILA pro se fees were denied despite recognizing the underlying policies of the TILA act. 537 F.2d 327 (9th Cir. 1976)

In *Ford v. Long Beach Unif. Sch. Dist.* the court denied fees to the parent of a disabled child/plaintiff under IDEA. [20 USC §1415]. 461 F. 3d 1087 (9th Cir. 2006). Yet, in Van Duyn v. Baker Sch. Dist. 5J the court remanded to award fees to the attorney who was not a parent). 481 F.3d 770 (9thCir-2007) In *Weissburg v. Lancaster Sch. Dist.* Panel held fees may be awarded to a student represented by an attorney relative who is *not* a parent; i.e. a grandparent. 591 F.3d. 1255, 1260 (9th Cir. 2010).

In *Rickley v. County of LA* the court held a successful civil rights plaintiff under 42 USC §1983 could recover fees for legal services provided by her attorney spouse. 654 F.3d. 950, 957 (9th Cir. 2011). The Panel remanded the case for the district court to determine if attorney *Roit* had an **attorney client relationship** with *Rickley*.

> The district court suggested that fees might be denied for another reason—because *Rickley* and *Roit* may have acted strategically "in naming *Rickley* as the plaintiff and *Roit* as the attorney."
>
> We do not agree with the County's assessment. Even assuming that *Rickley* and *Roit* acted "strategically" in the manner suggested by the district court, there would have been nothing improper in doing so. *Rickley*, 654 F.3d 957

FIRST CIRCUIT

In *Fontanillas-Lopez v. Morell Bauzá Cartagena* the Panel upheld a fee award to an in-house attorney, citing this court's dicta at fn 7 in *Kay* and finding fees were recoverable as there was an **attorney client relationship**. 832 F.3d 50 (1stCir.2016)

FOURTH CIRCUIT

In *Bond v. Blum* the court awarded fees to a member of a law firm finding there was an **attorney client relationship** between the lawyer and employer law firm. It applied this court's *dicta* at footnote 7 in *Kay*. 317 F.3d 385, 400 (4th Cir.2003)

FIFTH CIRCUIT:

The court in *Gold, Weems, Bruser, Sues & Rundell v. Metal Sales Mfg. Corp*., distinguished Louisiana's *pro per* prohibition, holding a law firm who hires its own attorney to bring a fee claim against a former client was entitled to fees to prosecute the action because the law firm client was an organization with a separate status. There was an **attorney client relationship** 236 F.3d 214, 218-219 (5th Cir. 2000)

EIGHTH CIRCUIT

In *Trustees of Drury Industries v. Goding* a panel upheld fees to in-house counsel, citing footnote 7 in *Kay* ["organization is not comparable to a pro se litigant because the organization is always represented by counsel, whether in-house or *pro bono*, and thus, there is always an **attorney-client relationship**." [*Kay*, 111 S.Ct. 1435, fn 7.] 692 F.3d 888 (2012). Panel joined 3 sister circuits to award fees to in-house counsel :

> We join the Fourth, Fifth, and D.C. Circuits to hold that, where an attorney represents his or her own firm, *Kay* does not forbid the award of attorneys' fees. We agree that there is no meaningful distinction between a law firm and any other organization on the issue of whether there exists an **attorney-client relationship** between the organization and its attorney.

DISTRICT OF COLUMBIA CIRCUIT:

In *Bode & Grenier, LLP v. Knight* the court held the central question concerning the fee-shifting provision in the parties' retention agreement was not what Congress intended, but what the parties intended, and no language in the parties' contract suggested the parties intended to preclude fees incurred by the self-represented firm. Fees were awarded. 31 F.Supp.3d 111 (2014)

In *Cuneo v. Rumsfeld* the court upheld a *pro se* fee award. 553 F.2d 1360, 1366 (D.C. Cir. 1977)

In *Baker & Hostetler v. US Dept. of Commerce* fees were awarded to in-house counsel for plaintiff. The court held that Footnote 7 in *Kay* suggested that an in-house counsel for a corporation is sufficiently independent to ensure effective prosecution of claims, thus justifying fees. The court reasoned that an attorney who works for a law firm certainly is no less independent than an attorney who works for a corporation. Therefore, it would make little sense to slice and dice *Kay*'s conclusion regarding organizations and apply footnote 7 to some organizations but not others. It found no distinction between a law firm organization and any other organization on the issue of whether an **attorney client relationship** exists---which was the determining factor in awarding fees. 473 F.3d 312, 325 (C.A.D.C.2006)

ALASKA DISTRICT COURT:

In *Cook v. Watt* the court held awarding *pro se* fees furthered the underlying policies of FOIA. 5 U.S.C. §552 (1982) 597 F. Supp.552, 554 (D. Alaska 1984) Many federal courts deny *pro se* fees. *Kaisha v. Dodson* US Lex.65355 (ND Cal-2010) https://www.leagle.com/decision/19901867900f2d96711710 (click on citing cases)

CALIFORNIA

CALIFORNIA SUPREME COURT:

In *Trope v. Katz* the High Court held an attorney representing himself is not entitled to attorney fees because he does not owe fees to himself and paying for his time would discriminate against non-attorneys who spend their time but cannot apply for attorney fees. 11 Cal.4th 274 (1995). *Trope* expressly recognized that a court could award attorney fees to a *pro per* attorney litigant "under any of the traditional equitable exceptions to the American rule, such as the private attorney general, substantial benefit, and common fund theories." 11 Cal.4th at 284. *Trope* was litigated on the reciprocal provision in Civil Code §1717, and was not for the public good, so equitable considerations were not relevant in the analysis.

In *Gorman v. Tassajara* denial of fees was upheld on appeal. The Panel found *Gorman*'s wife could not collect fees because she was represented by her spouse and their community property interests were intertwined. 178 CA.4th 44 (2009). *Gorman* litigated under the reciprocal provision in Civil §1717, and the litigation was for public good, so equitable considerations were not relevant to the analysis.

Yet, in *Rickley v. Goodfriend* the Panel found that fees should be awarded if an attorney client relationship exists. 207 C.A.4th 1528, 1538 (2012). The Panel held:

> As in *Lolley, Musaelian*, and *Healdsburg,* we find that the dispositive factor in awarding fees is not whether Rickley and Roit were liable for or obligated to pay fees, but whether there was an **attorney-client relationship** between *Roit* as an attorney and *Roit* and her spouse *Rickley* as homeowners. In this case, the trial court did not consider the existence of this relationship.

The Panel remanded the case to the trial to consider whether there was an **attorney client relationship** between plaintiff *Rickley* & spouse/attorney *Roit*.

In *PLCM Group v. Drexler* the California Supreme Court <u>awarded attorney fees</u> to in-house counsel, finding that just like private counsel, they do not represent their own personal interests and are not seeking remuneration simply for lost opportunity costs that could not be recouped by a non-lawyer. A corporation represented by in-house counsel is in an <u>**agency relationship**</u>, meaning it hired an attorney to provide professional legal services. The court held payment of a salary to an in-house attorney is just like hiring a private firm on a retainer. 22 Cal.4th 1084 (2000).

<u>CALIFORNIA, FOURTH DISTRICT, DIVISION 1</u>

In *Ramona Unif. School Dist. v. Tsiknas* 135 CA 4th 510 (2005) the court revisited *Trope* holding that where <u>**attorney/client relationship**</u> exists fees are recoverable:

> "In [*Trope v. Katz*], we considered [the limited question of] whether an attorney who chooses to litigate *in propria persona* rather than retain an attorney to represent him [or her] in an action to enforce a contract containing an attorney fee provision can recover attorney fees under Civ §1717." (*PLCM Group, Inc. v. Drexler* 22 Cal.4th 1084, 1092 (2000)
>
> PLCM pointed out "that, by definition, **the term `attorney fees' implies the existence of an attorney-client relationship**, i.e., a party receiving professional services from a lawyer." (Ibid., citing *Trope v. Katz*, supra, 11 Cal.4th at p. 280, **Where an attorney-client relationship exists, the courts uniformly allow for the recovery of attorney fees under Civil Code §1717** (PLCM, 22 C.4th at p.1093 {…cites…}
>
> Cases that have allowed the recovery of attorney fees under the anti-SLAPP statute are similarly marked by the existence of an <u>**attorney-client relationship**</u>. (*Ketchum v.Moses* (2001)24 C.4th1122,1132) *Id*

Ramona Panel held were <u>**attorney client relationship**</u> exists fees are recoverable. *Ramona* Panel held when a *pro se* attorney litigates and represents other co-parties for the public good equitable considerations must be addressed.

CALIFORNIA, THIRD DISTRICT:

In *Ellis Law Group, LLP v. Nevada City Sugar Loaf Properties, LLC* the court denied fees holding a "contract attorney," who "was paid in a manner different than a regular 'employee' of [the firm] may render him an independent contractor for taxation purposes, but does not make him separate counsel for [the firm] for purposes of attorney fees under the anti-SLAPP statute." 230 Cal.App.4th 244 (2014)

Yet, in *Families Unafraid To Uphold Rural El Dorado County v. Board of Supervisors* the court held *pro se* attorney Barrow was entitled to fees because he represented other plaintiffs in the case for the public good. 79 CA.4th 505, 522 (2000)

In *Healdsburg Citizens v. City of Healdsburg* 206 CA4th 988,997 (2012) the Panel upheld a fee award to a *pro per* attorney who represented herself and co-petitioners. The court distinguished *Trope* and *Gorman* because they were litigated under the reciprocal provision in Civil §1717. No equitable considerations were relevant. *Healdsburg* was litigated for the public good; equitable considerations were relevant. An **attorney/client relationship** was the determining factor in upholding the award:

> The court concluded that because an **attorney-client relationship** existed between Hamilton and the other defendants, ". . . *Trope* does not preclude the award of attorney fees merely because Hamilton was a codefendant with the non-attorney clients to whom she provided legal assistance." (Ramona, supra, 135 Cal.App.4th at p. 525.)
>
> It thus appears that in *Ramona* the attorney's work inured to the benefit of the attorney and also, independently, to her codefendants with whom she had an **attorney-client relationship**.
>
> The trial court could reasonably conclude each had an **attorney-client relationship** with HCSS and Bisset. Moreover, it appears that HCSS has over 100 members, and there is no cause for concern that *Grattan* is self-dealing. Rather, **she was seeking to vindicate an important public interest in ensuring compliance with CEQA, and at the same time taking the risk that she would not be compensated**….

