

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Krist v. TUT Systems, Inc.

319 F. App'x 681 (9th Cir. 2009) · Decided March 19, 2009

SUMMARY

The Ninth Circuit affirmed the denial of Bruce Murphy's request for a share of class counsel's attorneys' fees in an underlying securities fraud class action. The court held that Murphy had not shown that his client referrals or pre-appointment work materially contributed to the class's recovery, and it declined to alter the fee award. The disposition was nonprecedential.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
WRITING FOR THE COURT	Per curiam; Fletcher; Nelson; Tallman
JURISDICTION	Federal
DECIDED	March 19, 2009
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the district court's denial of Murphy's request for an award of attorneys' fees from class counsel.
STANDARD OF REVIEW	Abuse of discretion for the district court's fee-award determination and related findings and legal conclusions.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Bruce Murphy v. TUT Systems, Inc., Class Counsel

TOPICS

attorney fees class actions appellate procedure contracts standard of review

PRACTICE AREAS

civil procedure appellate procedure class actions attorney fees contracts

QUESTIONS PRESENTED

- Whether Murphy was entitled to attorneys' fees based on referring clients to class counsel.
- Whether Murphy was entitled to attorneys' fees for work performed before the appointment of lead plaintiffs because that work benefited the class.

HOLDINGS

1. The district court acted within its discretion in declining to award Murphy fees based on his referral of clients because Murphy did not establish that his efforts were pivotal to the class action's success.
2. Murphy was not entitled to an award of attorneys' fees for his alleged early work because he presented insufficient evidence that his actions created, increased, or preserved the class's ultimate recovery; the district court did not abuse its discretion in denying the request.

KEY QUOTATIONS

"The district judge did not abuse her discretion in her findings or her legal conclusions." (683)

"This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3." (683)

FACTUAL BACKGROUND

Murphy referred clients to class counsel and claimed an agreement entitling him to ten percent of any fee awarded. He also claimed that his early work in discovering and developing the securities-fraud case created a substantial benefit for the class, but he presented insufficient evidence that his efforts created, increased, or preserved the class's ultimate recovery.

PROCEDURAL HISTORY

Murphy sought compensation for referring clients to class counsel and for work allegedly performed before the appointment of lead plaintiffs in an underlying securities-fraud class action. The district court rejected both theories, treating the matter as a motion for attorneys' fees rather than as a formal breach-of-contract action. Murphy appealed, and the Ninth Circuit affirmed.

DISPOSITION

affirmed

CASES CITED

- *In re Cendant Corp. Sec. Litig.*, 404 F.3d 173, 193-95 (3d Cir. 2005)