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[RJB Wholesale, Inc. v. Castleberry](#)

United States Court of Appeals for the Ninth Circuit

December 12, 2019, Argued and Submitted, Seattle, Washington; December 23, 2019, Filed

No. 18-35916

Reporter

2019 U.S. App. LEXIS 38232 *; ___ Fed. Appx. ___; 2019 WL 7163354

RJB WHOLESale, INC., Plaintiff-Appellant, v.
JEFFREY CASTLEBERRY; and JANE DOE
CASTLEBERRY, Defendants-Appellees.

Richard A. Bersin, Attorney, Mark S. Leen, Inslee, Best, Doezie & Ryder, P.S., Bellevue, WA; Julie Bardacke Haddon, Attorney, Gordon & Rees LLP, Portland, OR.

Notice: PLEASE REFER TO *FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1* GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

For JEFFREY CASTLEBERRY, JANE DOE CASTLEBERRY, husband and wife and their marital community, Defendants - Appellees: Karin D. Jones, James Maxwell Shore, Esquire, Attorney, Christopher Townsend Wall, Attorney, Stoel Rives LLP, Seattle, WA.

Prior History: [*1] Appeal from the United States District Court for the Western District of Washington. D.C. No. 2:16-cv-1829-MJP. Marsha J. Pechman, District Judge, Presiding.

Judges: Before: HAWKINS and McKEOWN, Circuit Judges, and PRATT,** District Judge.

[RJB Wholesale, Inc. v. Castleberry, 2018 U.S. Dist. LEXIS 182640 \(W.D. Wash., Oct. 24, 2018\)](#)
[RJB Wholesale, Inc. v. Castleberry, 2018 U.S. Dist. LEXIS 139042 \(W.D. Wash., Aug. 9, 2018\)](#)

Disposition: AFFIRMED IN PART, REVERSED IN PART.

Opinion

MEMORANDUM*

Plaintiff-Appellant RJB Wholesale, Inc. ("RJB") appeals the grant of summary judgment and award of attorneys' fees in favor of Defendant-Appellant Jeffrey Castleberry ("Castleberry"). We have jurisdiction under [28 U.S.C. § 1291](#). Following oral argument, we affirm in part and reverse in part.

**The Honorable Robert W. Pratt, Senior United States District Judge for the Southern District of Iowa, sitting by designation.

*This disposition is not appropriate for publication and is not precedent except as provided by [Ninth Circuit Rule 36-3](#).

Counsel: For RJB WHOLESale, INC., a Washington corporation, Plaintiff - Appellant:

First, the summary judgment order, which we review de novo. [Williams v. Paramo, 775 F.3d 1182, 1191 \(9th Cir. 2015\)](#). Castleberry sought summary judgment on all claims based on, inter alia, RJB's failure to provide evidence of damages. The [*2] district court agreed that all of RJB's claims failed for lack of damages and granted summary judgment accordingly. Our de novo review reaches the same result: Even if there were a trade secret, RJB failed to prove damages for all claims, so summary judgment in Castleberry's favor was warranted.¹

Next, the attorneys' fees. RJB argues the district court erred in finding Castleberry entitled to attorneys' fees because this suit was not brought in bad faith. We review questions of law concerning entitlement to attorneys' fees de novo, and factual findings for clear error. [Thomas v. City of Tacoma, 410 F.3d 644, 647 \(9th Cir. 2005\)](#). Under the Defend Trade Secrets Act and Washington's Uniform Trade Secrets Act ("UTSA"), "[i]f a claim of misappropriation is made in bad faith," the court may "award reasonable attorney's fees to the prevailing party." [Wash. Rev. Code § 19.108.040; 18 U.S.C. § 1836\(b\)\(3\)\(D\)](#). Finding Washington has not defined bad faith in this context, the district court looked to California's approach in [Gemini Aluminum Corp. v. California Custom Shapes, Inc., 95 Cal. App. 4th 1249, 116 Cal. Rptr. 2d 358, 368 \(Cal. Ct. App. 2002\)](#). Yet outside the UTSA, Washington has recognized that attorneys' fees may be awarded "on the equitable grounds of . . . bad faith," specifically for: (1) prelitigation misconduct; (2) procedural bad faith; and (3) substantive bad faith. [Rogerson Hiller Corp. v. Port of Port Angeles, 96 Wn. App. 918, 982 P.2d 131, 135](#)

[\(Wash. Ct. App. 1999\)](#). Prelitigation misconduct is "obdurate [*3] or obstinate conduct that necessitates legal action to enforce a clearly valid claim or right," procedural bad faith is "vexatious conduct during the course of litigation," and subjective bad faith "occurs when a party intentionally brings a frivolous claim, counterclaim, or defense with improper motive." [Id. at 136](#) (citations omitted).

Here, no such circumstances exist to support a finding that RJB brought and maintained this suit in bad faith. Thus, the district court erred in finding Castleberry entitled to attorneys' fees.

AFFIRMED IN PART, REVERSED IN PART.
Each party shall bear its own costs on appeal.

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¹ Because we affirm the summary judgment order on de novo review, we necessarily find that the district court did not abuse its discretion in denying RJB's motion for reconsideration. See [Koch v. Hankins, 928 F.2d 1471, 1475 \(9th Cir. 1991\)](#); [Ortiz v. City of Imperial, 884 F.2d 1312, 1314 n.1 \(9th Cir. 1989\)](#). To the extent RJB appeals the grant of Castleberry's motion to compel, we affirm. The information requested was relevant to the subject matter involved, so the district court did not abuse its discretion. See [Epstein v. MCA, Inc., 54 F.3d 1422, 1423-24 \(9th Cir. 1995\)](#).