

FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

OPINION ON FEES UNDER CALIFORNIA CIVIL CODE § 1717

CHRISTOPHER KLEIN, Bankruptcy Judge:

Artful pleading in order not to state a contract cause of action in a bankruptcy dischargeability case does not necessarily insulate against exposure to prevailing party attorney's fees for actions "on a contract" under California Civil Code § 1717.

The victorious defendant in a nondischargeability action seeks attorney's fees based on the reciprocal prevailing party fee provisions of California Civil Code § 1717.

A business divorce agreement between 50 percent shareholders of a business required Defendant to pay Plaintiff \$275,000, consisting of \$137,500 cash and \$137,500 backed by a note and deed of trust on Defendant's home to be recorded after the cash payment was made. The Shareholder Buyout Agreement required, pursuant to Joint Escrow Instructions, the executed Deed of Trust ("DOT") to be held in trust and not recorded until Defendant raised the \$135,000 cash component by refinancing his home.

The DOT was not recorded for a year after the refinancing. In the interval before recording, another DOT was recorded, leaving Plaintiff under-secured when he eventually initiated the foreclosure proceedings that precipitated this chapter 7 case.

Plaintiff sought to except the debt from discharge under 11 U.S.C. §§ 523(a)(2) and (a)(6), alleging fraud and willful and malicious conduct in deferring recording of the DOT until after obtaining other secured debt senior in position to Plaintiff.

The Note and DOT each have attorney's fee provisions that the victorious Defendant now invokes under the reciprocal fee provision of California Civil Code § 1717.

I

California Civil Code § 1717

California's reciprocal fee statute, as a matter of state public policy, makes reciprocal all fee provisions in contracts in favor of the prevailing party in litigation. The terms of the contractual attorney fee provision may extend to tort and other non-contract claims. In other words, all one-sided fee provisions in contracts are reciprocal and entitle the prevailing party to reasonable attorney fees. Cal. Civ. Code § 1717; Santisas v. Goodin, 17 Cal. 4th 599, 614 (1998) (California Supreme Court); Penrod v. AmeriCredit Fin. Servs. (In re Penrod), 802 F.3d 1084, 1088 (9th Cir. 2015).

The California Supreme Court has been specific that, depending on the language of the particular contractual fee provision, § 1717 may embrace tort and other noncontractual claims. *Santisas*, 17 Cal. 4th at 622-23.

Section 1717 "was enacted to establish mutuality of remedy where a contractual provision makes recovery of attorney's fees available for only one party, and to prevent oppressive use of one-sided attorney's fees provisions." Reynolds Metals Co. v. Alperson, 25 Cal.3d 124, 128 (1979).

II

California Civil Code § 1717 Applies in Bankruptcy

9 It is settled that California Civil Code § 1717 applies in
10 bankruptcy when state law issues are integral to the bankruptcy
11 litigation. Heritage Ford v. Baroff (In re Baroff), 105 F.3d 439,
12 442 (9th Cir. 1997); Merced Proc. Credit Ass'n v. Sparkman (In re
13 Sparkman), 703 F.2d 1097, 1099-1100 (9th Cir. 1983).

14 That applicability, however, was formerly circumscribed in
15 the Ninth Circuit to exclude litigation in which the court
16 decided only federal bankruptcy law issues. Fobian v. W. Farm
17 Credit Bank (In re Fobian), 951 F.2d 1149, 1153 (9th Cir. 1991).

18 The United States Supreme Court disapproved the Ninth
19 Circuit Fobian rule in 2007 in Travelers Casualty & Surety Co. v.
20 Pacific Gas & Electric Co., 549 U.S. 443, 452 (2007).

21 In rejecting Fobian, the Supreme Court held that claims
22 enforceable under applicable state law will be allowed in
23 bankruptcy unless they are expressly disallowed. It reasoned that
24 the validity of creditor claims in bankruptcy is ordinarily a
25 question of state law and "we generally presume that claims
26 enforceable under applicable state law will be allowed in
27 bankruptcy unless they are expressly disallowed." In particular,
28 it held that nothing in the Bankruptcy Code expressly disallows

1 claims for attorney's fees simply because the fees are incurred
2 litigating questions of federal bankruptcy law. Travelers, 549
3 U.S. at 452-53.

4 A consequence of Travelers is that California Civil Code
5 § 1717 applies in all bankruptcy litigation when a party prevails
6 in an action "on a contract" and otherwise satisfies the
7 essential elements of that statute. Penrod, 802 F.3d at 1088.

8 In Penrod, the bankruptcy court had rejected § 1717 fees
9 because enforcement of the subject contract had been defeated
10 under bankruptcy law, rather than non-bankruptcy law. The Ninth
11 Circuit reversed, noting that the "bankruptcy court's reasoning
12 might have been valid before the Supreme Court" decided
13 Travelers, but not thereafter. Penrod, 802 F.3d at 1088.

