

California Civil Code Section 1717 Provides for Mutuality of Remedy in Favor of a Third Party Beneficiary

January 31, 2012 by [David J. McMahon](#)

In [Cargill Inc. v. Souza](#), 2011 DJDAR 17680 (2011), the [California Court of Appeal for the Fifth Appellate District](#) decided a novel case relating to the attempt by a litigant's attempt to enforce a fee clause in a contract against a purported third party beneficiary of the agreement.

The Teixeiras borrowed \$1 million from the Souzas to buy cattle and farm equipment. The Teixeiras executed a promissory note (the "Note") and a security agreement (the "Agreement") in favor of the Souzas. The Note and the Agreement created a security interest on behalf of the Souzas in the cattle and farm equipment. In addition, the Teixeiras bought feed from Cargill Inc. The feed purchase resulted in a further unsecured indebtedness in favor of Cargill in the sum of \$262,000.

The Teixeiras soon defaulted on the promissory notes.

They executed a Transfer Agreement ("Transfer Agreement") with the Souzas. Under the Transfer Agreement, the Souzas agreed to pay the Teixeiras' outstanding obligations listed on an exhibit to the Agreement. By omission, the exhibit was not completely filled out. The Transfer Agreement had a prevailing party fee clause indicating that the winner of any dispute arising under the Transfer Agreement would be entitled to reasonable attorney fees.

The bill for feed was never paid. Eventually, Cargill brought suit to collect the unpaid invoice. Cargill alleged that the Souzas failed to pay the Teixeiras' obligation owed to Cargill for the unpaid feed bills. Cargill alleged that it was a third party beneficiary of the Transfer Agreement. The Souzas moved for summary judgment and the trial court granted the Souzas' motion. The Souzas moved for attorney fees, but the trial court denied the motion.

The court of appeal reversed the decision of the trial court. The court of appeal noted that under [Civil Code Section 1717](#) in an action on a contract, if a non-party to the Agreement sues a signatory party and the signatory defendant prevails, the signatory defendant is entitled to attorney fees if the nonsignatory plaintiff would have been entitled to fees in the case had they won the litigation.

Because Cargill was a third party beneficiary of the Transfer Agreement, and would have been entitled to fees if it had won, the court of appeal concluded that the Souzas were entitled to reasonable attorney fees as the prevailing party under the reciprocal provisions of Civil Code Section 1717.