# IN THE SUPREME COURT OF GUAM

**GEORGE P. MACRIS**
Plaintiff-Appellant

**v.**

**DANIEL D. SWAVELY**
Defendant-Appellee

Supreme Court Case No. CVA07-022
Superior Court Case No. CV0972-03

## OPINION

**Cite as: 2008 Guam 18**

Appeal from the Superior Court of Guam
Argued and submitted on July 17, 2008
Hagåtña, Guam

Appearing for Plaintiff-Appellant:
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BEFORE: ROBERT J. TORRES, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; KATHERINE A. MARAMAN, Associate Justice.

**CARBULLIDO, J.:**

**[1]** Plaintiff-Appellant George P. Macris appeals from a Superior Court judgment ordering him to pay Defendant-Appellee Daniel D. Swavely's reasonable attorney's fees and court costs. Macris argues that the trial court erred in finding that he had filed suit under the Deceptive Trade Practices Act for the purpose of harassing Swavely, and contends that the trial court ignored evidence that Macris sued Swavely to enforce compliance with the federal Fair Housing Act. Swavely requests that this court affirm the trial court's judgment as well as award him additional attorney's fees and costs to cover the expenses incurred as a result of Macris' appeal of the trial court's ruling. We hold that the trial court's finding was not clearly erroneous and therefore affirm the trial court's judgment. We further order Macris to pay Swavely's reasonable and necessary appellate attorney's fees, in an amount determined by the Superior Court upon remand, as well as court costs.

## I. FACTUAL AND PROCEDURAL BACKGROUND

**[2]** In early 1999, Defendant-Appellee Daniel D. Swavely contacted Plaintiff-Appellant George P. Macris and a small number of other potential investors regarding a proposed luxury condominium project to be located along Tumon Bay. Swavely provided a written description of this proposed project—which eventually became known as the Villa Kanton Tasi ("VKT")—to every potential investor. According to the proposal, VKT would consist of a 12-story tower with 22 units (two on each floor) on floors #2 through #12, with the first level reserved for common area amenities and parking. Each investor would receive one unit. These units were planned to have a total gross area of 2,250 square feet per unit and be identical in width and depth, but did

not include height specifications. Owners were to share equally in the costs and expenses associated with the project, but would be individually responsible for the cost of design and layout of their individual units. On March 4, 1999, Swavely, Macris, and the other owners became members of the Beach Front Development LLC ("BFD"), with Swavely serving as the initial, uncompensated manager of the organization.

**[3]** No representations that VKT would contain a rooftop terrace were made by Swavely, or were included in any version of BFD's Articles of Organization, Swavely's original written proposal, or the purchase and sale agreement. Though members discussed the possibility of constructing a rooftop terrace as early as March and April 1999, it remained a controversial issue and no consensus was reached by the time Macris joined BFD.

**[4]** All versions of BFD's Articles of Organization expressly provided that, with a few narrow exceptions, all decisions shall be made by a majority vote of the members. On May 26, 1999, a majority of BFD's members approved a rooftop terrace, as well as raised ceilings or "pop-ups" over the two units located on the 12th floor, one of which belonged to Swavely. The additional costs of these pop-ups were to be paid by the owners of the two 12th floor units. Macris' proxy was present at this meeting and all members, including Macris, were provided with minutes of the meeting and information on how to obtain full-size tower and floor plans with the included changes.

**[5]** Through the end of 2000, many meetings were held about the status of the construction, including that of the rooftop terrace and the pop-ups. Macris or his proxy attended most of these meetings but in early 2001 Macris questioned the legitimacy of the pop-ups and the specifications of the rooftop terrace, which was not designed to be accessible by an elevator. At this point, Macris began to share his strong disagreement on these issues with Swavely and

BFD's other members. Macris actively protested the rooftop terrace, arguing that, as designed, it would not be in compliance with the Fair Housing Act ("FHA") or the Americans with Disabilities Act. Once it became clear that BFD would not construct the terrace to Macris' desired specifications, Macris launched an email campaign attacking Swavely.

