

IN THE SUPREME COURT OF THE STATE OF DELAWARE

P.J. BALE, INC.	§	
	§	No. 243, 2005
Plaintiff Below,	§	
Appellant,	§	Court Below: Court of Chancery
	§	of the State of Delaware in and for
v.	§	New Castle County
	§	
CATHERINE E. RAPUANO, and	§	C.A. No. 504-N
LEON J. RAPUANO, JR.,	§	
Defendant Below,	§	
Third Party Plaintiff Below,	§	
Appellees,	§	
	§	
v.	§	
	§	
PANTANO REAL ESTATE, INC.	§	
a Delaware Corporation and	§	
PAUL PANTANO,	§	
Third Party Defendant Below.	§	

Submitted: September 20, 2005

Decided: November 17, 2005

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices.

ORDER

This 17th day of November 2005, upon consideration of the briefs of the parties, it appears to the Court that:

(1) Plaintiff-Appellant Bale, Inc. appeals the Court of Chancery's denial of its motion to award reasonable attorneys' fees, damages, and costs associated with its action for specific performance arising from defendants-appellees' failure

to execute their contractual obligation under a contract for the sale of land. Upon a review of the record, we find that there was no abuse of discretion. We affirm.

(2) Appellant and Appellees contracted for the sale of a lot in Wilmington for \$8,000. Before going to settlement, it appears that Appellees sought another buyer for a higher price. After demanding performance on the contract, Appellants scheduled a settlement on the property in question. Appellees never attended settlement, and Appellant filed this action for specific performance.

(3) Appellant moved for summary judgment in the Court of Chancery. The Vice Chancellor held a hearing on Appellant's motion and issued a bench ruling granting specific performance, but denying attorneys fees and costs. We review the Vice Chancellor's decision not to award fees and costs for an abuse of discretion.¹

(4) In *Montgomery Cellular*, this Court recognized that fee-shifting is the exception to the general rule that litigating parties pay their own costs, and that Delaware follows the "American Rule."²

Delaware follows the "American Rule," whereby a prevailing party is generally expected to pay its own attorney's fees and costs. This Court has recognized limited equitable exceptions to that rule, including the exception for "bad faith" conduct during the litigation. Although there is no single, comprehensive definition of "bad faith" that will justify a fee-

¹ See, *Montgomery Cellular Holding Co. v. Dobler*, 880 A.2d 206, 210 (Del. 2005); *Pitts v. White*, 109 A.2d 786, 788 (Del. 1954).

² 880 A.2d at 2227.

shifting award, Delaware courts have previously awarded attorneys' fees where (for example) "parties have unnecessarily prolonged or delayed litigation, falsified records or knowingly asserted frivolous claims." The bad faith exception is applied in "extraordinary circumstances" as a tool to deter abusive litigation and to protect the integrity of the judicial process.³

(5) *Montgomery Cellular* also summarized our holdings in *Johnston*⁴ and *Kaung v. Cole National Corp.*⁵ In *Johnston* we highlighted the basis for awarding of attorneys' fees under the bad faith exception to the American Rule. A party engages in "bad faith" sufficient for awarding attorneys fees to its opponent when it (i) defends the action despite knowledge there is no valid defense, (ii) delays the litigation and asserted frivolous motions, (iii) falsifies evidence, and (iv) changes his or her testimony to suit his or her needs.⁶ In *Kaung*, we also found adequate evidentiary support to impose attorneys' fees under the bad faith exception "where the plaintiff had an improper motive for filing the action, the plaintiff's attorneys had made excessive and duplicative discovery requests while ignoring their own client's discovery obligations, and one of the plaintiff's key witnesses had refused to answer any questions during his deposition."⁷ Indeed, our decision in *Montgomery Cellular*, finding that the Court of Chancery abused in discretion in

³ *Id.* at 227 (citing *Goodrich v. E.F. Hutton Group, Inc.*, 681 A.2d 1039, 1042 (Del. 1996). See *Johnston v. Arbitrium (Cayman Is.) Handels AG*, 720 A.2d 542, 546 (Del. 1998). See also *Cronin v. AmBase Corp.*, 2005 Del. Ch. LEXIS 131, 29-31 (Del. Ch. 2005) (summarizing *Montgomery*).

⁴ *Johnston*, 720 A.2d at 546. See *supra*, at footnote 6.

⁵ Del. Supr., No. 480, 2004, Ridgely, J. (July 5, 2005).

⁶ *Montgomery Cellular*, 880 A.2d at 227-28 (quoting *Johnston*, 720 A.2d at 546).

⁷ *Id.* at 228 (citing *Kaung* at *16-17).

not awarding attorneys' fees notwithstanding the "American Rule," was premised on the overwhelming evidence that the respondents repeatedly acted in bad faith to obstruct, if not prevent, a fair valuation.⁸

(6) In this case, the Vice Chancellor reviewed the controlling rule of law and applied it to the facts before him. Specifically addressing Appellant's request for attorneys' fees, the Vice Chancellor ruled:

There's also an application for an award of attorneys' fees. Under the American Rule, each party bears its own legal fees unless there's a basis for fee-shifting. Here, according to plaintiff, the basis would be bad faith. The defendants have not come forward with enough to withstand a motion for summary judgment; but it appears that their letter of, I believe it was, May 24th, was written in the belief and – that subsequent steps were taken in accordance with that belief that they had been taken advantaged of.

I'm satisfied, from what little I have available to me, that that decision was – was not in bad faith and, more specifically, the plaintiff has not demonstrated to my satisfaction that that was not under –that that was undertaken in bad faith.

The claim that the defendants seek to assert may not have been a winning claim because of the state of the record I guess we'll never know for sure, but I am satisfied that the position was not taken and asserted with the type of bad faith that entitles the shifting of attorneys' fees. Thus, the request for attorneys' fees is denied.

(7) The Chancellor thus found that there was a colorable basis for Appellees' position that specific performance would be inequitable. While he

⁸ *Id.* at 229.

noted that the claim may not have been a “winning” one,⁹ it was nonetheless present. Furthermore, the Vice Chancellor found that Appellant had failed to present sufficient evidence of bad faith. We find no abuse of discretion on the facts of this case.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Court of Chancery is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely

Justice

⁹ The Vice Chancellor described his understanding of Appellant’s argument:

In essence, as I understand the defendant’s unverified argument, is that the plaintiff was not acting in good faith when the \$8,000 offer for the property was presented, because the City of Wilmington had or would be willing to pay \$15,000 for it. And implicit in that is the suggestion that the plaintiffs knew that the \$15,000 would be available and failed to provide the information to them; thus, misleading them or inducing them into signing the agreement.