

# Contract Disputes and Prevailing Party Attorneys Fees in California

By: Peter S. Bauman, Esq.

<http://commercialcounselor.com/>

Under California law, the recovery of attorneys' fees are authorized by statute in a variety of situations. Among these are contract disputes.

The "prevailing party" in a contract dispute is entitled to recover their attorneys' fees and costs, if the contract provides for attorneys' fees to the prevailing party. Even if the contract authorizes attorneys' fees for only one named party, the other party may still recover attorneys' fees if it is the prevailing party. [Cal. Civil Code, Section 1717] As a result, a defendant in a lawsuit may recover attorneys' fees if it is the prevailing party, even if the contract only authorized attorneys' fees for the plaintiff.

A prevailing party is "the party who recovered a greater relief in the action on the contract." [Cal. Civil Code, Section 1717 (b)(2)]

The California Supreme Court has interpreted Civil Code Section 1717 as giving rise to attorneys' fees as a matter of right in certain situations, while only at the discretion of the court in others. A party is entitled to attorney's fees as a matter of right in cases where the result is not mixed and the prevailing party triumphs convincingly. This does not mean that the party must win on all fronts. A lopsided win is sufficient.

If the results are mixed, however, a court may determine that there is no prevailing party and refuse to award attorney's fees to either side. Alternatively, the Court may still award attorneys' fees to the prevailing party at its discretion. As stated in *Hsu v. Abbara*, 9 Cal. 4th 863 (1995), the legislative intent of Section 1717 is given effect by:

allowing those parties whose litigation success is not fairly disputable to claim attorney fees as a matter of right, while reserving for the trial court a measure of discretion to find no prevailing party when the results of the litigation are mixed.

Moreover, early victories, including procedural victories, do not necessarily give rise to a right to recover attorney's fees. For instance, a party may defeat a motion for summary judgment, or to compel arbitration, but ultimately lose the lawsuit after trial.

But if the lawsuit is resolved early, e.g. by winning a summary judgment motion that disposes of the action entirely, attorneys' fees may be awarded. As stated in Civil Code Section 1717(b)(1):

The court . . . shall determine who is the party prevailing on the contract for purposes of this section, whether or not the suit proceeds to final judgment.

Link to original article: <http://commercialcounselor.com/contract-disputes-and-prevailing-party-attorneys-fees-in-california/>

For over 35 years small businesses, major corporations, public entities, individuals and insurance companies have depended on Tharpe & Howell, LLP, to deliver pragmatic, innovative, cost-effective civil litigation and

transactional solutions. For more information, please contact us at (818) 473-5720 or email your request to [cabusinesslawreport@tharpe-howell.com](mailto:cabusinesslawreport@tharpe-howell.com).