**[6]** The BFD members, in response to Macris' actions, held a re-vote on the pop-ups issue, which resulted in the pop-ups being re-approved by a majority vote of all members. After this vote, Macris filed a complaint with the Department of Land Management ("DLM") regarding the pop-ups, which resulted in a DLM letter stating that the pop-ups were consistent with prior DLM approval of the project. Macris also continued to press that BFD adopt his alternative layout for the proposed rooftop terrace. After BFD's legal counsel concluded that elevator access for the rooftop terrace was necessary to comply with the FHA, BFD's members, aware that extending the elevator to the roof would cause significant delay and additional expenses, voted not to proceed with the rooftop terrace, but to construct infrastructure capable of supporting a terrace should the VKT Homeowner's Association choose to build one in the future. Macris, not content with these outcomes, threatened to sue Swavely under the Deceptive Trade Practices Act ("DTPA"), 5 GCA § 32101 *et seq.*

**[7]** On July 3, 2003 Macris filed a complaint, alleging that Swavely had engaged in unconscionable actions prohibited by the DTPA. Swavely submitted an answer denying the allegations and initiated a counterclaim for attorney's fees and costs pursuant to 5 GCA § 32107. Both Macris' DTPA action and Swavely's counterclaim came before the Superior Court for a bench trial. The Superior Court issued findings of fact and conclusions of law holding that Macris failed to prove, by a preponderance of the evidence, that Swavely engaged in unconscionable actions prohibited by the DTPA. The trial court further found that, because

Macris' lawsuit was without merit and had been filed with the intent to harass Swavely, reasonable attorney's fees and costs should be awarded to Swavely pursuant to 5 GCA § 32107. The Superior Court's judgment was entered on September 27, 2007, and Macris filed a timely Notice of Appeal.

## II. JURISDICTION

**[8]** This court has jurisdiction to hear appeals of final judgments entered by the Superior Court of Guam. 48 U.S.C. § 1424-1(a)(2) (West through Pub. L. 110-350 (excluding P.L. 110-329, 110-343, 110-344, and 110-346) (2008)); 7 GCA §§ 3107(b), 3108(a), 25101, 25102(a) (2005).

## III. DISCUSSION

### A. The Trial Court's Finding of Harassment Was Not Clearly Erroneous

**[9]** The DTPA provides that, "[o]n a finding by the court that an action under this chapter was groundless and brought in bad faith, or brought for the purpose of harassment, the court shall award to the innocent party reasonable and necessary attorneys' fees and court costs." 5 GCA § 32107 (2005). Determination of a party's intent is a pure question of fact. *Pullman-Standard, v. Swint*, 456 U.S. 273, 287-88 (1982). Upon appellate review, findings of fact "are reviewed in a highly deferential manner and will only be set aside if clearly erroneous." *Zahnen v. Limitiaco*, 2008 Guam 5 ¶ 8 (citing *In re Application of Leon Guerrero*, 2005 Guam 1 ¶ 15). Under this standard, the appellate court affords deference to the trial court to judge the credibility of witnesses. *Jenkins v. Montallana*, 2007 Guam 12 ¶ 9. A finding of fact is "clearly erroneous" if "the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Fargo Pac., Inc. v. Korando Corp.*, 2006 Guam 22 ¶ 22. When evaluating the trial court's judgment, the appellate court "must examine the evidence in the light

most favorable to the successful party, resolve any controverted fact in favor of the successful party, and give the successful party the benefit of every reasonable inference from the evidence." *Id.* at ¶ 23 (citing *Guam United Warehouse Corp. v. DeWitt Transp. Servs. of Guam, Inc.*, 2003 Guam 20 ¶ 41). The appellate court cannot merely substitute its judgment for that of the trial court. *People v. Flores*, 2004 Guam 18 ¶ 7.

**[10]** Sufficient evidence exists to support a finding that Macris filed suit with the intent to harass Swavely. In its Findings of Fact & Conclusions of Law, the trial court cited numerous instances of Macris bringing forth claims without evidentiary support and concluded, based on witness testimony and other evidence introduced at trial, that Macris' lawsuit was an "evolution in strategy" in Macris' ongoing efforts to force BFD to create a rooftop terrace accessible by elevator and stop construction of the pop-ups. ER at 13 (Finds. Fact & Concl. L.). Even Macris has not gone so far as to say that no plausible evidence exists to support the trial court's finding of harassment, for Macris concedes that he "came out second best in the credibility determinations" and that the trial court, as the finder of fact, had the discretion to believe one witness over another. Appellant's Reply Br. at 4 (May 1, 2007). Though it is possible that another finder of fact may have evaluated Macris' credibility differently, in the absence of a "definite and firm conviction that a mistake has been committed," the trial court's decision should not be disturbed. *Fargo Pac., Inc.*, 2006 Guam 22 ¶ 22.

