

OREGON LAW UPDATE

ORS 20.080: No Pre-Litigation Demand Required for Defendant To Obtain Attorney Fees on its' Counterclaims

From the Desk of Jeff Eberhard: This case is important to those dealing with defendants who have counterclaims in ORS 20.080 cases.

Claims Pointer: ORS 20.080 allows for plaintiffs to obtain attorney fees on cases where the amount pleaded is \$10,000 or less. Defendants can also recover attorney fees if they bring a counterclaim for \$10,000 or less and win. In such cases, a defendant is not required to send a pre-litigation demand to recover attorney fees on its counterclaims.

case in point ...

Halperin v. Pitts, in the Supreme Court of Oregon, En Banc, 352 Or. 482, 287 P.3d 1069 (October 4, 2012).

Eric Halperin and Beatrice Michel (jointly, the "Halperins") owned a piece of land in Washington County, Oregon that was immediately next to land owned by Ray Pitts and Joyce Pitts (jointly, the "Pitts"). For years, the Halperins and Pitts disputed the boundary between their properties. The Halperins eventually sent a demand letter to the Pitts complaining that the Pitts had trespassed on their property and asking for \$5,500 in damages. The Halperins later initiated an action to quiet title against the Pitts and also brought a claim for trespass. In response, the Pitts counterclaimed against the Halperins bringing their own claims for quiet title and trespass against the Halperins and asking for \$5,000 in general damages. At trial, both parties' trespass claims were dismissed, but the trial court granted the Halperins quiet title action. The Pitts appealed.

On appeal, the Pitts argued that the trial court made a mistake in dismissing their counterclaim for trespass and the Court of Appeals agreed, finding evidence that the Halperins did trespass. The Pitts then requested that the Court of Appeals make an award for their attorney fees pursuant

to ORS 20.080(2). The Halperins objected to the Pitt's attorney fee request because the Pitts had not sent the Halperins a pre-litigation demand letter. The Court of Appeals agreed with the Halperins, concluding that ORS 20.080(2) required a demand letter from the Pitts for them to receive attorney fees. The Pitts appealed and argued to the Oregon Supreme Court that ORS 20.080(2) did not place a requirement on defendants to send a demand letter in order to receive attorney fees. The Oregon Supreme Court agreed with the Pitts and found that the plain language of ORS 20.080(2) applied only to defendants and did not mention a demand letter requirement.

The Court then looked to the legislative history for the statute dating back to its enactment in 1947, and found nothing that indicated a legislative intent to include a pre-litigation demand letter requirement for defendants in ORS 20.080(2). Therefore, the Pitts were not required to provide a pre-litigation demand to the Halperins in order to recover attorney fees.

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