OTHER STATES

<u>CONNECTICUT</u>:

In *Jones v. Ippoliti* the law firm sought in-house counsel fees for its time spent assisting trial counsel. The firm claimed attorneys & paralegals spent time drafting pleadings, briefs, researching and other tasks, taking time away from other work. It urged the court to adopt the trend in other jurisdictions granting fees to outside and in-house counsel who participate in the prosecution of claims. The Panel <u>denied fees</u>, holding employees were not in-house counsel and did not act as attorneys and if they appeared is would have been *in pro per*. 52 Conn. App. 199, 727 A.2d 713 (1999)

<u>ARIZONA</u>:

In *Munger Chadwick, P.L.C. v. Farwest Dev. & Const. of Southwest, LLC* a law firm tried to avoid prohibition by asserting firm members who represented the firm in a fee action against a former client worked on the case in their spare time in addition to obligations on assigned cases, thus acted as "outside counsel." The court disagreed, holding that "a *pro se* attorney who works in her spare time on a case representing herself, separate and apart from her obligations to other clients, is nonetheless <u>not entitled to an award of attorney fees</u>." 235 Ariz. 125 (Ariz. Ct. App. 2014)

CONCLUSION ON COURTS BEING SHARPLY DIVIDED:

Federal and State Courts of Appeal are sharply divided on whether fees should be awarded to *pro se* attorneys. However, courts always award fees when there is a pre-existing **<u>attorney/client relationship</u>** between the *pro se* attorney and the represented party, whether the party is co-plaintiff, co-petitioner, or codefendant. When a *pro se* attorney is working for the public good equity must be considered.

B. Question Presented is Important to the Public Good

In 2017, 86% of the civil legal problems reported by low-income Americans in the past year received inadequate or no legal help. [19] Low-income Americans will approach LSC-funded legal aid organizations for support with an estimated 1.7 million problems. In the past year, 71% of low-income households experienced at least one civil legal problem, including problems with domestic violence, veterans' benefits, disability access, **housing conditions**, and health care. [fn [19]] They will receive only limited or no legal help for more than half of these problems because of a lack of resources. [fn [19]]

Over 60 million Americans have family incomes at or below 125% of FPL, including: 6.4 million seniors,11.1 million disabled,1.7 million veterans;10 million rural residents. **California has 7.7 million people with family incomes below 125% of FPL.**

The 133 LSC-funded legal aid organizations across the United States, Puerto Rico, and territories will serve an estimated 1 million low-income Americans in 2017, but will be able to fully address the civil legal needs of only about half of them. 88% of low-income adults don't have a college degree; 62% have no more than a high school degree.

In 2017, low-income Americans will receive limited or no legal help for an estimated 1.1 million eligible problems after seeking help from LSC-funded legal aid organizations. **A lack of available pro bono attorneys accounts for the vast majority (85%-97%) of civil legal problems that LSC-funded organizations do not fully address**.

After seeking legal assistance from LSC grantees, low-income Americans will not receive any legal assistance for an estimated 700,000 eligible problems in 2017.

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[19] https://www.lsc.gov/media-center/publications/2017-justice-gap-report (executive summary, p. 6)

The phrase "with liberty and justice for all" in the Pledge of Allegiance stands for the idea that everyone should have access to justice, not just those who can afford a lawyer. State courts across the entire country are overwhelmed with unrepresented litigants.

In 2015 an estimated 1.8 million people appeared in the New York State courts without a lawyer. [2] **98% of tenants in eviction cases were unrepresented in these courts in 2013**.[3] Comparable numbers are found in courts across the U.S. More than half of the problems receiving legal case services from LSC-funded legal aid programs involve family and **<u>housing issues</u>**. Low-income seniors received inadequate or no professional legal help for 87% of their civil legal problems in 2017. Low-income veterans and other military personnel received inadequate or no professional legal help for 88% of civil legal problems in 2017. Low-income persons with a disability received inadequate or no professional legal help for 87% of civil legal problems in 2017. [fn 19]

SUPREME COURT MUST ENSURE JUSTICE FOR ALL

The justice gap documented above is unacceptable in our country. As John Adams declared over 200 years ago, if we are to have a "government of laws and not men," we need our courts and judges to forever ensure that our legal rights are protected. Without our courts, there is no justice, there is no freedom. *Id* When those who come to the safe haven of the courthouse arrive to participate in the glory and majesty of our cherished justice system, they should leave knowing that our courts & our judges were there for them, administering justice fairly and impartially whether rich or poor. Legislators enacted schemes to ensure the poor a fair chance at justice by providing fee awards to *pro bono* attorneys who represent poor litigants to achieve justice for all. This court must ensure judges cannot thwart <u>justice for all</u> by denying *pro bono* fees.

One of California's schemes to ensure justice is the Mobile Home Residency Law enacted in 1978 to protect mobilehome tenants from predatory park-owner landlords. Civil §798 et seq.   Civil §798.55 precludes arbitrary evictions without just cause:

> (a) The Legislature finds and declares that, because of the high cost of moving mobilehomes, the potential for damage resulting therefrom, the requirements relating to the installation of mobilehomes, and the cost of landscaping or lot preparation, it is necessary that the owners of mobilehomes occupied within mobilehome parks be provided with the unique protection from actual or constructive eviction afforded by the provisions of this chapter.
>
> (b)(1) The management may not terminate or refuse to renew a tenancy, except for a reason specified in this article and upon the giving of written notice to the homeowner, in the manner prescribed by Section 1162 of the Code of Civil Procedure , to sell or remove, at the homeowner's election, the mobilehome from the park within a period of not less than 60 days, which period shall be specified in the notice.

To ensure justice for all legislators enacted a fee-shifting provision to encourage *pro bono* attorneys to protect elderly, disabled & poor residents in mobilehome parks:

> In any action arising out of the provisions of this chapter the **prevailing party shall be entitled to reasonable attorney's fees and costs.** A party shall be deemed a prevailing party for the purposes of this section if the judgment is rendered in his or her favor or where the litigation is dismissed in his or her favor prior to or during the trial, unless the parties otherwise agree in the settlement or compromise.

In 1956 mobile home manufacturers started marketing mobile homes for permanent installation on concrete foundations as a form of affordable housing. [20] For many they became a way to realize "the American dream of home ownership." Since the 1950's mobile homes provided affordable housing for thousands in the U.S. Mobile homes in the U.S. increased from 300,000 in 1950 to 8.8 million by 2000. [21]

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20 https://en.wikipedia.org/wiki/Mobile_home

21 http://www.epodunk.com/top10/mobile_homes/index.html

There are 8.5 million homes & 20 million people living in mobile homes in U.S. [22] 57% of household heads are employed; 23% are retired; household income in mobile homes is half the national average. If they are evicted many will become homeless.

Rent control is the only way cities and towns can maintain affordable housing. Without rent control predatory park owners will engage in price-gouging to force owners to abandon homes---to convert them into market-rate cash-cow rental units. In California 1 of every 20 homes is mobile. [Florida 1 in 10; So Carolina 1 in 5]. [23] 2016 census [updated 9/17] shows 5,447,389 [5% US population] live in mobilehomes [24]

4,792 CA mobile home lots have vanished from the map according to CA's DCH. [25] Senior citizen mobile home parks fight for survival against predatory developers. [26] As mobile homes and entire parks disappear by the hundreds, thousands of elderly, poor and disabled residents are rendered homeless---unable to afford any housing.

California (22%), New York (16%), Florida (6%), Texas (4%), and Washington (4%) account for more than half of the homeless population in the United States in 2016. [27] Our National Affordable Housing Crisis and Homelessness Crisis were caused in part by predatory park-owners' price-gouging to force owners to abandon their mobilehomes.

It cannot be denied that the issue presented here is of national importance because the only way owners can avoid price-gouging and eviction is to engage *pro bono* help. This court must ensure they will be compensated after working for the public good.

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[22] http://www.bbc.com/news/magazine-24135022

[23] http://www.statemaster.com/graph/houperofhouunithaaremobhom-housing-percent-units-mobile-homes

[24] http://www.nmhc.org/Content.aspx?id=4708 [Nat'l Multi-family Housing Council website]

[25] https://www.gsmol.org/news-around-the-state/californias-affordable-mobile-home-parks-vanishing/

[26] https://www.gsmol.org/news-around-the-state/senior-citizen-mobile-home-parks-across-oc-fight-for-their-survival-against-developers/

[27] http://nationalhomeless.org/about-homelessness/

C. Decision Below is Incorrect and Harmful to the Public Good

The court deprived Shipley of due process & equal protection guaranteed by the 5th & 14th Amendments to the U.S. Constitution, and Article 1, §7(a) of the California Constitution, by denying her prevailing party attorney fees on a whim. Shipley raised these constitutional arguments in a Petition for Review to the Supreme Court. [App.D] and in the 4th Appellate District, Division 2 [App.C]

1. Shipley is Entitled to Prevailing Party Fees Under Civil §798.85

The trial court expressly found "*Here, Defendants are the prevailing party as they are the beneficiaries of a unanimous jury verdict in their favor*." [App.B:3] *Stare decisis*, unambiguous language in Civil §798.85, and legislative intent recited in Civil §798.55 [protect against illegal evictions] required a fee award; while there is discretion to set a fee *amount*—there is no discretion to deny fees. [28]

> "When the Legislature intends that the successful side shall recover its attorney's fees no matter who brought the legal proceeding, it typically uses the term `prevailing party… once a trial court determines that a defendant qualifies, the language of section 55 mandates a fee award: a prevailing party "shall be entitled" to reasonable fees." *Jankey* @ 1046

In *Molski v. Arciero Wine Group* the Panel found a fee award was mandatory, "The statute is unambiguous and *Molski* cites no authority interpreting section 55 to disproportionately benefit plaintiffs." 164 Cal.App.4th 786, 790 (2008). Here, the court cited no authority interpreting Civil §798.85 to disproportionately benefit plaintiff landlords, especially where they prosecuted ~~two~~ illegal evictions. It flew in the face of legislative intent to protect *defendants* from illegal evictions.

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[28] *Jankey v. Lee*, 55 Cal.4th1038, 1046 (2012); *Almanor Lakeside Villas Homeowners Assn. v. Carson* 246 Cal.App.4th 761,776-777(2016);*Graciano v. Robinson Ford Sales* 144 Cal.App.4th 140,153(2006); *Flannery v. California Highway Patrol*, 61 CA.4th 629, 647 (1998) (no discretion to deny fees)

Both courts failed to distinguish two controlling MRL eviction cases Shipley cited:

1. *Palmer v. Agee* 87 Cal.App.3d 377, 387 (1978) (denial of fees reversed)

> An "action" thus includes all proceedings, at least to the time of judgment, which are required to perfect the rights. The defenses raised in the answer to the complaint are a real part of any action.
>
> In this action the tenants raised as a defense the fact the landlord had not complied with section 789.5 and they prevailed in that contention. The defense in this action did arise from §789.5 and the tenants should have the attorneys' fees provided in §789.12.

2. *Del Cerro v. Proffer* 87 CA.4th 943, 948-949 (2001) (fee award affirmed)

> … Proffer was entitled to recover attorney fees under §798.85, a statute providing that the prevailing party in an action under the Mobilehome Residency Law is entitled to reasonable attorney fees and that a party is deemed the prevailing party for the purposes of that statute "where the litigation is dismissed in his or her favor prior to or during the trial, unless the parties otherwise agree in the settlement or compromise."

