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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

SHAUNAK SAYTA,
Plaintiff,
v.
BENNY MARTIN,
Defendant.

Case No. [16-cv-03775-LB](#)

**ORDER DENYING THE
DEFENDANT'S MOTION FOR
ATTORNEY'S FEES.**

Re: ECF No. 52

INTRODUCTION & BACKGROUND

This case arises from an attorney-client relationship gone wrong. The court previously compelled arbitration of client Shaunak Sayta's¹ claims against attorney Benny Martin and confirmed a prior, fees-based arbitration award in favor of Mr. Martin.² The court assumes familiarity with the case and incorporates by reference the statement of facts in its prior order.³

Mr. Martin, an attorney proceeding pro se in this litigation, now moves to collect attorney's fees "measured by the loss of income that he suffered as a result of" litigating the case.⁴ He seeks to recover those "fees" on three grounds: (1) under the parties' agreement for attorney's fees in the

¹ Mr. Sayta is also a licensed attorney. See First Amended Compl. – ECF No. 39, ¶ 1.

² Order – ECF No. 47.

³ Id. at 2–4.

⁴ Motion for Attorney's Fees – ECF No. 52-1 at 8; Reply – ECF No. 55 at 7.

1 event of a dispute (as authorized by California Civil Code section 1717); (2) as sanctions under 28
2 U.S.C. § 1927; and (3) as sanctions under the court’s inherent authority.⁵

3 The court can decide this matter without oral argument and vacates the hearing on April 13,
4 2017. Civil. L.R. 7-1(b). The court denies Mr. Martin’s motion because he is not entitled to
5 recover his opportunity costs and the court declines to impose those losses as a sanction on Mr.
6 Sayta.

7
8 **ANALYSIS**

9 **1. Mr. Martin Is Not Entitled to Attorney’s Fees Under Civil Code Section 1717**

10 Mr. Martin’s first claim for attorney’s fees arises under the parties’ contract and California
11 Civil Code section 1717.⁶ Section 1717(a) provides for the recovery of reasonable attorney’s fees
12 and costs to the prevailing party in a contract action:

13 In any action on a contract, where the contract specifically provides that attorney’s
14 fees and costs, which are incurred to enforce that contract, shall be awarded either
15 to one of the parties or to the prevailing party, then the party who is determined to
16 be the party prevailing on the contract, whether he or she is the party specified in
17 the contract or not, shall be entitled to reasonable attorney’s fees in addition to other
18 costs.

19 Cal. Civ. Code § 1717(a); *Lucasfilm, Ltd. v. Canal Toys*, No. C 11-01639 WHA, 2012 WL
20 685415, at *3 (N.D. Cal. Mar. 2, 2012).

21 And, indeed, the parties’ attorney-client fee agreement contains two fee provisions. First, it
22 says, “[i]n the event it becomes necessary to institute an action at law to enforce this agreement or
23 any part thereof, including recovery of fees and/or costs and expenses, the prevailing party in that
24 action shall be entitled to recover reasonable attorney’s fees.”⁷ Second, the agreement provides,
25 the parties must arbitrate “any dispute with respect to this agreement,” and that “[t]he prevailing
26 party shall be entitled to recover reasonable attorney’s fees, [whether] pro se or otherwise, in said
27 [arbitration].”⁸ Thus, Mr. Martin asserts, because there “can be no doubt that [he] was the
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26 ⁵ See generally *id.*

27 ⁶ *Id.* at 9–12.

28 ⁷ Attorney-Client Fee Agreement – ECF No. 9 at 6–9, § 4.

⁸ *Id.* § 9.

1 prevailing party in this action,” and because the contract provides for his recovery of attorney’s
2 fees, he is entitled to those fees under section 1717.⁹

3 But Mr. Martin identifies the “twist” here: the parties are both attorneys that represented
4 themselves pro se.¹⁰ Mr. Martin asserts that “[n]o case law prohibits the parties’ bargain” and that
5 “there is no public policy conceivable for preventing a litigator that hires another litigator from
6 agreeing to pay the other’s reasonable fees.”¹¹

7 Not so. The California Supreme Court has held “that an attorney who chooses to litigate in
8 propria persona and therefore does not pay or become liable to pay consideration in exchange for
9 legal representation cannot recover ‘reasonable attorney’s fees’ under Civil Code section 1717.”
10 *Trope v. Katz*, 11 Cal. 4th 274, 292 (1995). The Trope Court “based its decision solely on the
11 statutory interpretation of section 1717, and specifically on what it means to ‘incur’ attorneys’
12 fees.” *Farmers Ins. Exch. v. Law Offices of Conrado Joe Sayas, Jr.*, 250 F.3d 1234, 1237 (9th Cir.
13 2001) (discussing Trope).

