

***Jones v. Goodman, No. D075907 (4th Cir. November 17, 2020)***

If a party moves for attorney's fees under Civil Code section 16701, subdivision (i), the party must show the claim was objectively arbitrary or capricious, or subjectively brought in bad faith.

**FACTS/PROCEDURE**

In 2010, Plaintiff Trevor Jones and his two friends, Defendants Paul Goodman and Griffin Thall, created two businesses. Jones and Thall formed an internet-based business called OUTnSD, and Griffin and Thall formed a Pura Vida bracelet business (d.b.a. Creative Genius, Inc.). The three allegedly entered into a signed written partnership agreement for an equity swap proposal which gave Jones and Goodman a 5% interest in Pura Vida and OUTnSD, respectively. However, the parties never acted on the agreement. Goodman and Thall created a corporation – not a partnership – and split Pura Vida's shares evenly between them both. Jones never invested money into Pura Vida, never discussed Pura Vida's tax liability, never received stock certificates, and never shared his OUTnSD salary with Goodman. OUTnSD later went out of business in 2013, while Pura Vida grew into a successful business.

Jones sued Goodman and Thall for a partnership buyout under Civil Code section 16701. At trial, the court found there was “no evidence that a partnership existed,” and Defendants prevailed. After judgment was entered in Defendants' favor, Defendants served notice of entry of judgment and later moved for attorney fees under section 16701, subdivision (i), on the grounds that Jones's claim was arbitrary, vexatious, and in bad faith. Approximately 3 weeks later, Defendants filed an amended motion to include expert fees. At the hearing, the trial court dismissed Defendants' motion for fees both for untimeliness and on the merits, and Defendants' appealed.

**HOLDING/DISCUSSION**

The Court of Appeal for the Fourth District affirmed. Unless an exception applies, California follows the American rule which states each party to a lawsuit must bear their own attorney fees. An exception to this general rule is codified in section 16701, subdivision (i), which states a court may grant attorney fees if a party's claim is arbitrary, vexatious, or in bad faith. If a party appeals a trial court's ruling on fees, an appellate court must review the trial court's finding under both objective and subjective criteria. A court will determine if a claim was brought arbitrarily or capriciously under a de novo standard of review and ask, “whether any reasonable person would have tenably filed and maintained the objection.” Here, there was a written agreement purportedly signed by all three parties that used the terms, “partners” and “partnership,” and described the objectives and expected contributions of the parties. Jones also testified he was actively involved in of Pura Vida, and the parties often assisted each other in their respective business endeavors. Therefore, despite the apparent defects in Jones's argument, his claim was not arbitrary or capricious. Next, a court will determine if a case was brought in bad faith under an abuse of discretion standard of review and look to “the contesting party's state of mind—specifically, whether he or she acted with an improper purpose.” Here, the court found that even though Jones's claims lacked objective legal merit, there was substantial evidence in the record that Jones subjectively believed in his case's merits. Therefore, the court did not abuse its discretion by finding Jones's claims were brought in good faith. Even if the trial court did err, however, the appellate court noted that the fee shifting provision in section 16701 was discretionary and did not mandate any finding.