**[11]** Macris argues that, while the trial court had the right to believe Swavely over him, we should nevertheless overturn the finding of harassment because the trial court purportedly ignored evidence that Macris was trying to enforce a policy of non-discrimination against future

VKT residents with disabilities and to enforce compliance with the FHA.[1] However, the trial court did not ignore this evidence. The trial court expressly acknowledged that Macris "actively protested the roof top access, arguing that it was not in compliance with . . . the Fair Housing Act . . . because it was not handicap accessible." ER, tab 4 at 7 (Finds. Fact & Concl. L.). The trial court also recognized Macris' other actions that could be construed as attempts to get Swavely to follow the law, such as filing a complaint with the DLM claiming that the pop-ups were not consistent with previous government approvals. *Id.* at 8.

**[12]** The record indicates that the trial court, rather than ignoring this evidence, simply interpreted it in a way not favorable to Macris. The trial court characterized Macris' activities as all part of Macris' evolving strategy to ensure that BFD and Swavely adopted his positions on the pop-ups and rooftop terrace. As the trial court describes,

> When Plaintiff's attempt to secure a roof top terrace by a majority of members failed during initial meetings, Plaintiff sought Defendant's assistance as an ally or friend. However, Defendant informed Plaintiff that the project was a continuing effort and modifications were to be made pursuant to the collective's approval. Subsequently, Plaintiff questioned Defendant's ability to remain objective, his qualifications, and personal motives. After unsuccessful attempts to convince members to adopt similar views of Defendant and Defendant's role in the modifications, Plaintiff switched to legal tactics. He informed members of violations with federal regulations (implying that Defendant should have known of these violations due to his wife's legal background), filed complaints with respective government agencies, and threatened to sue Defendant unless Defendant submitted to Plaintiff's requests. Thus, the Court finds substantial evidence that Plaintiff has used the instant action to harass Defendant.

*Id.* at 13-14. The trial court, as the finder of fact, is entitled to deference from this court with respect to how it has judged the credibility of the witnesses. *Coffey v. Gov't of Guam*, 1997

[1] Swavely has argued that this court should not consider this argument because it is inappropriate for Macris to raise Swavely's alleged violations of the FHA for the first time on appeal. It is well established that, as a general rule, "this court will not entertain an issue raised for the first time on appeal." *Sinlao v. Sinlao*, 2005 Guam 24 ¶ 30. We do not believe that Macris is raising a new issue, for he has not requested that this court determine Swavely's liability under the FHA. Rather, Macris is setting forth an argument that his subjective belief that Swavely violated the FHA should negate a finding of intent to harass. Thus, we may consider Macris' argument, to the extent that our analysis is limited to the issue of Macris' intent and not Swavely's actual liability under federal law.

Guam 14 ¶ 19. While it is possible that a different finder of fact could have reached a different conclusion, sufficient evidence exists to support a finding that Macris initiated his lawsuit for the improper purpose of harassing Swavely. At trial, the initial VKT proposal, the purchase agreement, and the First and Second Operating Agreements were introduced into evidence, none of which indicated that a rooftop terrace was among VKT's planned common area amenities or that the units had any height specifications. Supplemental Excerpts of Record ("SER"), tab 14 at 181-84 (Def's. Ex. 41, Letter from Dan Swavely to BFD Members, Jan. 11, 1999); SER, tab 17 at 188-201 (Def's Ex. 46, Purchase and Sale Agreement,); SER, tab 19 at 274-344 (Def's Ex. 49, First and Second Operating Agreements). Multiple witnesses testified that Swavely did not make any representations that VKT's units would have the same ceiling height or that a rooftop terrace would be a common area amenity. *See* SER, tab 3 at 29-32 (Swavely Tr., Jan. 31, 2006); SER, tab 7 at 97-98, 120 (Keogh Tr., Feb. 2, 2006); SER, tab 11 at 167 (Johnson Tr., Sept. 7, 2006); SER, tab 6 at 81 (Felix Tr., Feb. 2, 2006).

