

## Court Abuses Discretion by Denying Award of Counsel Fees

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In [Silver Creek LLC v. Blackrock Realty Advisors, 2009 DJDAR 7165 \(pdf\)](#), the [California Court of Appeal – 4<sup>th</sup> District](#) decided an important issue concerning [California’s prevailing party statute, CC § 1717](#).

BlackRock Realty Advisors, Inc. (BlackRock) agreed to purchase commercial property from Silver Creek, LLC (Silver Creek). The agreement was to buy the property for \$29.75 million with a deposit of \$1.13 million in escrow. BlackRock agreed to assume the existing property loans and the transaction was to close on July 1, 2005. The agreement included a provision for attorney fees to be awarded to the “prevailing party.”

Subsequently, the parties got into a dispute about certain loan assumption terms and the contract was not consummated by the contractual deadline. Silver Creek advised BlackRock that escrow was terminated as the deadline was not met. BlackRock refused to acknowledge the termination. Silver Creek offered to relinquish the deposit in exchange for termination and sought declaratory relief when BlackRock failed to respond. The trial court found in favor of Silver Creek, but concluded that BlackRock was entitled to a set off in the amount paid for the deposit. Silver Creek filed a motion for attorney’s fees under Civil Code § 1717. The trial court found that there was no “prevailing party” as Silver Creek was not completely victorious.

The court of appeal reserved and concluded that Section 1717 requires on award of attorney’s fees to the “prevailing party.” The “prevailing party” is the party who recovers “a greater relief in the action on the contract.” While the trial court has discretion in determining the “prevailing party,” the discretion is limited. The court held that the record clearly showed that Silver Creek obtained the greater relief as the “main litigation objective” was the “disposition of the properties” rather than the return of the deposit. Since the “property issue” was decided in Silver Creek’s favor, Silver Creek was the “prevailing party” for the purposes of § 1717.