Attorney Fee Award is Appropriate Based on Successful Forum Non Conveniens Motion

Posted on December 15, 2010 by David J. McMahon

The California Court of Appeal for the Fourth District recently decided a novel fee question. In *PNEC Corp. v. Meyer*, 2010 DJDAR 17387 (2010), the trial court awarded attorney fees to the Defendant after a successful motion to dismiss on the grounds of inconvenient forum (CCP § 418.10(a)(2).

The plaintiff, PNEC Corp., sued the Defendant for breach of guaranty. Plaintiff alleged that it provided Defendant with products and that she failed to pay for them. Plaintiff based its fee claim on a written guaranty of payment signed by Defendant, stating that the customer will be required to pay attorney fees if the account is referred to an attorney for collection.

Plaintiff filed suit and Defendant's counsel moved alternatively to quash service of process due to lack of personal jurisdiction, or to dismiss the action due to inconvenient forum. Defendant proved that she lived in Washington. She submitted additional proof that she had never worked or initiated a lawsuit in California.

The trial court granted the motion to dismiss. The court also awarded Defendant $21,667.25 in attorney fees as the prevailing party. Plaintiff claimed that the attorney fee award was improper as a litigant is never entitled to a fee award based on dismissal of an action on forum non conveniens grounds.

The court of appeal affirmed, noting that under Civil Code Section 1717(a), in any action on a contract that provides for attorney fees, the party determined to be the prevailing party on the contract is entitled to attorney fees.

The court held that if the action on a contract is dismissed based on forum *non conveniens*, the trial court may award attorney fees to the moving party where the contract has a fee clause. Because the lawsuit was based on the collection efforts, it triggered the attorney fee provision. For these reasons, the trial court award of fees to the Defendant was proper.