

[Be Careful When Alleging Your Client's Right to Attorneys' Fees Because It May Come Back to Haunt You](#)

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When a contract contains a one-sided prevailing party attorneys' fees provision, California Civil Code section 1717 makes that provision reciprocal. So if you allege your client is entitled to attorneys' fees due to the prevailing party contract clause -- even if it specifically states only your client is entitled to fees -- if the other party prevails it may be entitled to its fees instead.

A recent example can be found in *Mepco Services, Inc. v. Saddleback Valley Unified School District* (2010) 10 C.D.O.S. 13918, where the Fourth Appellate District affirmed an award of \$366,916.63 in attorneys' fees. A contractor agreed to perform work for a school district, but the construction contract did not contain an attorneys' fees provision to the prevailing party in any dispute. The contract did, however, require the contractor to obtain a performance bond. The performance bond contained a one-way attorneys' fees provision, entitling *only the school district* to its attorneys' fees in the event of a claim for enforcement of the bond.

When a dispute arose between the contractor and the district, the district named the bonding company and alleged *both* the bonding company and the contractor had breached the terms of the performance bond. More importantly, the district alleged its entitlement to attorneys' fees under the bond.

When the jury found in favor of the contractor, the trial court ordered the district to pay the contractor \$366,916.63, representing its reasonable attorneys fees. The appellate court affirmed. Consequently, the school district was obligated to pay the contractor's fees, even though the construction contract between those two parties did *not* contain an attorneys' fees provision.

Moreover, the school district was responsible for the contractor's fees even though the performance bond entitled *only* the district to *its* fees. The court reasoned that if the district had prevailed on its bond claim, the contractor and bonding company would have been jointly and severally liable for the district's fees. Since Civil Code section 1717 makes a one-way attorneys' fees provision reciprocal by statute, then it stands to reason that the district, as the losing party, should be obligated to cover the contractor's fees.

So parties to litigation should always use caution, both when deciding whether to mention certain specific contracts, but especially when alleging their entitlement to fees under any contract mentioned.