14 The Ninth Circuit in Penrod explained that after Travelers,
15 the question is whether § 1717 categorically precludes awards of
16 attorney's fees when a party successfully limits enforcement of a
17 contract solely on the basis of bankruptcy law. It then answered
18 the question in the negative, concluding that California fee-
19 shifting statutes, such as § 1717, apply to issues litigated
20 under bankruptcy law. Penrod, 802 F.3d at 1189.

21 In short, § 1717 applies to bankruptcy litigation when the
22 essential elements for that statute are satisfied.

23

24 III

25 Essential Elements of Civil Code § 1717

26 The three essential elements for Civil Code § 1717 attorney
27 fee awards are: (1) an action "on a contract"; (2) a clause in
28 the contract providing for fees; and (3) the movant must have

1 been the prevailing party. Penrod, 802 F.3d at 1088 (citing
2 California law).

3

4 A

5 First Essential Element: "On A Contract."

6 As a matter of California law, the term action "on a
7 contract" is liberally construed to extend to any action, as long
8 as it "involves" a contract and one of the parties would be
9 entitled to recover attorney fees under the contract if that
10 party prevails in its lawsuit. In re Tobacco Cases I, 193 Cal.
11 App. 4th 1591, 1601 (2011), cited by Penrod, 802 F.3d at 1087.

12

13 1

14 As applied in bankruptcy, an action in bankruptcy court is
15 "on a contract" for purposes of § 1717 if the bankruptcy court
16 needed to determine enforceability of the agreement in order to
17 determine dischargeability. Conversely, if the court did not need
18 to determine whether the agreement is enforceable, then it is not
19 an action "on a contract." Penrod, 802 F.4th at 1088-89 (noting
20 effect of Travelers); Bos v. Bd. of Trs., 818 F.3d 486, 489-90
21 (9th Cir. 2016); cf., Howard v. Ray Hodge & Assocs. (In re
22 Howard)

23, 2025 Westlaw 763478, 74 Bankr. Ct. Dec. 94 (9th Cir.
2025) (reversing denial of § 1717 fees).

24 Here, Plaintiff contends that his nondischargeability action
25 was not "on a contract" because the Complaint pled only fraud and
26 willful and malicious conduct under §§ 523(a)(2) and (a)(6). The
27 argument falls short where, as here, the fraud and conduct
28 allegations can only be assessed by referring to the Shareholder

1 Buyout Agreement and its payment and security provisions. Even
2 before Travelers disapproved Fobian, the fact that review of the
3 agreement was essential to understanding the allegations could
4 have warranted § 1717 fees in bankruptcy under Baroff. After
5 Travelers, Plaintiff's argument is foreclosed.

6

7 2

8 At the trial on the § 523(a)(2) count, Plaintiff urged that
9 Defendant made a fraudulent misrepresentation by agreeing in the
10 Shareholder Buyout Agreement to record the DOT in favor of Plaintiff,
11 without disclosing that the DOT in favor of Plaintiff might not be
12 recorded until long after obtaining the contemplated financing loan
13 and might become subject to yet another loan, thereby leaving
14 Plaintiff in a less secure junior position.

15 At the trial on the § 523(a)(6) count, Plaintiff urged that
16 Defendant's one-year deferral of recording Plaintiff's DOT until after
17 the financing loan was obtained was both willful and malicious.

18 Determining whether Defendant made a material misrepresentation
19 or acted willfully and with malice required the Court to examine the
20 terms of the Shareholder Buyout Agreement and the attendant Note and
21 DOT in order to determine enforceability.

22 The gravamen of the Complaint was that Defendant breached his
23 contractual obligation to cause the DOT to be recorded promptly upon
24 obtaining the intended financing. The evidence established the
25 Plaintiff's DOT was executed November 17, 2021, concurrent with
26 entering into the Shareholder Buyout Agreement, which supposedly had a
27 90-day "no recording" clause. Defendant refinanced for \$464,000 with
28 Nationstar Mortgage LLC as evidenced by a DOT executed January 25,

1 2022, and recorded February 3, 2022. Although the contract anticipated
2 Plaintiff's DOT would then be recorded in February 2022, it was not
3 recorded until February 9, 2023. During that one-year delay, Defendant
4 obtained a \$39,400 home equity line of credit from Sequoia Federal
5 Credit Union on December 15, 2022, for which the DOT was recorded
6 January 9, 2023, i.e., 31 days before Plaintiff's DOT was recorded.

7 The existence of the Sequoia DOT relegated Plaintiff to a
8 partially unsecured position when the chapter 7 case was filed.

9 This Court determined from examining the Shareholder Buyout
10 Agreement: (1) that the Defendant was required to obtain financing to
11 make the first payment; and (2) that, to enable Defendant to raise the
12 \$137,500 cash payment, the agreement did not mandate immediate
13 recording by Defendant, and was otherwise vague about timing.

14 Interpreting the transaction in the context of the Shareholder
15 Buyout Agreement and the attendant Note and DOT, this trier of fact
16 concluded Defendant did not make a representation at the time of the
17 agreement that was false, knowingly false, made for the purpose of
18 inducing reliance by Plaintiff, and upon which Plaintiff justifiably
19 relied as required by § 523(a)(2).