There is no published case where a prevailing resident (homeowner or not) was denied attorney fees, which is why Stubblefield did not argue Civil §798.85 in opposition or on appeal. Division failed to distinguish these two controlling eviction cases litigated under MRL as they were unable to "write around them." The court was not authorized to arbitrarily carve out a new exception on a whim. Unambiguous language in CCP §1032(a)(4)and(b) makes a fee award mandatory.

> (b) Except as otherwise expressly provided by statute, a prevailing party is entitled as a matter of right to recover costs in any action or proceeding.

In 1872 when legislators codified common law into books CCP §1858 was enacted:

> In the construction of a statute or instrument, <u>the office of the Judge is</u> is simply to ascertain and declare what is in terms or in substance contained therein, <u>not to insert what has been omitted</u>, <u>or to omit what has been inserted</u>; and where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all. CCP §1858 enacted 1872

Our forefathers expected judges to be unbiased and apply the law equally to all, despite personal bias against a party. Art.1, §7 of California' Constitution recites:

> §7. Due process; Equal protection; Privileges and immunities
> (b) A person may not be deprived of life, liberty, <u>or property</u> without due process of law or denied equal protection of the laws.

CA's Art. 1, §7 was drafted from the 5th and 14th Amendments to US Constitution:

> No person shall … be deprived of life, liberty, <u>or property</u>, without due process of law 5th Amendment
>
> <u>nor deny</u> to any person within its jurisdiction the <u>equal protection of the laws</u>. 14th Amendment

The trial court denied fees under Civil §798.85 by adopting a concocted theory that because Shipley was not a named defendant, "voluntarily interjected herself," and shared the same interests with her counsel, fees should be denied. [AppB:24] The court extended *Trope/Gorman*'s *pro se* fee bar to the client. This was wrong.

First, *Trope & Gorman* were decided on reciprocity of contract in Civil §1717. *Trope/Gorman* do not apply to mandatory fee-shifting cases. *Grossman v. Victor Elem. School*, 238 CA.4th 1010, 1014 (2015). *Grossman* held to deny fees based on how a caption is labeled is to "elevate form over substance." Panel said, "[w]e care about the nature of the transaction, not the label attached" citing *Microsoft Corp. v. Franchise Tax Board* 39 Cal.4th 750, 761 (2006).

Secondly, *Trope* & *Gorman* are inapposite as there was <u>**no attorney/client relationship**</u> in either case. Shipley had an attorney client relationship with her *pro bono* counsel who represented her in Stubblefield's first illegal eviction in 2012. Because she defeated the first eviction Shipley knew she would defeat a second one.

As shown above under “Federal & State Courts are Sharply Divided” (pp.11-18) attorney fees are always awarded when there is an **attorney/client relationship** between the *pro se* attorney and her co-plaintiff, co-petitioner, or co-defendant. In *Ramona Unif. Sch. Dist. v. Tsiknas*, 135 CA. 4th 510 (2005) the Panel followed PLCM in holding fees are recoverable if an **attorney-client relationship** exists.

> "In [*Trope v. Katz*], we considered [the limited question of] whether an attorney who chooses to litigate *in propria persona* rather than retain an attorney to represent him [or her] in an action to enforce a contract containing an attorney fee provision can recover attorney fees under Civil §1717." (*PLCM Group, Inc. v. Drexler* 22 Cal.4th 1084, 1092 (2000))
>
> PLCM pointed out "that, by definition, the term `attorney fees' implies the existence of an attorney-client relationship, i.e., a party receiving professional services from a lawyer." (Ibid., citing *Trope v. Katz*, supra, 11 Cal.4th at p. 280. **Where an attorney-client relationship exists, the courts uniformly allow for the recovery of attorney fees...** [29]

Third, there is no reported case where a prevailing tenant’s fees were denied, which is why Stubblefield never discussed Civil §798.85 in opposition or on appeal. This is why the trial court avoided discussing Shipley’s cites to *Palmer* & *Del Cerro*. Instead, the trial court recited *Trope/Gorman* and two other cases where fees were denied to *pro pers* (from 1874 & 1929---decades before MRL was enacted in 1978). Court avoided discussing fee award cases involving attorney client relationships.

Division devoted 2 paragraphs to §798.85. [App.A:10] The first quoted §798.85. Second recited, “the proceeding was not an action against Shipley, whether under MRL or otherwise, since Shipley “unilaterally interjected herself into the lawsuit.” Neither court cited a case denying fees to a subtenant served with eviction papers.

[29] *Rickley v. LA*, 654 F.3d. 950, 957 (9th Cir.2011); *Rickley v. Goofriend* 207 CA.4th 1528,1538 (2012); *Future v. Board of Supr* 79 CA.4th 505,522 (2000); *PLCM Group v. Drexler* 22 C.4th 1084,1092 (2000); *Healdsburg Citizens v. Healdsburg* 206 CA.4th 988,997 (2012); *Ketchum v. Moses* 24 C.4th 1122, 1132-1134 (2001); *Ramona Unif. Sch. Dist. v. Tsiknas* 135 CA 4th 510 (2005) [attorney client relationship]

Neither court cited any case denying mandatory fees to a prevailing tenant who was duly served & filed a *Prejudgment Claim of Right to Possession* to avoid eviction. Judicial Council created the PCRP form after the CA Supreme Court urged them to create one in *Arrieta v. Mahon,* which held every occupant has the right to a hearing before a judicial officer in every eviction proceeding in California. 31 C.3d 381 (1982) Trial court & Division denied fees to punish Shipley for filing PCRP to avoid eviction.

Division's finding that this case "did not arise under MRL" is clearly wrong. Civil §798.55, governing termination of tenancies, clarifies that all park residents (not just homeowners) are subject to MRL and rules incorporated into park leases:

> … (e) The resident of a mobilehome that remains in the mobilehome park after service of the notice to sell or remove the mobilehome shall continue to be subject to this chapter and the rules and regulations of the park, including rules regarding maintenance of the space. §798.55(e)

Shipley, as a resident who remained in the park after service of a 60-day Notice to remove the mobilehome, was subject to *this Chapter*; i.e. Chapter 2 of Civil Code. Stubblefield sent a process server to serve <u>two</u> eviction packs to Shipley. Eviction Pack 2 notified Shipley if she didn't file PCRP form in 10 days she would be evicted. Stubblefield had already spent 2 years trying to evict Shipley from the mobilehome. No reasonable attorney would ignore the service & risk eviction without a hearing.

Stubblefield never moved the court to strike Shipley as "unnecessary defendant." Stubblefield took her videotaped deposition, propounded discovery & served Notice to Appear at Trial and bring documents. Shipley was cross-examined at trial and identified as a hostile witness. The court awarded "party sanctions" against Shipley. The court denied Shipley equal protection by denying fees with <u>no</u> discretion to do so.

2. Non-Signatory Shipley is Entitled to Reciprocal Contract Fees - Civil §1717

Division recited Civil §1717 verbatim; i.e. "…a prevailing party is entitled to fees "whether he or she is the party specified in the contract or not" and "shall be entitled to reasonable attorney's fees in addition to other costs." [App.A:8-10] Division cited *Reynolds Metals v. Alperson* 25 C.3d 124, 128 (1979), admitting fees are recoverable even where one successfully argues a contract does not apply, citing *Santisas v. Goodin* 17 C.4th 599, 611 (1998). Division failed to discuss *Tract 19051 Homeowners Association v. Kemp,* 60 Cal.4th 1135, 1142 (2015) which held the following:

> …[s]ection 1717 was enacted to establish mutuality of remedy where [a] contractual provision makes recovery of attorney's fees available for only one party ..., **and to prevent oppressive use of one-sided attorney's fees provisions.**... The statute would fall short of this goal of full mutuality of remedy if its benefits were denied to parties who defeat contract claims by proving that they were not parties to the alleged contract or that it was never formed.

see also *Brown Bark III, L.P. v. Haver* 219 CA.4th 809, 819-820 (2013); *Eden Twp. Healthcare Dist. v. Eden Med. Ctr* 220 CA.4th 418, 426 (2013)

Lacking any authority to justify affirming denial, Division harkened back to the trial court's concocted theory that because Shipley interjected herself by filing a PCRP it precluded fees under *any* theory. [Civil §798.85, Civil 1717 or CCP §1021.5].

As an alternate basis to uphold denial Division harkened back to the trial court's theory that *Trope/Gorman's pro per* bar extended to Shipley & the *Unity of Interest* doctrine barred fees to codefendants. In 1986 legislators abolished that fee bar by expressly **<u>deleting</u>** the words "unity of interest" from the 1986 revised CCP §1032. Secondly, legislators intended to abolish the "unity of interest" fee bar to prevailing codefendants in 1986 by deleting it. *Charton v. Harkey* 247 CA.4th 730, 734 (2016).

Division held reciprocity under Civil §1717 didn't apply as Stubblefield didn't have a contract with Shipley, refusing to follow mandatory authority in *Tract 19051*. In *Tract 19051* the CA Supreme Court reaffirmed its prior holding in *Hsu v. Abbara,* 9 Cal. 4th. 863, 870 (1995) by holding even where a codefendant is not named in the contract a codefendant is still entitled to reciprocal attorney fees under Civil §1717:

> Plaintiffs' underlying lawsuit was an action to enforce the governing documents of a common interest development, and defendants were the prevailing party in the action. Second, because plaintiffs clearly would have been entitled to an award under the statute had they prevailed in the action, **denying defendants an award under the statute when they were the prevailing party would unquestionably violate the reciprocal nature of the statute and thus defeat the evident legislative intent underlying the statute**. *Tract 19051* @ 1139

Yet, this is exactly what the trial court did, which was affirmed by the Division. In essence, the trial court transmuted a bilateral prevailing party fee statute into a unilateral prevailing party fee statute to benefit <u>only</u> landlords evicting tenants.

3. Shipley is Entitled to CCP §1021.5 Fees under the Mandatory *Whitley* Test

The trial court whimsically concluded Shipley did not defend the illegal eviction "for the public good" but rather for the personal interest of the defending residents. The whimsical, subjective opinion of a biased judge is not the proper test under CCP §1021.5 to award fees, as explained by California's Supreme Court in *Conservatorship of the Estate of Whitley* 50 Cal. 4th 1206, 1217-1218 (2010). A party's personal interest in a litigation does not preclude a §1021.5 fee award.

The key issue is "necessity and financial burden of private enforcement" "where no public enforcement exists" in order to equalize legal representation. *Whitley* @ 1218; see *Robinson v. City of Chowchilla* 202 CA. 4th 382, 401 (2011).

Whitley test is satisfied as no public enforcement exists. See *__Introduction to MRL__*:

> The Mobilehome Residency Law, like provisions of conventional landlord-tenant law, are enforced by the courts; that is, the disputing parties must enforce the MRL against one another in a court of law. The State Department of Housing and Community Development does not have authority to enforce these Civil Code provisions. *MRL, Intro.*

Under *Whitley's* test Shipley is entitled to CCP §1021.5 fees because there is no public enforcement of MRL. Personal interests did not preclude a fee award. Defendants assumed a tremendous financial burden to privately enforce MRL protections against arbitrary and illegal evictions, with no financial gain at all. There were no cross claims; hence no damages. The only benefit from private enforcement was avoiding eviction. Even if it could be asserted the homeowner benefited because Stubblefield was not able to filch the mobilehome there was no financial benefit to Shipley. In prevailing the only benefit Shipley realized is that she did not have to relocate to another low-income rental.

