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**EQUINE LEGAL SUMMARY**  
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Catanese & Wells, A Law Corporation provides a quarterly newsletter to the equine industry of and concerning legal, tax and business issues for participants in the horse business or sport. [www.cataneselaw.com](http://cataneselaw.com) (<http://cataneselaw.com>).

This issue of the Equine Legal Summary is directed to a *novel* legal theory available in the state of California regarding fraudulent equine transactions. The remedy is important because it allows for enhanced damages and for the recovery of attorneys' fees.

*California Penal Code § 496* makes it a crime to receive or withhold from an owner "property that has been . . . obtained in any manner constituting theft" and provides that any person injured by a violation of the statute may bring an action for treble damages. See *California Penal Code § 496(a), (c)*. Under California law "theft" includes theft by false pretense – the consensual but fraudulent acquisition of property (including money) from its owner. The civil remedy provided in this section does not require that the defendant be convicted of a crime, all that is necessary is that the defendant violated the statute and the plaintiff was injured by reason of the violation. See *Bell v. Feibush* (2013) 212 Cal.App.4<sup>th</sup> 1041, 1049. *The statute also allows the aggrieved party to recover their reasonable attorneys' fees if they prevail against the defendant. Id. at § 496(c). And, the statute appears to allow attorneys' fees only to the "injured" party which would indicate that it is not a reciprocal statute for attorneys' fees. In other words, it is only available to the plaintiff if they prevail and not to a prevailing defendant.*

Section 496 has broad application to cases involving a situation where a seller of a horse has obtained cash proceeds by reason of a misrepresentation to a buyer of the horse. Arguably, the statute also applies in situations where the consideration given is a horse or other type of property which occurs in horse exchange transactions.

Section 496 gives an injured plaintiff great leverage in negotiating a settlement with the other side before litigation starts. The leverage arises because the injured party can argue they are entitled to treble damages plus their attorneys' fees should they prevail at trial. In addition, California limits the recovery of attorneys' fees in litigation to situations where the prevailing party has a contractual right to their legal fees if they prevail in a dispute or if a statute specifically provides for the recovery of attorneys' fees if a party prevails as a person entitled to protected status under the statute. See *California Civil Code § 1717*.

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Other than the *Bell* case mentioned above, the only other reported case that discusses Section 496 is the case of *Grouse River Outfitters Ltd. v. NetSuite, Inc.* (N.D. Cal. Oct. 12, 2016) 2016 WL 5930273, at \*14. The *Grouse River* case was a federal district court case from Northern California. The case referenced some limits regarding the use of Section 496, but the court also recognized Section 496 as an available remedy in civil cases.

The availability of enhanced damages and the recovery of attorneys' fees under Section 496 make this statutory relief a potent law for an injured plaintiff – particularly in equine transactions. Whether you are a plaintiff or a defendant, consideration of Section 496 should be exercised for the reasons stated above. The statute can help to expedite a settlement before expensive litigation is commenced and the statute can also provide a strong lever during litigation and at trial for an injured party.

For further questions regarding the remedies available under Section 496 or other equine legal issues, feel free to contact our offices at [info@cataneselaw.com](mailto:info@cataneselaw.com) (mail:info@cataneselaw.com) or (818) 707-0407.