

Dewberry had brought a breach of contract action against C3NS, Inc. ("C3"), seeking to collect the balance owed to Dewberry for its preparation of a survey and a site plan for the construction of a tire recycling plant on C3's property.

The parties' contract included several standard terms and conditions, including that C3 furnish Dewberry with all plans, drawings, and surveys, and provided for the payment of attorneys' fees and expenses to the prevailing party in the event of litigation arising from the contract.

At trial in the circuit court, Dewberry established that C3 had not provided accurate documents necessary for the preparation of the site plan, which resulted in Dewberry improperly placing the location of the recycling plant in the site plan. After C3 withheld payment to Dewberry due to its purportedly defective site plan, Dewberry obtained a mechanic's lien on the property and subsequently filed suit against C3. In that suit, C3 filed a counterclaim, alleging a breach of contract as a result of the inadequacy of the site plan. Both parties sought an award of attorneys' fees and expenses per the terms of the contract.

Following a bench trial, the Fairfax County Circuit Court found in favor of Dewberry on its claim for compensation under the contract, and in Dewberry's favor on C3's counterclaim for the alleged breach of contract. The circuit court stated it would consider an award of attorneys' fees, but in its opinion, the case involved a "legitimate, good-faith dispute, a difference of opinion." Therefore, the circuit court awarded Dewberry over \$18,000 in attorneys' fees for the prosecution of its complaint, but a nominal amount of \$1 in attorneys' fees for Dewberry's successful defense of C3's counterclaim, despite the actual amount of attorneys' fees incurred by Dewberry.

On appeal, the Supreme Court of Virginia declared that the circuit court abused its discretion by ignoring the contract's attorneys' fees provision, and limiting Dewberry's recovery of attorneys' fees for the successful defense of the counterclaim to \$1. This decision teaches that contracting parties should be cognizant of the terms of the agreements they enter, as courts cannot rewrite those terms, but will hold parties to the terms upon which they agree.