Because the trial court used the wrong test (whether defense was for public good) denying fees was a prejudicial error as a matter of law. Affirming this erroneous and biased ruling, without applying *Whitley's* test, compounded other clear errors.

Under CCP §1021.5 Shipley was entitled to fees as she enforced MRL protections against unlawful evictions without just cause. Legislators expressly found mobile home residents need special protection from charlatans trying to filch mobilehomes.

> (a) The Legislature finds and declares that, because of the high cost of moving mobilehomes, the potential for damage resulting therefrom, the requirements relating to the installation of mobilehomes, and the cost of landscaping or lot preparation, it is necessary that the owners of mobilehomes occupied within mobilehome parks be provided with the unique protection from actual or constructive eviction afforded by the provisions of this chapter. Civil Code §798.55

NATIONAL PUBLIC CRISES MUST BE ADDRESSED:

Over 60 million Americans have family incomes at or below 125% of FPL, including: 6.4 million seniors,11.1 million disabled,1.7 million veterans;10 million rural residents; **California has 7.7 million people with family incomes below 125% of FPL.** [30] Housing Assistance Council estimates there are more than 50,000 manufactured home communities in the United States. [31] There are 8.5 million mobilehomes; an estimated 20 million live in them in U.S. [32] 57% of mobilehome household heads are employed; 23% are retired; **household income in mobile homes is half of national average**.

In California 1 of every 20 homes is mobile. [Florida 1 in 10; So Carolina 1 in 5]. [33] 2016 census [updated 9/17] shows 5,447,389 [5% US population] live in mobilehomes [34] In California 4,792 mobilehome lots vanished from the map according to CA's DCH. [35]

Senior citizen mobile home parks fight for survival against predatory developers. [36] As mobile homes and entire parks disappear by the hundreds, thousands of elderly, poor and disabled residents are rendered homeless---unable to afford any housing. California (22%), New York (16%), Florida (6%), Texas (4%), and Washington (4%) account for more than half of the homeless population in the United States in 2016. [37] We have an epidemic of homelessness in our free society which will only get worse unless this court intervenes to ensure affordable housing is not eliminated in the US.

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[30] https://www.lsc.gov/media-center/publications/2017-justice-gap-report

[31] http://www.nmhc.org/Content.aspx?id=4708#Structures

[32] http://www.bbc.com/news/magazine-24135022

[33] http://www.statemaster.com/graph/houperofhouunithaaremobhom-housing-percent-units-mobile-homes

[34] http://www.nmhc.org/Content.aspx?id=4708 [Nat'l Multi-family Housing Council website]

[35] https://www.gsmol.org/news-around-the-state/californias-affordable-mobile-home-parks-vanishing/

[36] https://www.gsmol.org/news-around-the-state/senior-citizen-mobile-home-parks-across-oc-fight-for-their-survival-against-developers/

[37] http://nationalhomeless.org/about-homelessness/

According to a recent analysis by AARP, at least 15 states have no manufactured home park statutes. In some states legal status for manufactured home community residents is similar to an apartment renter where they are evicted on 30-days' notice. Another concern is the ever increasing number of manufactured home park closures. Closures of manufactured home communities have hit epidemic levels in some places. Exacerbating the rapid nature of closures are weak legal protections for tenants. Closures of parks threaten an already vulnerable population residing in one of the few affordable housing resources in this nation. [38]

In 2015 an estimated 1.8 million people appeared in the New York State courts without a lawyer. [2] **98% of tenants in eviction cases were unrepresented in these courts in 2013**. [3] Comparable numbers are found in courts across the U.S.

These statistics prove without reasonable dispute that intervention is necessary to establish a national policy on how we can save a dwindling *pro bono* population. It certainly cannot be by denying *pro bono* fees after prevailing against tyrants. This court has a duty to protect poor, elderly and disabled citizens from predatory landlords who seek to filch the only assets these impoverished citizens have left. The only chance they have to avoid chronic homelessness in their golden years is through *pro bono* help to save the homes they have cherished for their entire lives.

For a judge to promote illegal evictions by denying *pro bono* fees to the prevailing tenant is a travesty of justice which should not be tolerated in any civilized society. The decision is an egregious miscarriage of justice designed to chill client advocacy by *pro bono* attorneys, which is the only way to achieve *justice for all* in our society.

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[38] http://www.nmhc.org/Content.aspx?id=4708#Structures

As stated in *Moreno v. City of Sacramento* 534 F.3d 1106, 1111 (9th Cir. 2008):

> **Lawyers must eat, so they generally won't take cases without a reasonable prospect of getting paid**. Congress thus recognized that private enforcement of civil rights legislation relies on the availability of fee awards: "If private citizens are to be able to assert their civil rights, and if those who violate the Nation['s] fundamental laws are not to proceed with impunity, then citizens must have the opportunity to recover what it costs them to vindicate these rights in court." S.Rep. No. 94-1011, at 2 (1976), as reprinted in 1976 U.S.C.C.A.N. 5908, 5910.1

If the decision below is allowed to stand it will chill *pro bono* advocacy like ice.

No public policy is served by judges who reward egregious abuses of *pro bono* lawyers.

No public policy is served by judges who concoct ways to deny fees to *pro bono* lawyers.

No public policy is served by judges who nurture evictions filed to filch mobilehomes.

No public policy is served by judges who transmute bilateral fee-shifting provisions into unilateral fee-shifting provisions to benefit only landlords who prosecute illegal evictions.

"The only thing necessary for the triumph of evil is for good men to do nothing."

Edmund Burke.

CONCLUSION

The petition for writ of certiorari should be granted.

Nancy Duffy McCarron

Respectfully submitted: 2/21/18

Nancy Duffy McCarron, 251239
Attorney for Petitioner Shipley
950 Roble Lane
Santa Barbara, CA 93103
nancyduffysb@yahoo.com
805-450-0450 fax:805-965-3492

SUPREME COURT OF THE UNITED STATES

BONNIE SHIPLEY,

Petitioner

v.

STUBBLEFIELD PROPERTIES,
a California General Partnership,

Respondent

On Petition For a Writ of Certiorari to the
San Bernardino Superior Court, Appellate Division

After 4/2 DCA and California Supreme Court Denied Timely Petitions to Review the Division's Opinion Affirming Trial Court's Denial of Statutory Attorney Fees

---

PROOF OF SERVICE

[Petition for Writ of Certiorari]

I, *Nancy Duffy McCarron*, do swear or declare that on the date signed below, as required by Supreme Court Rule 29, I served enclosed Petition For Writ of Certiorari on each party or counsel to the above proceeding and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by electronic service if Court requires or by agreement to parties on next page: Word Count w/o tables is 8,449 MS word 2010

PARTIES SERVED and MANNER OF SERVICE

ORIGINAL+10 copies served by US MAIL (2-day) to: Supreme Court of the United States 1 First Street, N.E. Washington, D.C. 20543-0001	1 electronic copy filed at: https://file.supremecourt.gov tel: 202-479-3000
California Supreme Court 350 McAllister Street, Room 1295 San Francisco, CA 94102-4797	1 electronic copy filed at: truefiling: in S245524 tel: 415-865-7000
Fourth District Court of Appeal – Division 2 3389 Twelfth Street Riverside, CA 92501	1 electronic copy filed at: truefiling: in E069254 tel: 951-782-2500
Stubblefield Properties, a CA General Partnership c/o Robert Williamson, Attorney of Record Hart/King Law Firm 4 Hutton Center Drive, Suite 900 Santa Ana, CA 92707	1 electronic emailed to: rwilliamson@hart/kinglaw.com (by agreement) tel: 714-432-8700 fax: 714-546-7457

1 Copy served by US MAIL (2-day) to addresses below:

San Bernardino Superior Court, Appellate Division 8303 Haven Ave, First Floor Rancho Cucamonga, CA 91730	ACIAS1600035	courtesy copy email: appeals@sb-court.org 909-521-3566
San Bernardino Superior Court, Justice Center 247 Third Street, Dept. S-29 San Bernardino, CA 92415-0210	UDFS1406978	909-708-8678

I declare under penalty of perjury and U.S. law that the foregoing is true & correct.

Executed in Santa Barbara, California on 2/21/18.

Nancy Duffy McCarron

Nancy Duffy McCarron, 251239
Attorney for Petitioner
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Santa Barbara, CA 93103
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805-450-0450 fax:805-965-3492

IN THE

SUPREME COURT OF THE UNITED STATES

BONNIE SHIPLEY,

Petitioner

v.

STUBBLEFIELD PROPERTIES,
a California General Partnership,

Respondent

On Petition For a Writ of Certiorari to the
San Bernardino Superior Court, Appellate Division

After 4/2 DCA and California Supreme Court Denied Timely Petitions to Review the Division's Opinion Affirming Trial Court's Denial of Statutory Attorney Fees

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APPENDIX

[Supporting Petition for Certiorari filed under separate cover]

EXHIBIT A

EXHIBIT
Appendix A

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
RANCHO CUCAMONGA DISTRICT

SEP 25 2017

BY ________
CHERYL FRANZEN, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO
APPELLATE DIVISION

STUBBLEFIELD PROPERTIES, Plaintiff and Respondent, v. BONNIE SHIPLEY, Defendant and Appellant.	Case No: ACIAS 1600035 (Trial Court: UDFS1406978) PER CURIAM OPINION

Appeal from order denying motion attorney's fees, San Bernardino County Superior Court, San Bernardino District, Janet M. Frangie, Judge. Affirmed.

Hart King; Robert G. Williamsons, Jr., James S. Morse, and Rhonda H. Mehlman for plaintiff respondent.

Law Office of Nancy Duffy McCarron; Nancy Duffy McCarron for defendant and appellant.

THE COURT:

FACTUAL AND PROCEDURAL BACKGROUND

Defendant and appellant Bonnie Shipley (Shipley) appeals the denial of her request for attorney's fees as against plaintiff and respondent Stubblefield Properties (Stubblefield). The parties and their dispute are not new to us. Stubblefield previously filed an unlawful detainer against Shipley as the subtenant of her attorney, Nancy McCarron (McCarron).

The prior action was premised upon Civil Code section 798.75, subdivision (c), which is found in the Mobilehome Residency Law (MRL). The statute authorizes the service of a five-day notice to surrender possession in the event a "purchaser or transferee" of a mobilehome occupies a mobilehome park's space without first executing an agreement with the park.

