**Oregon Trial Court’s Award of Reduced Attorney Fees Subject to Remand Due to Insufficient Explanation**

**From the desk of Josh Hayward:** Attorney fee exposure can cause small cases to turn into big problems. In some cases, the prevailing party’s fees may be reduced by the trial court if they are unreasonable, unrelated, or excessive. What factors does a judge weigh when making such a reduction? Does the court have to explain its reasoning when it does so? Read on to find out.

**Case Pointer:** In this dispute with attorney fee exposure, the plaintiff received an award of $3,600 at the trial court and sought more than $7,000 in attorney fees. The trial court only awarded $2,000 in a single sentence opinion letter. The plaintiff appealed, arguing that the trial court abused its discretion in making such a large reduction without adequate explanation. The court of appeals reviewed the trial court’s decision and found that there was not enough of an explanation provided by the trial court to allow the court to adequately review the decision. Because of the insufficient record, the court remanded the case back to the trial court to provide an explanation of its reasoning. Attorney fee exposure is common in insurance defense, especially in 20.080 actions and first party cases. This case provides a good overview of the factors that go into a court will consider when making an attorney fee award.

Moreau v. Samalin, 295 Or App 534 (January 3, 2019).

Sandra Moreau (“Plaintiff”) agreed to rent an apartment from the defendant, a landlord, in Portland. The plaintiff found the apartment to be uninhabitable when she moved in. After terminating her lease, she unsuccessfully sought the return of her deposit and filed a lawsuit under Oregon’s Residential Landlord and Tenant Act (ORLTA). She secured a default judgment against defendant for $3,600 and sought $3,054 in attorney fees as authorized by the statute. Following the judgment, defendant hired an attorney. Defendant’s counsel filed several motions for relief from default and a motion to dismiss. Each was denied. After litigating these motions, Plaintiff filed an amended attorney fee petition for $7,018.75. Defendant objected to the amount of requested attorney fees and Plaintiff filed a surreply with an explanation of the reasons for the amount. Neither party requested a hearing and the court issued a one sentence letter opinion awarding Plaintiff $2,000 in attorney fees. Plaintiff appealed.

On appeal, the court sought to tease out the trial court’s reasons for its award of only 28% of Plaintiff’s requested fees. The court explained the law behind an award of discretionary attorney fees, noting the numerous factors that trial courts must weigh. The 17 factors—listed in ORS 20.075(2)—include, among others, (1) the time and labor required; (2) the fee customarily charged in the locality for the same services; (3) the skill needed to perform the legal services; and (4) the novelty and difficulty of the questions involved. The court noted that a trial court is entitled to assign any weight to the 17 factors it sees fit. Finally, the court of appeals explained that, when it receives an appeal of an attorney fee award or reduction, it must inspect the record to determine whether the trial court abused its discretion in examining the 17 factors of ORS 20.075(2).

This, however, was not possible in this case. Specifically, the court of appeals explained that the single sentence letter opinion provided no basis from which it could glean the trial court’s reasoning for its reduction. In such situations, the court noted it can examine the record as a whole—including the appealing party’s objection, and any motions or hearings on the subject of attorney fees—to determine whether the court abused its discretion. In this case, the objection was contained in one sentence, no hearing was held, and the motions were insufficient to fully illustrate the potential reasonableness of the award. Accordingly, the court was unable to meaningfully review the award.

Because of this dearth of guidance, the court was required to remand the attorney fee petition back to the trial court. It instructed the trial court to provide enough information on the attorney fee award to “provide the necessary information for meaningful appellate review.” In other words, the trial court had to explain why the 17 factors of ORS 20.075(2) warranted an attorney fee award totaling only 28% of the prevailing party’s requested fees.

This case serves as a reminder that discretionary attorney fees, as the name implies, are potentially subject to reduction by the trial court. When you are involved in a case with discretionary attorney fees, be sure to consult counsel regarding the reasonableness of the prevailing party’s requested fees. If they seem unreasonably high, developing arguments based on the 17 factors for why fees should be reduced may be a viable strategy.

View full opinion at:

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