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## State high court clarifies prevailing party attorney fee rules

By Malcolm Maclachlan

The state Supreme Court ruled Thursday that a litigant cannot collect attorney fees while a similar contract dispute continues in Florida.

The decision helps clarify a series of appellate court rulings relating to state Civil Code Section 1717, which governs the awarding of attorney fees. *DisputeSuite.com LLC v. Score/nc.com*, CA Supreme Court, DAR p. 3300.

The case arose from a dispute between DisputeSuite, a software company based in Florida, and Score, a firm that offers services to companies that help people fix mistakes on their credit scores.

The companies signed three business contracts, calling for DisputeSuite to refer potential clients to Score, which would pay commissions and relicense DisputeSuite's software.

The agreements called for the prevailing party to recover legal fees. Two of the contracts specified Florida as the proper forum for a dispute, while the third named Los Angeles.

In 2012, DisputeSuite sued Score for fraud and breach of contract in Los Angeles County Superior Court. Score filed a motion to dismiss, arguing the case involved the Florida forum contracts. When the judge agreed, Score filed a motion to recover \$84,640 in fees.

However, the Los Angeles County judge stayed the order to allow DisputeSuite to refile in Florida. The trial judge denied the fee request on the grounds "there has been no final resolution of the contract claims."

In a unanimous decision written by Justice Kathryn M. Werdegar, the state high court ruled, "The parties' substantive disputes remain unresolved" because "the action had already been refiled in the chosen jurisdiction."

"We hold that Score's victory in moving the litigation to Florida did not make it the prevailing party as a matter of law under Section 1717, and the trial court therefore acted within its discretion in denying Score's motion for attorney fees," Werdegar wrote.

Score's attorney, Robert Cooper, of counsel at Wilson Elser Moskowitz Edelman & Dicker LLP in Los Angeles, said he saw positives in the ruling.

"Besides resolving the split of authority, the opinion adopts our position on one of the key issues presented by confirming that Section 1717 does not require a victory on the merits of the contractual dispute to trigger fee shifting," Cooper said.

"The opinion also confirms our clients' right to seek fee recovery at the conclusion of the Florida action for defeating the California action," he added.

Cooper had argued that denying Score's fee request would encourage forum shopping by plaintiffs. He cited two cases in which fees were awarded on dismissal.

The ruling denied these claims, saying the limited circumstances of the case did not mean fees could never be awarded after "a dismissal on grounds of improper forum."

The court found the more relevant case was *Hsu v. Abbata* (1995) 9 Cal.4th 863, 876.

Hsu states a "prevailing party" can be decided on grounds beside contract claims, and that a court can rule that neither party prevailed.

Louie H. Castoria, a partner at Kaufman Dolowich & Voluck LLP in San Francisco, said the case brings a measure of clarity to Civil Code Section 1717.

The statute does not define a "prevailing party," except to specify that there is no prevailing party in cases that settle or reach another voluntary resolution.

"If you are going to be seeking attorney fees under 1717, you better prevail on something that brings a case to an end as a whole," said Castoria, who has written about the case but is not involved.

Castoria added that he would have liked to have seen the court more directly address forum shopping. The prevailing party will now need to seek attorney fees in Florida, he said.

While that state has rules on attorney fees similar to California, he said, many states do not.

James J. Little, who represents DisputeSuite as managing partner of J.J. Little & Associates in Marina Del Rey, did not return calls seeking comment.

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