

APR 28 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RAYMOND REUDY; MARK KEVIN  
HICKS, dba Advertising Display Systems,

Plaintiffs - Appellants,

v.

CBS CORPORATION, a Delaware  
corporation; PATRICK ROCHE, an  
individual,

Defendants - Appellees,

and

CLEAR CHANNEL OUTDOOR, INC., a  
Delaware Corporation; WILLIAM  
HOOPER, an individual; DOES 1-50,

Defendants.

No. 10-15533

D.C. No. 06-CV-05409-SC

MEMORANDUM\*

Appeal from the United States District Court  
for the Northern District of California  
Samuel Conti, Senior District Judge, Presiding

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\* This disposition is not appropriate for publication and is not precedent  
except as provided by Ninth Circuit Rule 36-3.

Argued and Submitted April 13, 2011  
San Francisco, California

Before: KOZINSKI, Chief Judge, N.R. SMITH, Circuit Judge, and BLOCK,  
District Judge.\*\*

1. The plain language of the Purchase and Sale Agreement does not limit entitlement to attorney's fees to those incurred in an independent action to enforce the agreement. *See Thompson v. Miller*, 4 Cal. Rptr. 3d 905, 913 (Ct. App. 2003). Because the fee provision allows either party to recover fees, section 1717 of the California Civil Code does not apply. *See Associated Convalescent Enters. v. Carl Marks & Co.*, 108 Cal. Rptr. 782, 785 (Ct. App. 1973).

2. There is no support for appellants' contention that the fee-shifting rule applicable to antitrust claims displaces the different rule set forth in the agreement.

3. With respect to Roche's attorney's fees, the parties agreed that a defaulting party would pay "any and all costs arising as a result of [its] default, including reasonable attorneys' fees." On its face, that provision is not limited to fees incurred by the contracting parties. In any event, Roche was a beneficiary of the agreement's covenant not to sue, and appellants do not dispute that CBS

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\*\* The Honorable Frederic Block, Senior United States District Judge for the Eastern District of New York, sitting by designation.

incurred fees defending him. *See Loduca v. Polyzos*, 62 Cal. Rptr. 3d 780, 786 (Ct. App. 2007).

**AFFIRMED.**