

## **Party Must Be an Intended Beneficiary of the Contract to Invoke the Reciprocity Provision of Civil Code Section 1717**

Posted on November 3, 2010 by [David J. McMahon](#)

In [Hyduke's Valley Motors v. Lobel Financial Corp.](#), 2010 DJDAR 16183 (2010), the [court of appeal for the fourth district](#) reiterated a fundamental prerequisite for a party seeking attorney fees under the reciprocity provision of [Civil Code 1717](#).

Under CC § 1717 in any action or a contract which provides for a fee award to one party, Section 1717 makes the clause reciprocal as a matter of law. However, in order to be eligible, the litigant must be a party to the contract or an intended beneficiary of the agreement.

Hyduke's Valley Motors (Hyduke's) appealed from a post-judgment order denying its motion for attorney fees against Lobel Financial Corp. (Lobel).

Hyduke's was the prevailing party in an action to recover against Lobel and Country Finance Services for the purchase price of vehicles it sold to a used car dealer. The dealer filed an insolvency petition prior to paying for the purchase price of the vehicles. Hyduke's filed a motion seeking attorney fees against Lobel and CFS, relying on an attorney fees clause contained in a conditional sales contract between the auto dealer and the finance companies. Hyduke argued that it was entitled to attorney fees as an intended beneficiary of the conditional sales contract. The trial court denied the motion.

The court of appeal affirmed the decision of the lower court noting that each party to litigation must bear its own attorney fees, unless otherwise provided by statute or contract. The court concluded that Hyduke's suit against the finance companies, was for the recovery of the purchase price of the automobiles and was not an action arising out of the conditional sales contract. The court specifically found that Hyduke was not an intended beneficiary of the conditional sales contract. There was no evidence in the record to support that conclusion.