

SUPREME COURT OF OREGON

Kovac v. Crooked River Ranch Club & Maintenance Ass'n

337 Or. 162 (2004) · No. S50740 · Decided July 1, 2004

SUMMARY

The Oregon Supreme Court held that ORS 9.537(1) immunized Tom Kovac from civil liability for attorney fees incurred by opposing counsel in responding to bar complaints filed by Kovac. The court modified the Court of Appeals' attorney-fee award by subtracting \$1,080, reducing the award from \$30,362.50 to \$29,282.50, and affirmed it as modified.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	Per Curiam; Carson, Chief Justice; Gillette, Justice; Durham, Justice; Riggs, Justice; De Muniz, Justice; Balmer, Justice
JURISDICTION	Oregon
DECIDED	July 1, 2004
DOCKET	S50740
DISPOSITION	affirmed
PROCEDURAL POSTURE	On petition for review of a Court of Appeals order awarding attorney fees against Kovac after Crooked River prevailed on appeal from a summary judgment entered by the Jefferson County Circuit Court.
PRECEDENTIAL VALUE	binding
PARTIES	Tom Kovac, dba Ranch Realty v. Crooked River Ranch Club and Maintenance Association

TOPICS

- attorney fees
- statutory interpretation
- appellate procedure
- remedies
- civil procedure

PRACTICE AREAS

- appellate procedure
- attorney fees
- statutory interpretation
- legal ethics
- remedies

QUESTIONS PRESENTED

1. Whether ORS 9.537(1)'s immunity for a person who makes a complaint to the bar concerning an attorney's conduct bars an award of attorney fees incurred in responding to that complaint.

HOLDINGS

1. ORS 9.537(1) immunizes a person who made a Bar complaint from an award of attorney fees incurred by the opposing party's counsel in responding to that complaint. Such an award constitutes civil liability at least to the extent of the award.

KEY QUOTATIONS

*“Any person who has made a complaint to the bar concerning the conduct of an attorney * * * shall be absolutely immune from civil liability for any such acts.”*

“There can be no doubt that any award of attorney fees in circumstances like those presented in this case constitutes imposition of civil liability, at least to the extent of the award.”

FACTUAL BACKGROUND

Kovac brought a civil action against Crooked River and Jefferson County that included antitrust allegations. After the trial court entered summary judgment against him and the Court of Appeals affirmed, Kovac's appeal was followed by two Bar complaints against Crooked River's counsel. Crooked River sought appellate attorney fees, and the Court of Appeals included \$1,080 in fees incurred in responding to those complaints.

PROCEDURAL HISTORY

Kovac filed a civil action alleging, among other things, antitrust violations by Crooked River and Jefferson County. The trial court granted summary judgment against Kovac, and the Court of Appeals affirmed. While that appeal was pending, Kovac filed two Oregon State Bar complaints against Crooked River's counsel. After prevailing on appeal, Crooked River obtained a Court of Appeals award of \$30,362.50 in appellate attorney fees, including \$1,080 for responding to the Bar complaints. The Oregon Supreme Court allowed review, held that ORS 9.537(1) immunized Kovac from liability for those fees, deducted \$1,080 from the award, and affirmed the order as modified.

DISPOSITION

affirmed

CASES CITED

- Kovac v. Crooked River Ranch Club, 186 Or. App. 545, 63 P.3d 1197 (2003), rev. denied, 336 Or. 16 (2003)

OPINION

PER CURIAM.

FILED: July 1, 2004 IN THE SUPREME COURT OF THE STATE OF OREGON TOM KOVAC,
dba RANCH REALTY, Petitioner on Review, v. CROOKED RIVER RANCH CLUB AND

MAINTENANCE ASSOCIATION, a not-for-profit corporation, Respondent on Review. CROOKED RIVER RANCH CLUB AND MAINTENANCE ASSOCIATION, a not-for-profit corporation, Counterclaim-Plaintiff, v. TOM KOVAC, dba RANCH REALTY, Counterclaim-Defendant.

(CC 97-CV-0060-34; CA A102661; SC S50740) On petition for review filed September 17, 2003.* Milo Petranovich, of Lane Powell Spears Lubersky LLP, Portland, filed the petition for review for petitioner on review. I. Franklin Hunsaker and Joel Wilson, of Bullivant Houser Bailey, Portland, filed the response for respondent on review.

Before Carson, Chief Justice, Gillette, Durham, Riggs, De Muniz, and Balmer, Justices.** PER CURIAM The petition for review is allowed. The order of the Court of Appeals is modified and, as modified, is affirmed. *Review of an order of the Court of Appeals awarding attorney fees on appeal from a judgment of the Jefferson County Circuit Court. 186 Or App 545, 63 P3d 1197, rev den 336 Or 16 (2003).

Gary S. Thompson, Judge. **Kistler, J., did not participate in the consideration or decision of this case. PER CURIAM Petitioner Tom Kovac asks this court to review a Court of Appeals order awarding attorney fees against him.

For the reasons that follow, we allow the petition for review and modify the order of the Court of Appeals in one respect. Kovac filed a civil action against the Crooked River Ranch Club and Maintenance Association ("Crooked River"), asserting, among other things, that Crooked River and Jefferson County had violated antitrust laws.

The trial court granted summary judgment against Kovac, and the Court of Appeals affirmed. Kovac v. Crooked River Ranch Club, 186 Or App 545, 63 P3d 1197, rev den 336 Or 16 (2003). While Kovac's appeal to the Court of Appeals was pending, Kovac filed two complaints with the Oregon State Bar against Crooked River's counsel.

The Bar ultimately took no action on those complaints. After prevailing on the appeal, Crooked River petitioned the Court of Appeals for an award against Kovac for the attorney fees that it had incurred on appeal. The Court of Appeals allowed the petition and awarded Crooked River \$30,362.50 in fees.

(1) Of that fee award, \$1,080.00 were for fees that Crooked River's counsel had incurred in responding to the Bar complaints. The Court of Appeals concluded that that part of the fee award was justified because "[s]uch conduct should be discouraged."

In this court, Kovac argues that ORS 9.537(1) grants him immunity from being required to pay any fees that were incurred by Crooked River's counsel in defending Kovac's Bar complaints. We agree. ORS 9.537(1) provides, in part: "Any person who has made a complaint to the bar

concerning the conduct of an attorney * * * shall be absolutely immune from civil liability for any such acts."

There can be no doubt that any award of attorney fees in circumstances like those presented in this case constitutes imposition of civil liability, at least to the extent of the award. Given the prohibition in ORS 9.537(1), then, the Court of Appeals cannot require Kovac to pay the fees that Crooked River's counsel incurred in responding to the Bar complaints.

The Court of Appeals erred in ruling to the contrary. The error is easily corrected. We modify the order of the Court of Appeals awarding attorney fees to Crooked River by subtracting \$1,080.00 from \$30,362.50, leaving a balance of \$29,282.50.

As modified, the order is affirmed. (2) The petition for review is allowed. The order of the Court of Appeals is modified and, as modified, is affirmed. 1. The Court of Appeals' order allowing attorney fees was entered on July 1, 2003.

The order is not reported in the Court of Appeals Reports. Return to previous location. 2. Kovac's petition for review presents one other issue relating to the Court of Appeals' order awarding attorney fees. That issue depends on a reading of the Court of Appeals' order that we do not find persuasive.

We therefore do not address the issue further. Return to previous location.