After the parties filed competing and unsuccessful motions for summary judgment in the prior action, Shipley sought review of the denial via petition for writ of mandate. We granted Shipley's request and held that service of the five-day notice was improper since Shipley was a subtenant and not a "purchaser or transferee." We also noted the distinction between evictions related to a mobilehome park's "site" as opposed to evictions of the occupants of the mobilehome "unit." Finally, in addressing Stubblefield's concern that Shipley's occupancy violated various park rules and regulations, we opined that Stubblefield was not without remedy since it could seek relief as against McCarron, not Shipley. Specifically, the MRL allows the termination of the "homeowner's" right to use the park's "site" (a right referred to as the "tenancy") based on the homeowner's or resident's failure to comply with the park's reasonable rules or regulations that are part of the rental agreement.[1] (See Civ. Code, §§ 798.12 and 798.56, subd. (d).)

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[1] See *Shipley v. Superior Court of the State of California, County of San Bernardino* (2013) (case no. CIVDS1302013), review denied August 14, 2013.

Before the prior lawsuit was completely resolved,[2] Stubblefield commenced the second action which underlies the current appeal.[3] Unlike the first proceeding, the second action was filed only against McCarron, though Shipley later added herself as a defendant by submitting a prejudgment claim of right to possession.[4] In any event, through the second action Stubblefield argued that McCarron had violated the park's "Community Guidelines" that were part of her rental agreement.[5] The guidelines indicate that at least one occupant of each mobilehome had to be the registered owner, age 55 or older, and a signatory on the lease. Furthermore, that same person had to regularly occupy the unit in the event there was a "permanent guest" living at the residence who was between 40 and 55 years of age.[6] According to Stubblefield, Shipley was

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[2] In three separate appeals that eventually arose in the prior action after the writ proceeding, we affirmed the trial court's (1) award of $197,857.50 in attorney's fees to Shipley; (2) denial of Shipley's request for supplemental fees; and (3) order staying enforcement of the fee award pending appeal. (See *Stubblefield v. Shipley* (2016) (Appellate Division of the Sup. Ct. of the State of California, County of San Bernardino, case no.'s ACIAS1500037, 1500046, and 1500049). The fee award was premised upon section 798.85 of the MRL which provides that "in any action arising out of [the MRL] the prevailing party shall be entitled to reasonable attorney's fees and costs."

[3] Stubblefield also had an appeal (case no. ACIAS1600020) which was abandoned after the record was certified. However, prior to the dismissal of the appeal, and pursuant to rule 8.839 of the Rules of Court, we ordered one record to be prepared for both appeals to avoid duplicate submission of documents. For reference purposes, "CT1" shall refer to documents designated in case no. ACIAS1600020 and "CT2" shall reference the documents designated for case no. ACIAS1600020.

[4] CT2 1 and 3
[5] CT1 178-184
[6] CT1 180 and 213-228

under 55 years of age and was residing in McCarron's unit even though McCarron herself was not a regular occupant.[7]

However, as noted above, the owner of a mobilehome park may only terminate a tenancy for noncompliance with "reasonable" rules or regulations that are also part of the rental agreement. Following trial, a jury concluded that the age restrictions were unreasonable and, as a result, they never reached the issue of whether the Community Guidelines were actually part of the lease.[8] McCarron and Shipley then moved for an award of attorney's fees under (1) Civil Code section 1717, which authorizes an award of attorney's fees to the prevailing party in an "action on a contract"; (2) Code of Civil Procedure section 1021.5, which authorizes fees in cases resulting in public benefit; and (3) Civil Code section 798.85, which authorizes fees related to actions arising under the MRL.[9]

In ruling on the fee motion, the trial court concluded that Shipley and McCarron were the prevailing party, but McCarron was not entitled to fees to the extent she represented herself pro per. As for Shipley, the trial court concluded that, as an occupant of the unit, she did not have a contract nor privity of contract with Stubblefield. The trial court also concluded that the action did not confer any benefit to the public at large and the action as it related to Shipley did not arise under the MRL since Shipley merely

[7] CT1 181
[8] CT1 2353 and 2492
[9] CT2 782-799

interjected herself as a defendant.[10] Shipley, though not McCarron, then appealed the denial of the fee motion.[11]

DISCUSSION

The Standard of Review for a Denial of Attorney's Fees

"An order granting or denying an award of attorney fees is generally reviewed under an abuse of discretion standard of review...." (*MHC Financing Ltd. Partnership Two v. City of Santee* (2005) 125 Cal.App.4th 1372, 1397, as modified on denial of reh'g (Feb. 16, 2005).) Discretion is abused "whenever it may be fairly said that in its exercise the court in a given case exceeded the bounds of reason or contravened the uncontradicted evidence." (*Nazemi v. Tseng* (1992) 5 Cal.App.4th 1633, 1642; See *Wal-Mart Real Estate Business Trust v. City Council of City of San Marcos* (2005) 132 Cal.App.4th 614, 620 [Whether the applicant for attorney fees has proved Code of Civil Procedure section 1021.5's elements is reviewed for abuse of discretion].) On the other hand, a "determination of whether the criteria for an award of attorney fees and costs have been met is a question of law." (*MHC Financing Ltd.*

[10] CT 1111-1122

[11] In connection with the appeal, Shipley and Stubblefield ask us to take judicial notice of the order on the fee motion, which we grant under Evidence Code section 452, subdivision (d). Shipley also asks us to take judicial notice of a lawsuit filed by Stubblefield against an unrelated third-party, a request which we deny as not dispositive to the appeal. (See *Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 544, fn. 4.) Furthermore, Shipley also asks us to take judicial notice of what she purports is the "legislative history" of various statutes. However, the document submitted is incomplete and it otherwise appears to be a portion of a practice guide which is not a type of document outlined in the Evidence Code. Therefore, we deny that request. Finally, Stubblefield also asks us to take judicial notice of our own prior orders and opinions related to the parties' dispute. We grant these latter requests.

Partnership Two, supra, 125 Cal.App.4th at p. 1397.) Thus, a party's "entitlement to attorney fees under Civil Code section 798.85 is a question of law subject to de novo review." (*Ibid.*)

The Fees Claimed Under the Private Attorney General Doctrine

Under Code of Civil Procedure section 1021.5, the trial court "may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement ... are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any."

In this case, the trial court concluded that fees under section 1021.5 were inappropriate since McCarron, as a named defendant, was defending the action for her own benefit.[12] Although the trial court did not expressly come to the same conclusion as to Shipley, the same logic would nevertheless apply to Shipley. Furthermore, the trial court indicated there was no evidence that the other 174 mobilehome owners at the park were facing possible eviction from Stubblefield, i.e. the defense of the eviction did not confer a benefit to the public at large. Shipley fails to cite any

[12] Much of the opening brief discusses whether McCarron should be entitled to fees as a pro per, but these arguments are outside the scope of the appeal.

evidence in the record which would demonstrate otherwise. Instead, Shipley make a blanket and unsubstantiated assertion that she and her attorney benefited a "large mobilehome tenant class."[13]

However, any statement in a brief concerning matters in the appellate record, no matter where in the brief the reference occurs, must be supported by a citation to the record or such arguments may be waived or forfeited. (See Cal. Rules of Court, rule 8.883(a)(1)(B); *Myers v. Trendwest Resorts, Inc.* (2009) 178 Cal.App.4th 735, 745; *City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239, fn. 16.) Given the absence of a relevant citation to the record, Shipley cannot and has not demonstrate that the trial court erred in concluding Code of Civil Procedure section 1021.5 did not apply.

The Fees Claimed Pursuant to Civil Code section 1717

Civil Code section 1717, subdivision (a), provides "[i]n any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs." The statute was originally "enacted to establish mutuality of remedy where contractual provision

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[13] Opening Brief at 19

makes recovery of attorney's fees available for only one party." (*Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124, 128.)

As a threshold matter, the statute only applies to an action "on a contract," a phrase which is liberally construed: "[a]s long as the action 'involve[s]' a contract it is 'on [the] contract' within the meaning of section 1717." (*Dell Merk, Inc. v. Franzia* (2005) 132 Cal.App.4th 443; *California Wholesale Material Supply, Inc. v. Norm Wilson & Sons, Inc.* (2007) 96 Cal.App.4th 598.) The statute's purposes also require section 1717 to "be interpreted to further provide a reciprocal remedy for a nonsignatory defendant, sued on a contract as if he were a party to it, when a plaintiff would clearly be entitled to attorney's fees should he prevail in enforcing the contractual obligation against the defendant." (*Reynolds Metals Co., supra,* 25 Cal.3d at p. 128.) Furthermore, a person defending a contract action involving a fee provision is entitled to fees "by successfully arguing the inapplicability, invalidity, unenforceability, or nonexistence of the same contract." (*Santisas v. Goodin* (1998) 17 Cal.4th 599, 611.)

Here, in the opening brief Shipley points to the reciprocal nature of section 1717 and the fact that the statute authorizes an award of fees regardless of whether the prevailing party is specified in the contract or not. While we agree with these basic legal principals, Shipley's argument ignores the threshold issue of whether the action, as it relates to her, is one "on a contract." As the trial court noted, Shipley and McCarron are not similarly situated since McCarron was a homeowner with a lease to the park's "site" and Shipley was a mere occupant of the "unit." Stubblefield's action was therefore not an action against Shipley, whether on a contract or otherwise, since it did not sue or seek to evict Shipley. Instead, consistent with Civil Code sections 798.12 and 798.56, subdivision (d), Shipley only sought to terminate the "tenancy" of McCarron and Shipley interjected herself.[14]

As one well-known practice guide indicates, "[t]he MRL termination provisions apply only to '*homeowner*' tenancies" or the mobilehome owner's rental of a "site." (The Rutter Group, Cal. Prac. Guide Landlord-Tenant Ch. 11-E, § 11:144.) "Once a mobilehome tenancy is properly terminated under the MRL, the normal summary repossession procedures ([Code of Civil Procedure section] 1159 et seq.) apply to affect an *eviction* of a tenant who remains in occupancy after the termination date." (*Id.* at § 11:147 [citing Civil Code section 798.60 which indicates the provisions of the MRL shall not affect any rights or proceedings set forth in Code of Civil Procedure section 1159, et seq.].) These concepts are also in line with the express and limiting language of Civil Code sections 798.12 and 798.56 and the MRL's purpose of protecting "owners of mobilehomes" from "the high cost of moving mobilehomes, the potential for damage resulting

[14] For this reason, we also reject Shipley's estoppel argument.

therefrom, the requirements relating to the installation of mobilehomes, and the cost of landscaping or lot preparation." (Civ. Code, § 798.55.)

Therefore, under the facts presented we cannot conclude that the trial court erred in denying Shipley's request for fees given the limited scope of the proceeding and Shipley's unilateral interjection into the lawsuit as an occupant of McCarron's mobilehome unit.

Shipley's Request for Fees under Civil Code Section 798.85

Under Civil Code section 798.85, "[i]n any action arising out of the provisions of [the MRL] the prevailing party shall be entitled to reasonable attorney's fees and costs." Here, Stubblefield's attempt to evict McCarron arise from the MRL given the dispute over whether the Community Guidelines were reasonable and part of the underlying lease agreement as is required under Civil Code section 798.56, subdivision (d).

