

SUPREME COURT OF OREGON

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

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

OPINION

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

337 Or. 162

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.