



Michael R. Diliberto, Esq.



No Fees Before Their Time

Does Civil Code section 1717 permit fee awards based on interim resolutions of contract claims, such as through an order granting summary adjudication? The answer is no, according to *Chen v. Valstock Ventures, LLC* (2022) 81 Cal.App.5th 957.

In *Chen*, a group of tenants filed an action for declaratory judgment, civil conspiracy and other claims against Valstock, the property manager, and a holding company, to determine which of two documents was the operative lease governing the tenants' tenancies in two apartment buildings. After a year of litigation, the tenants filed a motion for summary adjudication of their declaratory judgment cause of action, which the trial court granted. The tenants' allegation of civil conspiracy and their other causes of action remained pending.

The tenants then moved under Civil Code section 1717 for an award of attorney's fees, arguing that the trial court's summary adjudication ruling meant they were the prevailing parties on the sole cause of action on the contract. Valstock argued in ex parte filings that a fee award was premature because the court had not entered final judgment and the remaining causes of action were in trial. The trial court ultimately awarded the tenants approximately \$1.1 million in fees, which the tenants moved to enforce. Valstock appealed the fee award.

The Court of Appeal reversed, finding that section 1717 does not permit interim fee awards. Among other factors, the statute establishes a procedure for reconciling a party's award of attorney's fees on the contract portion of an action with the outcome of the rest of the action. "The existence of the process for such reconciliation indicates that contractual fee awards should be made only after the end of all litigation in a case, including litigation of non-contract claims."

There is no exception for cases in which contract claims are disposed of earlier than non-contract claims, such as through a demurrer or summary adjudication. The Legislature's attempt to create consistency between section 1717 and the procedures for a prevailing party to collect costs indicates that "attorney's fees are intended to be part of costs and therefore awarded, like all costs, at the conclusion of the litigation of an action." In addition, trial courts have "statutory and inherent authority to modify a summary adjudication order . . . which is sufficient to prevent the order from being final."

The Takeaway: *Chen* instructs that attorney fees will not be awarded before their time. Civil Code section 1717 does not permit interim fee awards. Contractual fee awards should be made only after the end of all litigation in a case, including litigation of non-contract claims.