

Legally Separate Cause of Action Supports a Fee Award Under Civil Code Section 1717

December 13, 2011 by [David J. McMahon](#)

In [CDF Firefighters v. Maldonado](#), 2011 DJDAR 15709 (2011), the [California Court of Appeal for the Fifth District](#) decided a complex case involving a claim for fee recovery arising under [California Civil Code Section 1717](#). That statute is designed to ensure mutuality of a remedy for attorney fee claims under contractual attorney fee provisions. The case arose out of a labor union dispute.

[CDF Firefighters](#) is a labor union for California wild-land firefighters. One of the members of the CDF labor union filed charges against two other members. He alleged that the two members conspired to violate his right to attend a conference and to vote during the proceedings.

The aggrieved member filed formal charges and a CDF Committee sustained the charges against one of the members. The CDF Committee levied a \$743 fine against that member. At that point, the case and the related proceedings get complex, factually and procedurally.

Subsequently, another former CDF labor union member filed charges against the same two CDF members involved in the first case. The member alleged that the two other members refused to comply with their trustee obligations. As a result, both members were expelled from CDF membership and fined more than \$22,000 each. Those members refused to pay the fines. CDF then sued them for breach of contract. Ultimately, the fines were found to be invalid by the court. In an effort to avoid a fee award, CDF then dismissed its remaining claims.

The defendant then moved for an award of attorney fees under Civil Code Section 1717 contending he was the prevailing party. The trial court denied the motion, concluding that CDF's dismissal of the remaining claims essentially ended the action. The defendant appealed and the appellate court reversed.

The court of appeal stated that in contractual litigation, the party prevailing on the claim is entitled to attorney fees under Section 1717. However, there is no prevailing party for purposes of Section 1717 if an action has been voluntarily dismissed. The court then drew a highly technical distinction and concluded that CDF's dismissal of the remaining claims was not sufficient to bar the claim for reasonable attorney fees.