14 Under Trope, “section 1717 applies only to contracts specifically providing that attorney[’s]
15 fees ‘which are incurred to enforce that contract’ shall be awarded to one of the parties or to the
16 prevailing party.” Trope, 11 Cal. 4th at 280 (emphasis in original). “To ‘incur’ a fee, of course, is
17 to ‘become liable,’” and so a pro se attorney “cannot be said to ‘incur’ compensation for his time
18 and his lost business opportunities.” Id. And section 1717 applies only to “fees” — “the
19 consideration that a litigant actually pays or becomes liable to pay in exchange for legal
20 representation.” Id. In other words, an attorney proceeding pro se does not “incur” — or, does not
21 actually pay or become liable to pay — “fees” measured by time spent and opportunities lost. Id.
22 at 283; see *Farmers*, 250 F.3d at 1237 (“[T]he key to the analysis of section 1717 under Trope is
23 the incurring of fees.”) (emphasis in original); *In re Aural, Inc.*, No. C 04-05100 SI, 2006 WL
24 2130903, at *5 (N.D. Cal. July 25, 2006) (describing Trope’s holding as “the conclusion that an
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26 ⁹ Motion at 10.

27 ¹⁰ Id. at 10–12.

28 ¹¹ Id. at 10–11.

1 attorney who represents herself in propria persona cannot recover attorney[’s] fees as
2 compensation for the time and effort she expends on her own behalf”).

3 Here, Mr. Martin represented himself pro se. He asserts that he “incurred the legal fees [he
4 seeks] as a cost or expense in representing himself, measured by the loss of income that he
5 suffered as a result of having to take time off [of] work to respond to Mr. Sayta’s federal action.”¹²
6 But under Trope, Mr. Martin cannot recover under section 1717 for lost time and opportunities; he
7 did not “incur” any “attorney’s fees.” He provides no authority to the contrary and asserts only
8 that “[n]o case law prohibits the parties’ bargain.”¹³ Absent compelling, controlling authority that
9 allows recovery in this context, Trope governs. The court denies Mr. Martin’s recovery under the
10 parties’ agreement and Civil Code section 1717.

11
12 **2. The Court Declines to Impose Sanctions on Mr. Sayta**

13 Mr. Martin’s other two claims for attorney’s fees, under 28 U.S.C. § 1927 and the court’s
14 inherent authority, rest in the court’s discretion. See *Trulis v. Barton*, 107 F.3d 685, 694 (9th Cir.
15 1995); *F.J. Hanshaw Enters., Inc. v. Emerald River Dev., Inc.*, 244 F.3d 1128, 1135 (9th Cir.
16 2001). The court exercises that discretion and declines to sanction Mr. Sayta with Mr. Martin’s
17 opportunity costs.

18 First, 28 U.S.C. § 1927 provides that “[a]ny attorney or other person admitted to conduct cases
19 in any court of the United States or any Territory thereof who so multiplies the proceedings in any
20 case unreasonably and vexatiously may be required by the court to satisfy personally the excess
21 costs, expenses, and attorneys’ fees reasonably incurred because of such conduct.” Sanctions
22 imposed under § 1927 may be imposed only based on activities before the sanctioning court. *Grid
23 Sys. Corp. v. John Fluke Mfg. Co., Inc.*, 41 F.3d 1318, 1319 (9th Cir. 1994) (per curiam). They
24 also “must be supported by a finding of subjective bad faith.” *In Re Keegan Mgmt. Co., Sec. Litig.*,
25 78 F.3d 431, 436 (9th Cir. 1996) (internal quotations omitted). Such “[b]ad faith is present when

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¹² *Id.* at 8.

28 ¹³ *Id.* at 11.

1 an attorney knowingly or recklessly raises a frivolous argument, or argues a meritorious claim for
2 the purpose of harassing an opponent.” *Id.*

3 Here, Mr. Sayta’s¹⁴ arguments in the litigation — primarily based on the enforceability of the
4 parties’ agreement (and thus the arbitrability of their disputes) — proved unsuccessful. But the
5 court cannot say that they were made in bad faith, especially in light of the uncontested allegations
6 that Mr. Martin violated California Business & Professions Code section 6148(c).¹⁵ And because
7 the court ordered the arbitration of Mr. Sayta’s substantive claims, the court has not adjudicated
8 them and cannot say that they are frivolous or made for the purpose of harassing Mr. Martin. The
9 court therefore declines to award Mr. Martin “fees” under § 1927.

10 Second, a court may impose sanctions under its inherent power if it finds “bad faith or conduct
11 tantamount to bad faith,” such as recklessness “combined with an additional factor such as
12 frivolousness, harassment, or an improper purpose.” *See Fink v. Gomez*, 239 F.3d 989, 994 (9th
13 Cir. 2001). For the reasons stated above regarding § 1927, the court declines to impose sanctions
14 on Mr. Sayta.

15
16 **CONCLUSION**

17 Mr. Martin is not entitled to fees under California Civil Code section 1717 because he
18 represented himself *pro se*, did not “incur” any “attorney’s fees,” and he cannot be compensated
19 for lost time and opportunities under that statute. The court also declines to exercise its discretion
20 to sanction Mr. Sayta and award Mr. Martin those losses.

21 The court denies Mr. Martin’s motion for attorney’s fees.

22 **IT IS SO ORDERED.**

23 Dated: April 7, 2017

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25 LAUREL BEELER
26 United States Magistrate Judge

27 ¹⁴ Mr. Sayta is a California-licensed attorney. *See supra* n.1.

28 ¹⁵ *See generally* Order – ECF No. 47 at 2–3.