**[13]** Likewise, substantial evidence was introduced at trial indicating that Macris' allegations had no evidentiary basis. Both witness testimony and documentary evidence established that BFD's members—and not Swavely himself—eliminated the rooftop terrace, and that the cost of the pop-ups was paid by the owners of the 12th floor units, and not BFD's entire membership. *See* SER, tab 4 at 71 (Swavely Tr., Feb. 1, 2006); SER, tab 5 at 79 (Swavely Tr., Feb. 2, 2006); SER, tab 6 at 91-93 (Felix Tr., Feb. 2, 2006); SER, tab 51 at 434-37 (Def's Ex. 117, BFD Meeting Minutes, June 30, 2001); SER, tab 55 at 445 (Def's Ex. 127, Copy of Swavelys' Personal Check and Receipt No. 6520); SER, tab 56 at 446 (Def's Ex. 128, Copy of Swavelys' Personal Check and Deposit Slip). Evidence was also introduced showing that Macris was aware of the situation, opposed the pop-ups and elimination of the rooftop terrace, and, when the

membership did not adopt his positions, harassed Swavely in the hopes that those decisions would be reversed. *See* SER, tab 4 at 52, 86 (Swavely Tr.); SER, tab 7 at 112-13 (Keogh Tr); SER, tab 40 at 397 (Def's Ex. 95, Copy of e-mail message from Dr. Bobby C. Baker to BFD Members, Mar. 9, 2001). Notably, Macris sought to get his way by filing multiple complaints with government agencies that were ultimately rejected.

**[14]** Furthermore, even after receiving an explanation from opposing counsel as to how his claims were groundless, Macris chose to file suit against Swavely under the DTPA anyway. SER, tab 60 at 473-76 (Def's Ex. 121, Letter from Attorney Thomas Lannen to Attorney Seaton Woodley, Sept. 28, 2001). Finally, Robert Keogh, at the time the President of the VKT Homeowner's Association, testified that Macris' attorney met with him and told him that he would have the instant lawsuit "go away" if the Homeowners Association agreed to allow Macris' dog to reside in his VKT unit despite VKT's prohibition against pets. SER, tab 7, Keogh Tr., 108:10-108:6. Reviewing the entire evidence, we are not left with the definite and firm conviction that a mistake has been committed by the trial court. Accordingly, we affirm the trial court's finding of harassment and imposition of attorney's fees and costs under 5 GCA § 32107.

**B. Swavely is Entitled to Appellate Attorney's Fees and Costs**

**[15]** Swavely requests that, pursuant to 5 GCA § 32107, this court grant him an award of additional attorney's fees and costs to cover the expenses incurred in defending Macris' appeal of the trial court's finding of harassment. Guam, like other United States jurisdictions, follows the "American Rule" governing attorney's fees. *Fleming v. Quigley*, 2003 Guam 4 ¶ 35. Under the American Rule, "the prevailing litigant is ordinarily not entitled to collect a reasonable attorneys' fee from the loser." *Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240,

247 (1975). Instead, all litigants "bear their own litigation expenses, including attorney's fees." *Fleming*, 2003 Guam 4 ¶ 7. However, certain recognized exceptions apply to the American Rule. Most notably, fee-shifting is permitted when it is authorized by a statute. *Id.*

**[16]** Both parties acknowledge that, while 5 GCA § 32107 mandates that a trial court award a prevailing defendant reasonable and necessary attorney's fees and costs upon a finding that a plaintiff initiated a DTPA action for the purpose of harassment, the plain text of the statute neither explicitly allows nor precludes an award of attorney's fees incurred during the course of an appeal. Macris contends that the statute's failure to explicitly authorize appellate attorney's fees precludes such an award, whereas Swavely argues this award would be consistent with how other jurisdictions have applied substantially similar DTPA statutes and would further the public policy goals behind the fee-shifting provision.

**[17]** Whether 5 GCA § 32107 authorizes fee-shifting on appeal is a pure question of law that involves statutory interpretation. Accordingly, this court must base its decision on the statute's plain meaning and the legislature's intent. *People v. Root*, 2005 Guam 16 ¶ 9. The legislature has expressly authorized courts construing the DTPA to "consider relevant and pertinent decisions of courts in other jurisdictions." 5 GCA § 32108(c)(B) (2005). Given the fee-shifting statute's ambiguous language and the absence of prior Guam case law interpreting 5 GCA § 32107, it is instructive to consider how courts in jurisdictions with similarly worded statutes have resolved this issue.