Here, the attempted eviction of McCarron arose from the MRL given Stubblefield's attempt to terminate the tenancy over the alleged violation of the parks rules and regulations. However, as we noted above, the proceeding was not an action against Shipley, whether under the MRL or otherwise, since Shipley unilaterally interjected herself into the lawsuit given the limited and express nature of Civil Code sections 798.12 and 798.56. Therefore, under the facts before us we cannot conclude that the trial court erred in denying Shipley's request for fees under the MRL.

DISPOSITION

The trial court's denial of the motion for attorney's fees is affirmed.

CARLOS CABRERA
Judge of the Appellate Division

KHYMBERLI S. APALOO
Judge of the Appellate Division

DAVID A. WILLIAMS
Judge of the Appellate Division

Superior Court State of California
County of San Bernardino

Appellate Division

DECLARATION OF SERVICE BY MAIL

STATE OF CALIFORNIA	)		
	)	vs.	Case # ACIAS 1600035
COUNTY OF SAN BERNARDINO	)		Trial Court# UDFS1406978

The undersigned hereby declares: I am a citizen of the United States of America, over the age of eighteen years, a resident of the above-named State, and not a party to nor interested in the proceedings named in the title of the annexed document. I am a Deputy Appellate Clerk of said County. I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business. On the date of mailing shown below, I placed for collection and mailing following ordinary business practices, at the request and under the direction of the Superior Court in and for the State of California and County above-named, whose office is at the Courthouse, Rancho Cucamonga, California, a sealed envelope which contained a true copy of each annexed document, and which envelope was addressed to the addressee, as follows:

LAW OFFICE OF NANCY DUFFY MCCARRON
950 ROBLE LANE
SANTA BARBARA, CA 93103

HART KING
4 HUTTON CENTER DR STE 900
SANTA ANA, CA 92707

cc: Honorable Judge JANET FRANGIE, San Bernardino Justice Center Courthouse

Trial Court: San Bernardino Justice Center Courthouse

Date and Place of Mailing: September 25, 2017, Rancho Cucamonga, California.

Document Mailed: **PER CURIAM OPINION**

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 25, 2017, at Rancho Cucamonga, California.

_______________ Deputy Clerk

EXHIBIT B

EXHIBIT
Appendix B

SAN BERNARDINO SUPERIOR COURT
SAN BERNARDINO JUSTICE CENTER
DEPARTMENT 29
247 W THIRD STREET
SAN BERNARDINO, CA 92415

SCANNED

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
OCT 4 2016
BY Theresa Handforide DEPUTY

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO – SAN BERNARDINO JUSTICE CENTER

STUBBLEFIELD PROPERTIES, a California general Partnership, dba Mountain Shadows Mobile Home community, Plaintiff, v. NANCY B. DUFFY, et al, Defendant.	CASE NO.: UDFS 1406978 **ORDER ON ATTORNEYS FEES**

On July 29, 2016, Defendants' Motion for attorneys' fees was heard.

Plaintiff Stubblefield Properties (STUBBLEFIELD) appeared by HART / KING, by Robert G. Williamson, Jr., Esq. and Defendants Nancy Duffy McCarron (McCARRON) and Bonnie Shipley (SHIPLEY) appeared by Nancy Duffy McCARRON, Attorney at law. The motions were argued and then submitted on the same date.

PDF page no. 56

The Court, having read the pleadings filed by the parties[1], and considering the oral argument of the parties, now rules as follows:

I. Defendants' Request for Judicial Notice:

The Court declines Defendants' Request for judicial notice of the documents attached to Defendants' Request for Judicial Notice filed April 15, 2016 as irrelevant.

II. Plaintiff's Evidentiary Objections filed May 20, 2016:

1.-5.	overruled
6.	sustained
7.-9.	overruled
10.-13.	sustained
14.	overruled
15.-16.	sustained
17.-18.	overruled
19.-20.	sustained

Plaintiff's Evidentiary Objections filed June 1, 2016:

1.-3.	overruled
4.-5.	sustained
6.	overruled
7.-11.	sustained
12.	overruled
13. -24.	sustained
25.	overruled
26.	sustained
27.	overruled
28.-30.	sustained
31.-32.	overruled

III. Motion:

Defendants seek an award of attorneys' fees pursuant to *California Civil Code §1717, California Code of Civil Procedure §1021.5* and *Civil Code §798.85.*

A. *Civil Code §1717:*

California Civil Code §1717 provides, in relevant part:

[1] The Court admonishes both parties for filing briefs that exceed the page length provided under the *California Rules of Court, Rule 3.113(d)*. Defendants' "Reply Brief" exceeds the rule by 18 pages!

> (a) In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs. * * *
>
> Reasonable attorney's fees shall be fixed by the court, and shall be an element of costs.

Code of Civil Procedure §1032 defines prevailing party. Under *§1032(a)(4),* a prevailing party includes the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant. When any party recovers other than monetary relief and in situations other than specified, the "prevailing party" shall be as determined by the court, and under those circumstances, the court, in its discretion, may allow costs or not and, if allowed may apportion costs between the parties on the same or adverse sides pursuant to rules adopted under section 1034. Here, Defendants are the prevailing party as they are the beneficiaries of a unanimous jury verdict in their favor.

Plaintiff does not dispute defendant McCARRON was a party to the mobile home lease agreement. It contends, however, that McCARRON is not entitled to attorney fees under Civil Code §1717 because she is an attorney representing herself, citing *Trope v. Katz* (1995) 11 Cal.4th 274, 284-285. In *Trope,* the California Supreme Court considered the issue of whether an attorney who successfully represents himself in litigation may recover attorney fees when these fees are provided for by contract or statute.

The *Trope* Court held that an attorney who chooses to litigate in propria persona and therefore does not pay or become liable to pay consideration in exchange for legal representation cannot recover reasonable attorney fees under *Civil Code §1717* as compensation for the time and effort she expends on her own behalf or for the professional business opportunities she foregoes as a result of his decision. *Id.* at 291. This Court determines that the *Trope* decision and its progeny are applicable in this case.

Defendant McCARRON argues, despite *Trope,* that she is entitled to attorney fees because she was representing Defendant SHIPLEY, citing *Healdsburg Citizens for Sustainable Solutions v. City of Healdsburg* (2012) 206 Cal.App.4th 988. *Healdsburg* is distinguishable. In the *Healdsburg* case, an attorney was a member of an environmental organization that was challenging an Environmental Impact Report under CEQA, and although she was not lead counsel, she carried out work for lead counsel. The Court distinguished *Trope* and noted that although the attorney enjoyed the benefits conferred by the litigation with her co-petitioners and the public, she was not in the kind of legal relationship with her co-petitioners that would have made her own interests interchangeable with, or legally indistinct, from theirs. *Healdsburg, supra,* 206 Cal.App.4th at 997. Furthermore, the Court noted the case did not involve contractual fees to enforce a private right, but conferred benefits on a large group under *§1021.5* and the private attorney general doctrine. *Id.*

As will be discussed in more detail infra, this is not a case where *§1021.5* applies. Here, McCARRON was essentially representing her own interests in her mobile home. SHIPLEY was her resident, and it was in McCARRON's interests to keep SHIPLEY as a resident.

Plaintiff made no claim against SHIPLEY and SHIPLEY's claims to possession flowed only through McCARRON's possessory rights as a leaseholder with Plaintiff. With respect to any right to possession asserted by SHIPLEY, her "right to possession" applies only to the mobile home unit owned by McCARRON, not to any ***site*** or ***space*** on which the mobile home unit is located that is the subject of the rental agreement between STUBBLEFIELD and McCARRON. SHIPLEY's right to possession of the mobile home ***unit*** is not in issue in this case, and STUBBLEFILED had no right to attempt to evict SHIPLEY from the mobile home unit. There was no privity of contract between Plaintiff and SHIPLEY which finding was made by the Appellate Division of this Superior Court in another case which preceded this action.[2]

SHIPLEY was only brought into the action either by her own doing or by McCARRON as a result of her filing a Prejudgment Claim of Right to Possession.

To the extent McCARRON is claiming SHIPLEY was a third party beneficiary under the mobile home lease agreement, Plaintiff argues McCARRON has continuously asserted SHIPLEY was *not* a party to the lease. The cases cited by McCARRON are also distinguishable. The case of *Hsu v. Abarra* (1995) 9 Cal.4th 863 did not involve an attorney representing herself and did not involve privity of contract. *Hsu* involved determining whether a party was the prevailing party on a contract. In *Sherwood & Sherwood v. Gill & Lutz* (1918) 36 Cal. App. 707, which did not discuss attorney fees, the court held that a party for whose benefit a contract was made need not name the party, but it must appear by the terms of the contract that it was made for the benefit of the party. *Id.* at 712. *Sherwood* predates the enactment of *Civil Code §1717* and is inapposite because it does not discuss an award of attorney's fees at all.

Here, McCARRON and Plaintiff STUBBLEFIELD entered into the mobile home lease agreement long before SHIPLEY ever became an occupant, and there could have been no contract terms for SHIPLEY's express benefit.[3] Defendants are therefore not entitled to attorney fees under *Civil Code §1717.* Defendant McCARRON, an attorney,

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[2] See the Opinion entered May 6, 2013 in *Stubblefield v. Shipley,* Case No. CIVDS 1302013.

[3] Notably, in SHIPLEY's Answer to STUBBLEFIELD's complaint for unlawful detainer, SHIPLEY asserted in the Twenty-fifth Affirmative Defense that, "Plaintiff's allegations fail to state facts sufficient to award attorney fees against Bonnie Shipley which she never agreed to pay. Plaintiff has no oral or written lease with defendant Shipley."

was representing herself and SHIPLEY was not a party to the contract; not in privity of contract with Plaintiff, and her interests were interchangeable and inextricably intertwined with McCARRON's who is not entitled to any award of attorney's fees as a self-represented litigant.

B. *Code of Civil Procedure Section 1021.5:*

Defendants also assert a claim for attorney's fees under the private attorney general statute. *Code of Civil Procedure §1021.5*, entitled "Attorney Fees in Cases Resulting in Public Benefit", provides:

> Upon motion, a court may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any. * * *

The fundamental objective of this provision is to encourage suits effectuating a strong public policy by awarding substantial attorney fees to those who successfully bring such suits, and bring about a benefit to a large group of citizens. *Daniels v. McKinney* (1983) 146 Cal.App.3d 42, 49. The allowance of recovery of attorneys' fees is based on the recognition that privately initiated lawsuits are essential to effectuating public policies embodied in the constitutional or statutory provisions, and such lawsuits may be impractical if attorney fees are not awarded. *Id.*

To determine whether an action has resulted in the enforcement of an important public right, the court makes a qualitative evaluation of the weight or social importance of the right involved. *Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d 917, 935.) It assesses the litigation to determine "from a practical

PDF page no. 61

perspective" whether the action "served to vindicate an important public right." *Id.* at p. 938. There is no concrete standard. *Beach Colony II Ltd. v. California Coastal Comm.* (1985) 166 Cal.App.3d 106, 111.