20 While there was little doubt that Defendant breached the payment
21 and recording provision of the Shareholder Buyout Agreement, this
22 trier of fact was not persuaded that the failure was animated by the
23 malice required by § 523(a)(6). Hence, this Court ruled the debt owed
24 to Plaintiff to be dischargeable.

25 The Shareholder Buyout Agreement was central to the adversary
26 proceeding. The Note and DOT and the recording thereof were integral
27 features of the contractual transaction. The foreclosure prompting the
28 chapter 7 filing was an exercise in enforcing that agreement.

Mindful of the liberal construction interpretation of § 1717 applied by California courts, it follows that the first essential element that there be an "action on a contract" is satisfied.

B

Second Essential Element: Contract Fee Clause

The Note and DOT required by the Shareholder Buyout Agreement contain contractual fee clauses.

The Note provides for attorney fees if the holder prevails "in a lawsuit to collect on it."¹

The DOT requires the Trustor "to appear in and defend any action purporting to affect the security, or the rights and powers of Beneficiary or Trustee; and to pay all costs and expenses ... including attorney fees in a reasonable sum, in any such action in which beneficiary or Trustee may appear."²

The application of those clauses in the Note and the DOT against the Plaintiff may come as a surprise but, in view of § 1717, should not be regarded as an unintended consequence of prosecuting an adversary proceeding premised on breach of the Shareholder Buyout Agreement to which the Note and DOT were integral.

It is ironic that Plaintiff's foreclosure activity prompted the

¹Note: "If the holder(s) of this note prevail(s) in a lawsuit to collect on it, the signer(s) agree(s) to pay the holder(s)' attorney fees in an amount the court finds to be just and reasonable." Promissory Note Secured by DOT, Plaintiff's Ex. 3.

²DOT: The Trustor agrees "To appear in and defend any action or proceeding purporting to affect the security, or the rights and powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidencing title and attorney fees in a reasonable sum, in any such action or proceeding in which beneficiary or Trustee may appear." DOT and Assignment of Rents Securing a Promissory Note, Plaintiff's Ex. 2.

1 filing of the chapter 7 case in which he prosecuted this adversary
2 proceeding to an unhappy end. Hoist on his own petard.

3 Accordingly, the second § 1717 essential element that there be a
4 contractual clause providing for fees is satisfied.

5

6 C

7 Third Essential Element: Prevailing Party

8 The prevailing party for purposes of § 1717 is determined by the
9 court based on the party who recovered, in the words of § 1717(b),
10 "greater relief" in the action on the contract. The court has
11 discretion to determine there is no party prevailing. In addition,
12 there is no prevailing party where an action is voluntarily dismissed
13 or dismissed pursuant to settlement. Cal. Civ. Code § 1717(b).

14 Here, the successful defense of the nondischargeability counts
15 afforded Defendant the "greater relief." He is the prevailing party.

16 Accordingly, the third § 1717 essential element is satisfied.

17

18 D

19 The Supreme Court's Traveler's analysis that claims allowable
20 under applicable state law are allowable in bankruptcy leads to the
21 conclusion that the request for reasonable attorney's fees under
22 California Civil Code § 1717 is allowable in this case.

23

24 IV

25 This Fee Application

26 The victorious Defendant applies under California Civil Code
27 § 1717 for attorney's fees and expenses totaling \$20,571.90,
28 consisting of \$19,195.00 in fees, plus expenses of \$1,376.00, and

1 has the burden of proof on whether the services were reasonable
2 and appropriate.

3 Plaintiff opposes, asserting that \$1,057.50 of the fees
4 claimed should not be allowed. This Court agrees with Plaintiff.³

With the exception of the three categories of items set forth in the margin, this Court finds in its judgment and experience that the fees and expenses requested are reasonable, appropriate, and acceptable.

9 Therefore, \$19,514.40 will be awarded as attorney's fees and
10 expenses pursuant to California Civil Code § 1717.

1

1

* * *

13 As explained in this decision, artful pleading alleging only
14 non-contract causes of action does not necessarily operate to
15 dodge exposure to liability for action "on a contract" fees
16 pursuant to California Civil Code § 1717.

17 An appropriate order awarding fees and expenses in the total
18 amount of \$19,514.40 will be entered.

1

20 | Dated: June 09, 2025

United States Bankruptcy Judge

24 Services that do not relate to the adversary proceeding
25 (\$270.00) are neither necessary, nor reasonable. Services for
26 obtaining vacation of entry of default (\$292.50) by counsel who
27 reviewed the Complaint in ample time to have prepared and filed a
28 response are neither necessary, nor reasonable - the opposing party
should not be required to pay the expenses of the opponent's
disorganization. Services for motions that were not filed (\$495.00)
and that could have prevented entry of default are not necessary and
not appropriate for fee-shifting purposes, even though they may be
appropriate for a lawyer to charge his client.