**[18]** Several states have DTPA statutes with attorney's fees provisions that contain language similar to 5 GCA § 32107.[2] Of these states, we consider Texas particularly relevant because its

[2] These states include Alabama, Ala. Code. § 8-19-10(a)(3), Colorado, Colo. Rev. Stat. § 6-1-113(3), Georgia, Ga. Code Ann. § 10-1-399, Louisiana, La. Rev. Stat. Ann. art. 51:1409(A), Tennessee, Tenn. Code Ann. § 47-18-109(e)(2), and Texas, Tex. Bus. & Com. Code Ann. § 17.50(c).

DTPA jurisprudence is well-developed, and its DTPA mandatory fee-shifting statute, Tex. Bus. & Com. Code Ann. § 17.50(c), contains language that is virtually identical to 5 GCA § 32107.[3] Texas courts have routinely used Tex. Bus. & Com. Code Ann. § 17.50(c) to award prevailing defendants additional attorney's fees and costs incurred due to a plaintiff's unsuccessful appeal of a trial court's finding of bad faith or harassment. *See Schott v. Leissner*, 659 S.W.2d 752 (Tex. App. 1983) (awarding defendant $2,500 in attorney's fees under § 17.50(c) for defending an appeal in the Court of Appeals and an additional $1,500 in appellate fees in the event of an appeal to the Texas Supreme Court); *see also Loeffler v. Lytle Indep. Sch. Dist.*, 211 S.W.3d 331, 351 (Tex. App. 2006) (affirming award of defendant's appellate attorney's fees under § 17.50(c) contingent on plaintiff's appeals being unsuccessful); *Transport Indem. Co. v. Orgain, Bell & Tucker*, 846 S.W.2d 878 (Tex. App. 1993) (affirming award of $20,000 in defendant's appellate attorney's fees in the event plaintiff appeals finding of bad faith under § 17.50(c) to the Court of Appeals and the Texas Supreme Court).

**[19]** An award of appellate attorney's fees in such circumstances is deemed necessary by Texas courts to promote the public policy considerations that underlie Tex. Bus. & Com. Code Ann. § 17.50(c), 5 GCA § 32107, and similar fee-shifting provisions in other DTPA statutes. As the Texas Supreme Court succinctly summarizes, requiring a plaintiff to pay a defendant's attorney's fees and costs upon a finding that the plaintiff's DTPA lawsuit was initiated in bad faith or with an intent to harass serves "to deter similar conduct in the future and to compensate

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[3] The Texas statute reads as follows:

> On a finding by the court that an action under this section was groundless in fact or law or brought in bad faith, or brought for the purpose of harassment, the court shall award to the defendant reasonable and necessary attorneys' fees and costs.

Tex. Bus. & Com. Code Ann. § 17.50(c) (2005).

the aggrieved party by reimbursing the costs incurred in responding to baseless pleadings." *Klein v. Dooley*, 949 S.W.2d 307, 308 (Tex. 1997) (quoting *Scott & White Mem'l Hosp. v. Schexnider*, 940 S.W.2d 594, 596-597 (Tex. 1996)) (internal quotation marks omitted). We agree that an award of appellate attorney's fees in the event of an unsuccessful appeal of a finding of harassment, even when the appeal itself is not groundless or brought for an improper purpose, is necessary to further the public policy considerations that underlie 5 GCA § 32107. *See Loeffler*, 211 S.W.3d at 351 (observing that award of appellate attorney's fees contingent on plaintiff's unsuccessful appeal is "designed to compensate appellees for the expenses of defending its award."). Accordingly, we hold that Macris pay Swavely's reasonable and necessary appellate attorney's fees.

**[20]** Finally, Swavely argues that this court should determine the exact amount of appellate attorney's fees in lieu of the trial court because this court is better suited than the trial court to evaluate the reasonableness and necessity of fees incurred in defending an appeal. We have previously recognized that, nationally, appellate courts are split on this issue, with some courts remanding the question to the trial court while others make the determination themselves. *Cruz v. Cruz*, 2005 Guam 3 ¶ 21. In *Cruz*, this court, while acknowledging that it has the authority to determine the exact amount of appellate attorney's fees, chose to remand that determination to the trial court. But unlike *Cruz*, the attorney's fees at issue here are mandatory—not discretionary—and do not depend on facts better known to the trial court. Because the instant case is distinct from *Cruz*, we must consider whether remand is appropriate in light of the changed circumstances.