The public always derives a "benefit" when illegal private or public conduct is rectified, but in order to determine whether a "significant" benefit has been conferred, the court must determine both the significance of the benefit and the size of the class receiving benefit, from a realistic assessment, in light of all the pertinent circumstances of the gains which have resulted in the particular case. *Woodland Hills*, supra, 23 Cal.3d 917 at pp. 939-940. The significant benefit analysis thus focuses on the results obtained in the action.

In this action, McCARRON was not litigating for a public benefit. She was named as a defendant in an unlawful detainer action and was litigating for her own benefit. The judgment does not confer any public rights and found only that three rules in STUBBLEFIELD's restated 2010 rules were not reasonable. There was no evidence that the other 174 mobile home owners referred to by McCARRON were facing any danger of eviction as a result of STUBBLEFIELD's claims against her. The record is devoid of any evidence that McCARRON was litigating for any public benefit. Therefore an award under this section is inappropriate as is any multiplier *§1021.5*.

C. *<u>California Code of Civil Procedure §798.85:</u>*

The final basis McCARRON asserts for an award of attorney's fees is under the Mobilehome Residency Law. *§798.85* provides:

> In any action arising out of the provisions of this chapter the prevailing party shall be entitled to reasonable attorney's fees and costs. A party shall be deemed a prevailing party for the purposes of this section if the judgment is rendered in his or her favor or where the litigation is dismissed in his or her favor prior to or during the trial, unless the parties otherwise agree in the settlement or compromise.

It is undisputed that the action arises out of the MRL and that defendants are the prevailing parties.

The issue still remains, however, whether or not defendant McCARRON is entitled to any attorney fees for representing herself under the MRL and whether McCARRON is entitled to any attorney fees for her representation of Shipley under the MRL. The Court has already determined that McCARRON is not entitled to attorney fees because of her self-representation.

Although the *Trope* decision was decided in the context of attorney fees under Civil Code §1717, it referred to other decisions where attorney fees were denied for self-representation in other contexts. In *City of Long Beach v. Sten* (1929) 206 Cal. 473, the defendant in an inverse condemnation action was an attorney defending himself and a co-defendant. They obtained an interlocutory judgment in their favor and the defendant attorney filed separate cost bills claiming, among other costs, attorney fees. The trial court allowed attorney fees for the co-defendant, but taxed the attorney fees claimed by the attorney defendant. The California Supreme Court affirmed. Citing an earlier decision, *Patterson v. Donner* (1874) 48 Cal. 369, which held that the plaintiff attorney in a foreclosure suit was not entitled to attorney fees, the *Sten* court ruled attorney fees were not allowed for the attorney representing himself in the inverse condemnation action.

In *O'Connell v. Zimmerman* (1958) 157 Cal.App.3d 330, 336, the Court disallowed attorney fees for an attorney representing himself in an interpleader action, stating, "When an attorney represents himself in an action he may not recover the reasonable value of his fee, for he has paid no fee nor has he incurred any liability to pay an attorney fee." *O'Connor v. Zimmerman, supra,* 157 Cal.App.2d at 337. Based on these authorities, McCARRON is not entitled to any attorney fees for her self-representation under *Civil Code §798.85.*

With respect to SHIPLEY, she was not originally named as a defendant in this action but injected herself into the action by filing a claim for possession and her rights were inextricably linked to any outcome obtained by McCARRON. Plaintiff cites to *Pardee v. Gray* (1885) 66 Cal. 524 which held that an occupant of a house was subject to be removed when the original lessee defaulted on payments of rent due. In a more recent case, *In re Perl,* 811 F.3d 1120 (9th Cir. 2016), the Ninth Circuit held that under C.C.P. §715.020(d), no occupant of the premises retains any possessory interest of any kind following service of the writ of possession. Here, SHIPLEY admitted she had no contractual or leasing agreement with Plaintiff and she claimed only to be a co-resident. In earlier litigation, when Plaintiff had filed an unlawful detainer action against SHIPLEY, the Appellate Division of this Court ruled Plaintiff had to proceed as McCARRON as the homeowner.

Plaintiff urges the court to follow *Gorman v. Tassajara Development Corp.* (2009) 178 Cal.App.4th 44. In *Gorman,* the plaintiffs were husband and wife and they sued a general contractor and other subcontractors for construction of their residence. The husband was an attorney and he and his law firm represented their interests. After a settlement was reached in which it was agreed plaintiffs were the prevailing parties and could recover attorney fees, the plaintiffs requested their fees and costs. The trial court awarded fees and costs, but the appellate court reversed and remanded.

The *Gorman* court held the trial court properly disallowed any fees billed by the attorney personally for any work he did on the case on his own behalf and on behalf of his wife. The Court stated:

> We can certainly imagine cases in which a true attorney-client relationship exists between spouses. However, in this case, husband and wife sued for and obtained recovery for the defective construction of their residence. There is no indication that Cheng suffered any damages apart from those suffered by her husband. Their interests in this matter appear to be joint and indivisible. There is no claim that Gorman spent

> extra time in this case representing his wife in addition to the time he spent representing himself. There is no claim that each of them owes half his fees. Their community estate is liable for their contracts. Since Gorman's billable hours appear to be entirely attributable to representing his common interests with Cheng, we conclude that the rule of *Trope* applies to this situation. (*Gorman, supra,* 178 Cal.App.4th at 96.)

The *Gorman* Court remanded, however, for a determination as to the total fees claimed by other attorneys and paralegals who had performed work for him as well as other firms with which they had signed retainer agreements.

While not husband and wife as in *Gorman,* the interests of SHIPLEY and McCARRON were certainly aligned. SHIPLEY was not named as a defendant in this action after the Court's Appellate Division found SHIPLEY was not the proper defendant. In this action, SHIPLEY was not a necessary defendant but was interjected into the action by McCARRON. SHIPLEY's claim to any right of possession was entirely dependent upon McCARRON's continued possession of the mobile home. In her reply, McCARRON points out that the amended judgment does, in fact, name SHIPLEY as a defendant and judgment is entered in her favor, but the fact remains that SHIPLEY's interests were aligned with McCARRON's interests throughout this litigation. McCARRON argues she and SHIPLEY did not share similar risks because McCARRON stood to lose her entire interest, whereas SHIPLEY could simply rent elsewhere. The Court disagrees. McCARRON's interest was in keeping her property and in keeping SHIPLEY as an occupant. By pursuing her own interests, McCARRON was necessarily protecting SHIPLEY's interests. Therefore, neither McCARRON nor SHIPLEY are entitled to attorney fees.

As this action does not arise out of the MRL *as to SHIPLEY*, since she is only interjected in the action as a person in possession, she is not entitled to attorney's fees and because McCARRON represented herself in the action, under *Trope* she is not entitled to attorney's fees.

The judicial assistant is directed to serve this Order on the parties.

DATED: OCT 4 2016

Janet M Frangie

HONORABLE JANET M. FRANGIE
JUDGE OF THE SUPERIOR COURT

SUPERIOR COURT IN THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

I, Theresa Handyside, the undersigned state:

I am employed in the County of San Bernardino, State of California; I am over the age of 18 years and not a party to this action; my business address is 247 W. Third Street, San Bernardino, California, 92415.

I am familiar with this court's practice for collection and processing of documents for mailing with the United States Postal Service. The documents below are enclosed in a sealed envelope, with postage fully paid, and mailed to the interested party/ies below and placed for collection and mailing this date, following standard court practices.

ORDER ON ATTORNEYS FEES
UDFS 1406978

Robert G. Williamson, Jr., Esq. HART KING A PROFESSIONAL CORPORATION 4 Hutton Centre Drive Suite 900 Santa Ana, California 92707	Nancy Duffy McCARRON Attorney at Law 950 Roble Lane Santa Barbara, California 93103

I declare under penalty of perjury under the law of the State of California, that the foregoing is true and correct.

Executed on OCT 4 2016, San Bernardino, California.

Theresa Handyside

Theresa Handyside
Judicial Assistant
San Bernardino Superior Court

EXHIBIT C

Court of Appeal, Fourth Appellate District, Division Two
Kevin J. Lane, Clerk/Administrator
Electronically FILED on 11/14/2017 by E. Bland, Deputy Clerk

EXHIBIT
Appendix C

COURT OF APPEAL -- STATE OF CALIFORNIA
FOURTH DISTRICT
DIVISION TWO

ORDER

BONNIE SHIPLEY,
Petitioner,
v.
THE SUPERIOR COURT OF SAN BERNARDINO COUNTY,
Respondent;

STUBBLEFIELD PROPERTIES,
Real Party in Interest.

E069254

(Super.Ct.Nos. ACIAS1500049, ACIAS1600035, UDDS1204130 & UDFS1406978)

The County of San Bernardino

THE COURT

The request for judicial notice is DENIED. The petition for writ of review is DENIED.

MILLER
Acting P. J.

Panel: Miller
Codrington
Fields

cc: See attached list

MAILING LIST FOR CASE: E069254
Bonnie Shipley v. The Superior Court; Stubblefield Properties

Superior Court Clerk
San Bernardino County
8303 N. Haven Ave
Rancho Cucamonga, CA 91730

Nancy Barbara Duffy
950 Roble Ln
Santa Barbara, CA 93103

Robert G. Williamson
Hart | King
4 Hutton Centre Drive, Suite 900
Santa Ana, CA 92707

EXHIBIT D

EXHIBIT

Appendix D

Court of Appeal, Fourth Appellate District, Division Two - No. E069254

S245524

IN THE SUPREME COURT OF CALIFORNIA

En Banc

SUPREME COURT
FILED

JAN 10 2018

Jorge Navarrete Clerk

Deputy

BONNIE SHIPLEY, Petitioner,

v.

SUPERIOR COURT OF SAN BERNARDINO COUNTY, Respondent;

STUBBLEFIELD PROPERTIES, Real Party in Interest.

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice

EXHIBIT E

EXHIBIT

Appendix E RJN

Table C-13.
Civil Pro Se And Non-Pro Se Filings, by District, During the 12-Month Period Ending September 30, 2016

Circuit and District	Total Civil Cases	Pro Se Cases	Non-Pro Se Cases	Prisoner Petitions			Nonprisoner Petitions		
				Total Cases	Pro Se Cases	Non-Pro Se Cases	Total Cases	Pro Se Cases	Non-Pro Se Cases
TOTAL	**291,851**	**85,992**	**205,859**	**73,725**	**61,324**	**12,401**	**218,126**	**24,668**	**193,458**
DC	**2,701**	**711**	**1,990**	**469**	**228**	**241**	**2,232**	**483**	**1,749**
1ST	**7,652**	**1,593**	**6,059**	**1,227**	**894**	**333**	**6,425**	**699**	**5,726**
ME	645	178	467	131	122	9	514	56	458
MA	3,226	646	2,580	519	298	221	2,707	348	2,359
NH	541	154	387	142	79	63	399	75	324
RI	684	211	473	144	143	1	540	68	472
PR	2,556	404	2,152	291	252	39	2,265	152	2,113
2ND	**24,178**	**5,683**	**18,495**	**4,048**	**3,203**	**845**	**20,130**	**2,480**	**17,650**
CT	2,208	625	1,583	457	349	108	1,751	276	1,475
NY,N	1,789	785	1,004	590	545	45	1,199	240	959
NY,E	7,475	1,314	6,161	804	611	193	6,671	703	5,968
NY,S	10,553	2,253	8,300	1,568	1,142	426	8,985	1,111	7,874
NY,W	1,830	652	1,178	559	522	37	1,271	130	1,141
VT	323	54	269	70	34	36	253	20	233
3RD	**24,425**	**6,707**	**17,718**	**6,212**	**4,868**	**1,344**	**18,213**	**1,839**	**16,374**
DE	1,335	337	998	268	221	47	1,067	116	951
NJ	8,967	2,422	6,545	1,936	1,725	211	7,031	697	6,334
PA,E	8,423	1,787	6,636	1,926	1,177	749	6,497	610	5,887
PA,M	2,692	1,213	1,479	1,086	1,006	80	1,606	207	1,399
PA,W	2,804	882	1,922	970	714	256	1,834	168	1,666
VI	204	66	138	26	25	1	178	41	137
4TH	**32,395**	**10,011**	**22,384**	**9,250**	**7,922**	**1,328**	**23,145**	**2,089**	**21,056**
MD	4,423	1,623	2,800	1,468	969	499	2,955	654	2,301
NC,E	2,433	1,501	932	1,458	1,274	184	975	227	748
NC,M	1,496	979	517	892	861	31	604	118	486
NC,W	1,420	499	921	632	351	281	788	148	640
SC	4,315	1,781	2,534	1,630	1,514	116	2,685	267	2,418
VA,E	3,731	2,042	1,689	1,610	1,543	67	2,121	499	1,622
VA,W	1,425	927	498	851	846	5	574	81	493
WV,N	766	392	374	400	347	53	366	45	321
WV,S	12,386	267	12,119	309	217	92	12,077	50	12,027

Table C-13. (September 30, 2016—Continued)

Circuit and District	Total Civil Cases	Pro Se Cases	Non-Pro Se Cases	Prisoner Petitions			Nonprisoner Petitions		
				Total Cases	Pro Se Cases	Non-Pro Se Cases	Total Cases	Pro Se Cases	Non-Pro Se Cases
5TH	**43,652**	**11,229**	**32,423**	**9,550**	**8,809**	**741**	**34,102**	**2,420**	**31,682**
LA,E	16,637	981	15,656	491	465	26	16,146	516	15,630
LA,M	890	317	573	274	257	17	616	60	556
LA,W	1,892	802	1,090	701	682	19	1,191	120	1,071
MS,N	772	235	537	231	186	45	541	49	492
MS,S	1,775	682	1,093	599	565	34	1,176	117	1,059
TX,N	5,888	2,320	3,568	2,095	1,869	226	3,793	451	3,342
TX,E	5,071	1,932	3,139	1,701	1,631	70	3,370	301	3,069
TX,S	6,341	2,364	3,977	1,946	1,860	86	4,395	504	3,891
TX,W	4,386	1,596	2,790	1,512	1,294	218	2,874	302	2,572
6TH	**22,241**	**8,151**	**14,090**	**7,713**	**6,503**	**1,210**	**14,528**	**1,648**	**12,880**
KY,E	1,506	527	979	460	448	12	1,046	79	967
KY,W	1,352	436	916	339	319	20	1,013	117	896
MI,E	4,680	1,443	3,237	1,114	1,016	98	3,566	427	3,139
MI,W	1,867	658	1,209	822	545	277	1,045	113	932
OH,N	3,726	935	2,791	862	655	207	2,864	280	2,584
OH,S	2,871	719	2,152	584	465	119	2,287	254	2,033
TN,E	1,700	811	889	734	720	14	966	91	875
TN,M	3,225	2,190	1,035	2,217	2,040	177	1,008	150	858
TN,W	1,314	432	882	581	295	286	733	137	596
7TH	**24,901**	**7,460**	**17,441**	**6,108**	**5,052**	**1,056**	**18,793**	**2,408**	**16,385**
IL,N	13,166	2,186	10,980	1,834	1,354	480	11,332	832	10,500
IL,C	1,565	952	613	887	802	85	678	150	528
IL,S	1,445	709	736	732	635	97	713	74	639
IN,N	1,950	712	1,238	600	536	64	1,350	176	1,174
IN,S	4,133	1,785	2,348	1,123	907	216	3,010	878	2,132
WI,E	1,751	739	1,012	627	547	80	1,124	192	932
WI,W	891	377	514	305	271	34	586	106	480
8TH	**15,799**	**4,360**	**11,439**	**4,702**	**3,439**	**1,263**	**11,097**	**921**	**10,176**
AR,E	2,027	1,169	858	1,042	1,021	21	985	148	837
AR,W	1,113	334	779	332	295	37	781	39	742
IA,N	863	198	665	328	180	148	535	18	517
IA,S	818	228	590	406	188	218	412	40	372
MN	4,114	612	3,502	443	424	19	3,671	188	3,483
MO,E	2,435	631	1,804	765	462	303	1,670	169	1,501
MO,W	2,561	707	1,854	804	543	261	1,757	164	1,593
NE	762	152	610	252	53	199	510	99	411
ND	427	194	233	171	157	14	256	37	219
SD	679	135	544	159	116	43	520	19	501

Table C-13. (September 30, 2016—Continued)

Circuit and District	Total Civil Cases	Pro Se Cases	Non-Pro Se Cases	Prisoner Petitions Total Cases	Prisoner Petitions Pro Se Cases	Prisoner Petitions Non-Pro Se Cases	Nonprisoner Petitions Total Cases	Nonprisoner Petitions Pro Se Cases	Nonprisoner Petitions Non-Pro Se Cases
9TH	**48,523**	**15,368**	**33,155**	**11,419**	**9,890**	**1,529**	**37,104**	**5,478**	**31,626**
AK	377	124	253	108	59	49	269	65	204
AZ	5,307	1,821	3,486	1,590	1,421	169	3,717	400	3,317
CA,N	7,304	1,818	5,486	1,279	1,150	129	6,025	668	5,357
CA,E	4,835	2,458	2,377	2,019	1,956	63	2,816	502	2,314
CA,C	14,731	3,950	10,781	2,310	1,986	324	12,421	1,964	10,457
CA,S	3,548	1,215	2,333	984	800	184	2,564	415	2,149
HI	759	226	533	182	90	92	577	136	441
ID	599	236	363	227	191	36	372	45	327
MT	693	294	399	289	239	50	404	55	349
NV	3,637	1,223	2,414	943	757	186	2,694	466	2,228
OR	2,518	911	1,607	750	668	82	1,768	243	1,525
WA,E	946	242	704	217	183	34	729	59	670
WA,W	3,149	786	2,363	509	385	124	2,640	401	2,239
GUAM	82	56	26	8	3	5	74	53	21
NMI	38	8	30	4	2	2	34	6	28
10TH	**11,399**	**2,993**	**8,406**	**2,860**	**1,977**	**883**	**8,539**	**1,016**	**7,523**
CO	3,182	1,097	2,085	817	763	54	2,365	334	2,031
KS	2,235	570	1,665	534	381	153	1,701	189	1,512
NM	1,417	323	1,094	414	203	211	1,003	120	883
OK,N	813	239	574	163	141	22	650	98	552
OK,E	552	111	441	105	83	22	447	28	419
OK,W	1,485	327	1,158	416	241	175	1,069	86	983
UT	1,399	226	1,173	296	98	198	1,103	128	975
WY	316	100	216	115	67	48	201	33	168
11TH	**33,985**	**11,726**	**22,259**	**10,167**	**8,539**	**1,628**	**23,818**	**3,187**	**20,631**
AL,N	2,446	807	1,639	702	614	88	1,744	193	1,551
AL,M	1,078	545	533	476	384	92	602	161	441
AL,S	705	282	423	236	229	7	469	53	416
FL,N	2,137	1,125	1,012	984	948	36	1,153	177	976
FL,M	9,260	3,083	6,177	2,860	2,334	526	6,400	749	5,651
FL,S	9,974	2,010	7,964	2,104	1,342	762	7,870	668	7,202
GA,N	5,701	2,205	3,496	1,345	1,268	77	4,356	937	3,419
GA,M	1,581	934	647	831	809	22	750	125	625
GA,S	1,103	735	368	629	611	18	474	124	350

IN THE

SUPREME COURT OF THE UNITED STATES

BONNIE SHIPLEY,

Petitioner

v.

STUBBLEFIELD PROPERTIES,
a California General Partnership,

Respondent

On Petition For a Writ of Certiorari to the
San Bernardino Superior Court, Appellate Division

After 4/2 DCA and California Supreme Court Denied Timely Petitions to Review the Division's Opinion Affirming Trial Court's Denial of Statutory Attorney Fees

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PROOF OF SERVICE

[**Appendix** to Petition for Writ of Certiori]

I, *Nancy Duffy McCarron*, do swear or declare that on the date signed below, as required by Supreme Court Rule 29, I served the enclosed **Appendix** to Petition for Writ of Certiorari on each party or counsel to the above proceeding and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by electronic service if Court requires or by agreement to parties on next page:

PARTIES SERVED and MANNER OF SERVICE

ORIGINAL+10 copies served by US MAIL (2-day) to: Supreme Court of the United States 1 First Street, N.E. Washington, D.C. 20543-0001	1 electronic copy filed at: https://file.supremecourt.gov tel: 202-479-3000
California Supreme Court 350 McAllister Street, Room 1295 San Francisco, CA 94102-4797	1 electronic copy filed at: truefiling: in S245524 tel: 415-865-7000
Fourth District Court of Appeal – Division 2 3389 Twelfth Street Riverside, CA 92501	1 electronic copy filed at: truefiling: in E069254 tel: 951-782-2500
Stubblefield Properties, a CA General Partnership c/o Robert Williamson, Attorney of Record Hart/King Law Firm 4 Hutton Center Drive, Suite 900 Santa Ana, CA 92707	1 electronic emailed to: rwilliamson@hart/kinglaw.com (by agreement) tel: 714-432-8700 fax: 714-546-7457

1 Copy served by US MAIL (2-day) to addresses below:

San Bernardino Superior Court, Appellate Division 8303 Haven Ave, First Floor Rancho Cucamonga, CA 91730	ACIAS1600035	courtesy copy email: appeals@sb-court.org 909-521-3566
San Bernardino Superior Court, Justice Center 247 Third Street, Dept. S-29 San Bernardino, CA 92415-0210	UDFS1406978	909-708-8678

I declare under penalty of perjury and U.S. law that the foregoing is true & correct.

Executed in Santa Barbara, CA on 2/21/18

Nancy Duffy McCarron

Nancy Duffy McCarron, 251239
Attorney for Petitioner
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