**[21]** When determining which court should assess the amount of appellate attorney's fees owed to a prevailing party under a deceptive trade practices statute's fee-shifting provision,

appellate courts in other jurisdictions have often made the determination themselves rather than remanding the issue to the trial court. *See, e.g., Laurents v. Louisiana Mobile Homes, Inc.*, 689 So. 2d 536, 543 (La. Ct. App. 1997) (increasing trial court's attorney's fees award by $1,000 for work done in connection with successful appeal); *Schott*, 659 S.W.2d at 755 n.1 (ordering plaintiff-appellant to pay defendant-appellee $2,500 in appellate attorney's fees). However, appellate courts have also frequently remanded the determination to the trial court, particularly when the reasonableness of the prevailing party's appellate attorney's fees was in dispute. *See, e.g., A.V.I., Inc. v. Heathington*, 842 S.W.2d 712, 718 (Tex. App. 1992) (holding that since the probable amount of appellate attorney's fees ranged from $3,000 to $7,500, remand to the trial court was appropriate since a question of fact existed as to the reasonable amount of appellate fees); *Smith v. Smith*, 757 S.W.2d 422, 426 (Tex. App. 1988) (remanding appellate attorney's fees issue to trial court because the trial court, as the finder of fact, must hear evidence to determine whether the amount of attorney's fees is reasonable).

**[22]** Here, the parties disagree as to whether the appellate attorney's fees requested by Swavely are reasonable. Though Swavely has requested an award of $7,212 in appellate attorney's fees, Macris disputes the reasonableness of this figure, accusing Swavely of unnecessarily incurring substantial costs in the hope that the fees would be assessed against Macris. With respect to this issue, the record before us is too underdeveloped for this court to determine whether the fees Swavely has requested are reasonable and necessary under 5 GCA § 32107. Because a trial court is the more proper forum to litigate such matters, we remand this issue to the Superior Court.

## IV. CONCLUSION

**[23]** We cannot find that the trial court erred when it held that Macris filed his DTPA lawsuit for the improper purpose of harassing Swavely. Under the clear error standard, we may overturn the trial court's finding of harassment only if we are left with the definite and firm conviction that a mistake has been committed. We hold that the trial court considered the entirety of the evidence and that sufficient evidence exists to support a finding of harassment. Thus we **AFFIRM** the trial court's decision.

**[24]** Having affirmed the finding of harassment, we further hold that Swavely is entitled to his reasonable and necessary appellate attorney's fees and court costs under 5 GCA § 32107. While we have the power to award a specific amount of attorney's fees on appeal, we decline to do so, for in this particular case the trial court is the more appropriate forum to determine whether the fees Swavely has requested are reasonable and necessary. Accordingly, we **ORDER** Macris to pay Swavely's reasonable attorney's fees and court costs in connection with this appeal, and **REMAND** to the trial court the determination of the exact amount of reasonable and necessary appellate attorney's fees.

Original Signed By: F. Philip Carbullido

F. PHILIP CARBULLIDO
Associate Justice

Original Signed By: Katherine A. Maraman

KATHERINE A. MARAMAN
Associate Justice

Original Signed By: Robert J. Torres

ROBERT J. TORRES
Chief Justice

## IV. CONCLUSION

**[23]** We cannot find that the trial court erred when it held that Macris filed his DTPA lawsuit for the improper purpose of harassing Swavely. Under the clear error standard, we may overturn the trial court's finding of harassment only if we are left with the definite and firm conviction that a mistake has been committed. We hold that the trial court considered the entirety of the evidence and that sufficient evidence exists to support a finding of harassment. Thus we **AFFIRM** the trial court's decision.

**[24]** Having affirmed the finding of harassment, we further hold that Swavely is entitled to his reasonable and necessary appellate attorney's fees and court costs under 5 GCA § 32107. While we have the power to award a specific amount of attorney's fees on appeal, we decline to do so, for in this particular case the trial court is the more appropriate forum to determine whether the fees Swavely has requested are reasonable and necessary. Accordingly, we **ORDER** Macris to pay Swavely's reasonable attorney's fees and court costs in connection with this appeal, and **REMAND** to the trial court the determination of the exact amount of reasonable and necessary appellate attorney's fees.

F. PHILIP CARBULLIDO
Associate Justice

KATHERINE A. MARAMAN
Associate Justice

ROBERT J. TORRES
Chief Justice